

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2019

DELIVERED ON : 21.08.2019

CORAM:

THE HONOURABLE Mr. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2755 of 2012

and

MP.No.1 of 2012

The Oriental Insurance Co. Ltd.,
Oriental House, 3rd Floor,
No.7, J.T. Road, Mumbai - 400 020.

...Appellant/2nd Respondents

Vs.

1.L.Harikrishnan

2.T.S.Saravanan ... 2nd Respondents/1st Respondents

R2 Remained Exparte and
notice is dispensed with for him)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.03.2011, in MCOP.No. 496 of 2004, on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Chengalpattu.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : M/s.G.Nalini for R1

R2 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Oriental Insurance Company Limited, challenging, the Judgment and decree passed in MCOP.No. 496 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Chengalpattu. They have filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimants is as follows:

(i) The first respondent/claimant was aged about 27 years on the date of the accident. He was earning a sum of Rs.8,000/- per month by doing business in Saw mill and agricultural works.

(ii) On 13.08.2004, the first respondent/claimant after handing over his motorcycle to Jai Automobiles for service at Tambaram Sanitorium, Chennai, by 06.30 pm, was waiting for the bus to return to Tambaram on the extreme left side of the road. At that time, the second respondent was coming on Pallavaram - Tambaram road in his motorcycle bearing Registration No. MH 02 DA 7317, in a rash and negligent manner, without following the traffic rules, and lost his control and hit the first respondent/claimant. Due to this accident, the first respondent/claimant sustained grievous injuries.

(iii) According to the first respondent/claimant, the accident occurred only due to the rash and negligent act of the driver of the motorcycle bearing Registration No. MH 02 DA 7317. The second respondent herein is the owner of the said motorcycle and the Oriental Insurance Company Limited, who is the present appellant is the insurer of the said motorcycle. Therefore, the owner and insurer of the said motorcycle are jointly and severally liable to pay compensation to him.

3. The second respondent/owner of the said motorcycle was absent before the Tribunal as well as before this Court and therefore, he was set ex-parte. The Oriental Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the first respondent/claimant, PW1 to PW3 were examined, exhibits P1 to P11 were marked. On the side of the Insurance Company, no documentary or oral evidences were marked. The learned Tribunal after analysing all the evidences, awarded a sum of Rs.4,04,200/- together with interest at the rate of 7.5% per annum and directed the Insurance Company to pay the same to the first respondent/ claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard both sides and perused the materials on record.

5. On going through the oral evidences of PW2 and PW3 coupled with documentary evidences of disability certificate (Ex.P9) and X-ray (Ex.P10), the whole body disability has to be fixed at 30% and not at 60% arrived by the Tribunal. Furthermore, taking note of the nature of the injuries sustained by the first respondent/claimant, it could be said that the injuries have resulted in loss of earning power of the first respondent/claimant and hence the criteria fixed by the Honourable Supreme Court in the case of Rajkumar vs Ajaykumar &

Another reported in 2011 (1) SCC 343 to adopt multiplier method is satisfied. The Tribunal has also rightly adopted the multiplier method and the same need not be disturbed. The notional income fixed by the Tribunal at Rs.2,000/- per month is hereby confirmed and also the multiplier of 18 fixed by the Tribunal is confirmed following the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The age of the deceased was 27 years on the date of the accident and as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospectus of the deceased.

Calculation:

Notional income = Rs.2,000/-

40% Future Prospects = Rs.800/-

Total = Rs.2,000/- + Rs.800 = Rs.2,800/-

Disability

= Rs. 2,800/- x 12 x 18 x 30/100

= Rs.1,81,440/-

6. As per the medical bills (Ex.P5), a sum of Rs.75,000/- is awarded towards medical expenses. Considering the date of the accident, as sum of Rs.5,000/- is awarded towards transportation. Taking into consideration, the nature of injuries sustained by the first respondent/claimant, a sum of Rs.10,000/- is awarded towards extra nourishment, a sum of Rs.20,000/- is awarded towards pain and sufferings and a sum of Rs.10,000/- is awarded toward attender's charges. In the facts and circumstances of the present case, the sum of Rs.60,000/- granted by the Tribunal under the head loss of amenities is reduced to Rs.20,000/-. Loss of income is calculated for a period of four months and therefore a sum of Rs.8,000/- (Rs.2,000/- x 4) is awarded towards the same. All the other heads awarded by the Tribunal are hereby vacated.

7. Accordingly, the award passed by the Tribunal in M.C.O.P.No. 496 of 2004 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income during treatment period	Rs.2,59,200/-	Rs.8,000
2.	Disability	NIL	Rs.1,81,440/-
3.	Transport to Hospital	Rs.5,000/-	Rs. 5,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Pain and sufferings	Rs.40,000/-	Rs.20,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
6.	Mental Agony	Rs.10,000/-	NIL
7.	Attender's charges	NIL	Rs.10,000/-
8.	Medical expenses	NIL	Rs.75,000/-
9.	Loss of amenities and enjoyment	Rs.60,000/-	Rs.20,000/-
10.	Loss of expectation of life	Rs.20,000/-	NIL
	Total	Rs.4,04,200/-	Rs.3,29,440/-

The compensation awarded by the Tribunal is reduced from Rs.4,04,200/- to Rs.3,29,440/- which shall carry interest at the rate of 7.5% per annum.

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.4,04,200/- to Rs.3,29,440/- which shall carry interest at the rate of 7.5% per annum.

(iii) The present appellant/Oriental Insurance Company is directed to deposit the entire compensation amount awarded by this Court, i.e., Rs.3,29,440/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 496 of 2004, dated 01.03.2011, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Chengalpattu within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/claimant is permitted to withdraw the same, in the manner known to law.

(v) If, the appellant/Insurance Company had already deposited the compensation awarded by the Tribunal to the credit of the said MCOP, then, they are at liberty to withdraw the balance amount which is in excess of the amount awarded by this Court after following due process of law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
The Additional Subordinate Judge,
Chengalpattu.

2.The Section Officer,
V.R. Section,
High Court,
Madras.

+1cc to M/s.M.Krishnamoorthy, Advocate Sr.72012
+1cc to Mr.G.Nalini, Advocate Sr.71272

C.M.A.No.2755 of 2012

rsi[co]
srg 06/01/2020