(2010) 08 MAD CK 0028

In the Madras High Court

Case No : C.M.A. No. 3580 of 2005

Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Punitha, A. Selvaganesh and Jawan Pipes (P) Ltd. RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0028

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; K. Kalyanasundaram, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the insurance company against the award dated 10.12.2004 made in M.C.O.P No.

245 of 2004 by the Motor Accident Claims Tribunal, III Additional Sub Court, Coimbatore.

2. Background facts in a nutshell are as follows:

The first respondent/claimant, is the owner of the Maruthi Esteem Car bearing registration No. TN 43-8672. On 11.09.2003 at about 02.30

A.M., the said car was driven by her husband along with his friend Suresh Kumar from Bangalore towards Tirupur in National Highway NH-47.

While they were nearing SIPCOT office east to west, an Auto bearing registration No. TN 33-R-3538 came in a rash and negligent manner in the

opposite direction and hit the Maruthi Esteem Car. Due to the impact, the Maruthi Esteem Car was completely damaged. Therefore, the claimant

claimed a sum of Rs. 1,75,000/- as compensation. The said Auto was insured with the appellant insurance company who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the Auto or not?

2. What is the compensation the claimant is entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of

the driver of the Auto and awarded compensation of Rs. 1,04,000/- with interest @ 9% per annum from the date of claim and the details of the

same are as under:

Damage to car = Rs. 88,000/-

Transportation = Rs. 1,000/-

Loss of value of car = Rs. 10,000/-

Mental agony = Rs 5,000/-

Total = Rs. 1,04,000/-

Aggrieved by that award, the appellant insurance company has filed the present appeal.

3. The learned Counsel appearing for the appellant insurance company questioned only the quantum of the award and vehemently contented that

the award passed by the Tribunal is excessive, exorbitant and also without any basis and justification. Further, the Tribunal ought not to have

awarded a sum of Rs. 88,000/- towards damage to car and Rs. 10,000/- towards loss due to fall in value of car and a further sum of Rs. 5,000/-

towards mental agony. Therefore, the award passed by the Tribunal is not in accordance with law and the same should be set aside.

4. The Learned Counsel appearing for the claimant submitted that the Tribunal has considered all the facts and circumstances of the case and

awarded a just, fair and reasonable compensation and it is based on valid materials and evidence. It is a question of fact and it is not a perverse

order. Therefore, the award passed by the Tribunal is in accordance with law and the same should be confirmed.

5. Heard the counsel. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P13 were marked. On the side of the

appellant insurance company, R.Ws.1 and 2 were examined and documents Exs.R1 to R11 were marked. P.W.1 is the husband of the claimant.

P.W.2 is one Ashok Kumar, who is the owner of M/s. Priyam Automobiles, Perundurai. Ex.P1 is the First Information Report. Ex.P2 dated

17.09.2003 is the copy of the charge sheet, Ex.P3 is the diagram, Ex.P4 dated 11.09.2003 motor vehicle inspector''s report, Ex.P5 dated

11.09.2003 motor vehicle inspector''s report, Ex.P6 is the copy of the policy, Ex.P7 is the repair receipt, Ex.P8 dated 16.02.2004 is the advocate

notice, Ex.P9 is the acknowledgement card, Ex.P10 is the copy of the driving licence, Ex.P11 is the R.C. Book, Ex.P12 is the company''s

registration certificate, Ex.P13 is the Income Tax card were marked. On the side of the appellant insurance company, R.W.1 one Sampath Kumar

who is the Administrative Officer of the insurance company and R.W.2 is one Murugan who is the Surveyor of the insurance company were

examined. Ex.R1 is the letter dated 01.09.2003, Ex.R2 is the estimate copy, Ex.R3 is the claim form, Ex.R4 is the survey report, Ex.R5 is the

letter and voucher, Ex.R6 is the copy of the letter dated 17.02.2004, Ex.R7 advocate notice dated 16.02.2004, Ex.R8 is the photos and negatives

given by the Surveyor, Ex.R9 is the surveyor licence, Ex.R10 is the order copy of I.R.T.N, Ex.R11 is the certificate given by UDG company were

marked. After considering the above oral and documentary evidence, the Tribunal has given a categorical finding that the accident had occurred

only due to the rash and negligent driving of the Auto and awarded compensation. It is a question of fact. The finding is based on valid materials

and evidence and therefore, the same is confirmed.

6. The Maruthi Esteem Car was completely damaged. Ex.P7 is the receipt given by the mechanic who repaired the car. According to the learned

Counsel for the appellant the said Exhibit has been wrongly stated as medical bills. As per Ex.P7, the claimant claimed the cost towards repair at

Rs. 1,34,796/-. The said car was given to M/s. Priyam Automobiles, Perundurai, for repair. one Ashok Kumar, who is the owner of the M/s.

Priyam Automobiles was examined as P.W.2. In his evidence, it is stated that the estimate cost the repair to the car is at Rs. 1,40,000/-. Ex.R2 is

the estimate copy given by the owner of the car to the insurance company. From this exhibit, it is clear that the cost would be incurred is only Rs.

88,000/-. The learned Counsel for the appellant vehemently contended that one Murgan, who is the surveyor of the insurance company was

examined as R.W.2. He inspected the car without informing the claimant and given a survey report. Ex.R4 is the Survey Report, in which, it is

stated that the estimated cost of the damage to the car is only at Rs. 38,614/-. After taking into consideration of Ex.R2, the Tribunal awarded a

sum of Rs. 88,000/- towards damage to car. It is a question of fact. I do not find any illegality in the award amount, and therefore, the same is

confirmed. Further, the Tribunal awarded a sum of Rs. 1,000/- towards transportation, which is very reasonable and the same is confirmed and the

Tribunal also awarded a sum of Rs. 10,000/- for loss towards fall in value of the car. The Tribunal after awarding a sum of Rs. 88,000/- towards

damage to car, awarded a sum of Rs. 10,000/- towards loss towards fall in value of the car which is unwarranted for the reason that the said car

was manufactured in the year 1998 and there is no resale value of the car in the year 2003 and therefore the same is unwarranted and accordingly

deleted. However, the Tribunal awarded a sum of Rs. 5,000/- towards mental agony. After taking into consideration of the facts and

circumstances of the case, the award towards mental agony is unwarranted and the same is deleted. The interest rate awarded by the Tribunal is

9% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that period, the

interest rate awarded by the Tribunal is reasonable and therefore the same is confirmed. The modified amount of the compensation are as under:

Damage to the car = Rs. 88,000/-

Transportation = Rs. 1,000/-

Total = Rs. 89,000/-

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7. In the result, the claimant is entitled to modified compensation of Rs. 89,000/- with interest @ 9% per annum from the date of claim petition. It

is stated by the learned Counsel for the appellant insurance company that the entire award amount has already been deposited by the Court order

dated 16.11.2005 and the claimant was also permitted to withdraw 50% of the award amount. Under these circumstances, the claimant is permitted to withdraw the modified compensation of Rs. 89,000/- with interest @ 9% per annum, less the amount already withdrawn, on making

proper application. The appellant insurance company is also permitted to withdraw the balance amount, on making proper application.

8. With the above modifications, the appeal is disposed of. No costs.

