

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2353 of 2013

and

M.P.No.1 of 2013

The Oriental Insurance Co. Ltd.,
Issuing office at
Gopal Rao Library Buildings,
Town Hall Road,
Kumbakonam.

...Appellant

Vs

1.S.Marimuthu

2.K.Kalaiselvan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 25.11.2011 passed in M.C.O.P.No.487 of 2009, on the file of Motor Accidents Claims Tribunal, Principal Sub-Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.S.S.Swaminathan

For R2 : No Appearance

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,96,400/- towards compensation to the first respondent / claimant due to the injuries sustained by him in the motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. 19.02.2009 at about 21.00 hours, when the 1st respondent was proceeding in the Mangalam - Tiruppur road near Santosh Dyeing Pirivu Kulathupudur, by walk, the motorcycle bearing Registration No.TN 39 AJ 7326 driven by its rider at high speed and in a rash and negligent manner, came from behind and hit the 1st respondent. Due to the said impact, the 1st respondent sustained grievous injuries and fractures. A claim petition was filed before the Tribunal. On consideration

of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,96,400/- with interest at the rate of 7.5% per annum from the date of petition. The said sum has been directed to be paid by the owner of the vehicle and the Insurance Company, jointly and severally. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant has submitted that the Tribunal has erred in coming to the conclusion that the accident had occurred due to the rash and negligent driving of the rider of the two-wheeler. It is also stated that the compensation awarded by the Tribunal is excessive.

4.The learned counsel for the 1st respondent / claimant has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant as well as the learned counsel for the 1st respondent and perused the materials available on record carefully and meticulously.

6.It is the case of the appellant that the motorcycle belonging to 2nd respondent was not involved in the accident. To substantiate the same, the appellant has not adduced any evidence. Hence the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle, which factual finding this Court is not inclined to interfere.

7.As regards the quantum of compensation awarded by the Tribunal, P.W.1/injured deposed before the Tribunal that he was working as a Security Officer in Santhosh Dying Company and earning a sum of Rs.5,000/- per month. The salary certificate was marked as Ex.P5. Based on his age and avocation, the Tribunal fixed the monthly income of the injured at Rs.4,500/-, adopted the multiplier of 5 and arrived at the sum of Rs.94,500/- towards loss of income due to 35% disability fixed by the Doctor as per Ex.P6. The Tribunal has also awarded sum of Rs.3,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards pain and suffering and Rs.88,849/- towards medical expenses based on Ex.P4/medical bills. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the deceased, adopted the correct multiplier and arrived at the compensation towards loss of income. Similarly, the amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed by this Court.

8.In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. The appellant-Insurance Company is directed to deposit the compensation amount, with interest and costs, as ordered by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

- 1.The Principal Sub-Judge,
Motor Accidents Claims Tribunal,
Tiruppur.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No. 58729
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 59350

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VSN II(CO)
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