



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.897 of 2009

The Oriental Insurance Co. Ltd.,
through its Divisional Manager
Office at North Cotton Road
Tuticorin

... Appellant/2nd Respondent

-vs-

1.P.Senthooor

...1st Respondent/Petitioner

2.Jayaraj

... 2nd Respondent/1st Respondent

(R2 ex-parte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Award made in M.C.O.P.No.80 of 2007, dated 08.04.2009, on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Tuticorin.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.Venugopal for R1

R2-Exparte before the Tribunal

J U D G M E N T

The appellant challenges the Judgment and Award, dated 08.04.2009, passed in M.C.O.P.No.80 of 2007, by the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Tuticorin, wherein for the claim of Rs.10,00,000/-, the Tribunal has totally awarded a sum of Rs.2,55,333/-.

2. This is a case of injury. The first respondent sustained injuries in a motor vehicle accident took place on 07.06.2006. According to him, on 07.06.2006, at about 06.30 a.m. he was travelling as pillion rider in a Motorcycle bearing registration No.TN69 K5029 owned by the second respondent and insured with the appellant - Insurance Company to attend a marriage function in Sulaivaikal Vasantham Marriage Hall and the Motorcycle was driven by one Ponmari Selvaraj. When they were proceeding near Selvanayagapuram, one Senthil suddenly crossed the road, due to which the Motorcycle hit against him. In that process, the claimant fell down and sustained injuries. Immediately, he was admitted in City Hospital at Thoothukudi as inpatient for the injuries sustained by him in the accident.

3. The stand of the appellant - Insurance Company before the Tribunal was that the Motorcycle was not driven by the said Ponmari Selvaraj at the relevant time, but it was driven by the



injured claimant and it was owned by his brother Jeyaraj / second respondent herein. Suppressing the said fact, the claim petition was filed. Since the injured himself was responsible for the accident, the Insurance Company cannot be made liable to pay compensation.

WEB COPY

4. Before the Tribunal, the claimant gave evidence as P.W.1 and the rider of the Motorcycle was examined as P.W.2. Both of them deposed that the accident occurred only on account of sudden crossing of one Senthil and the Motorcycle was driven by P.W.2. Ex.P20 - Driving Licence of P.W.2 was also produced. Exs.P1 - First Information Report and P2 - Charge Sheet would reveal that the criminal case was registered against P.W.2. The appellant - Insurance Company relied on Ex.P3 - Wound Certificate to substantiate their case that the Motorcycle was driven by the claimant himself, but in Ex.P3 - Wound Certificate and Ex.R2 - Intimation, it is stated that while the claimant was travelling in a two wheeler, he fell down. The Tribunal noticing that those documents do not disclose that while the claimant was riding, he fell down, rejected the case of the appellant - Insurance Company and by placing reliance on the evidence of P.Ws.1 and 2 and Exs.P1 and P2, held that the Motorcycle was driven by P.W.2 at the relevant time and on his negligence, the accident had taken place.

5. With regard to the quantum, P.W.1 has stated that from 07.06.2006 to 27.09.2006, he took treatment in City Hospital and during treatment in the said Hospital, he undergone three surgeries and a rod was fixed. However, since he did not have financial capacity to continue treatment in the Private Hospital, he was admitted in Thoothukudi Government Hospital, where he underwent fourth surgery. Ex.P3 is the Wound Certificate and Exs.P6 to P8 are the Discharge Summaries. Exs.P9 to P12 are the Medical Bills; Ex.P14 is the X-Ray Bill and Ex.P15 is the Transport Charge Bill, which would reveal that the claimant spent Rs.90,333/- towards medical expenses. Ex.P19 - Disability Certificate shows that the claimant suffered 65% permanent disability. Based on the above documentary evidence, the Tribunal awarded Rs.65,000/- towards permanent disability; Rs.90,333/- towards medical expenses; Rs.20,000/- towards pain and suffering; Rs.5,000/- towards transportation expenses and extra-nourishment; Rs.20,000/- towards mental agony, loss of income during treatment period and consequences of injuries; Rs.10,000/- towards loss of happiness; Rs.15,000/- towards loss of amenities and Rs.15,000/- towards occupational impact due to disability and Rs.15,000/- towards future medical expenses. In total, the Tribunal awarded Rs.2,55,333/- along with interest at the rate of 7.5% per annum. In my considered opinion, the award amount is reasonable and it cannot be said to be excessive.



6. In that view, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent - claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

KRK

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tuticorin.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.K.Bhaskaran , Advocate SR.No.25971

+1 cc to Mr.M.P.Senthil , Advocate SR.No.25989

C.M.A. (MD) No.897 of 2009

16.12.2020

KM (20.01.2021) 3P 6C