

## The Oriental Insurance Co. Ltd. Vs Rathinam and Others

**Court:** Madras High Court

**Date of Decision:** Oct. 20, 2010

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** K. Anbarasan, for the Appellant; V. Thillaisamy, for R1, for the Respondent

**Final Decision:** Dismissed

### Judgement

C.S. Karnan, J.

The above Civil Miscellaneous Appeal has been filed by the Appellant/second Respondent against the Award and Decree, dated 30.01.2006, made in M.C.O.P. No. 99 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court,

Coimbatore, awarding a compensation of Rs. 2,03,230/- together with 7.5% interest per annum, from the date of filing the claim petition till the

date of payment of compensation.

2. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to scale down the award and

decree passed by the Tribunal.

3. The short facts of the case are as follows:

According to the Petitioner, the first Respondent is the owner-cum-driver of the Maruthi car bearing registration No. KL01 U2693, had parked

her car in a no parking area along the main road, in front of Shrihari Automobiles, Sulur, Coimbatore, thereby violating the traffic rules. The first

Respondent could have atleast switched on her indicators, to alert the following vehicles. The Petitioner was a pillion rider, was travelling with her

husband on 29.06.2002, in scooter bearing registration No. TN39 E7602, at about 5.30 p.m. when they were nearing the Shrihari Automobiles at

Sulur of Coimbatore was knocked down by the first Respondent, who negligently opened her front right door without noticing the Petitioner's

scooter. The first Respondent apart from parking her vehicle in a no parking area, without an atom care to see if any vehicle is coming behind,

mechanically and negligently opened her car's front right door, as a result the Petitioner and her husband travelling in the scooter in a fraction of a

second was blown off into the streets. By the sudden unexpected door-open by the first Respondent, the Petitioner succumbed to grievous sutured

wounds and multiple injuries and was rushed to the hospital for first aid and treatment by the people, who gathered there. The Petitioner was a

pillion rider and the scooter bearing registration No. TN39 E7602 was driven by the Petitioner's husband, who had a valid driving licence at the

time of the accident, is also added as a formal party to the proceedings as the third Respondent. The scooter bearing registration No. TN39

E7602 belonging to one A.N. Sukumar, who is also added as a party to the proceedings as the fourth Respondent. Whereas the fifth Respondent

is the insurer of the scooter. The accident had taken place only due to careless and negligence of the first Respondent. Hence the first Respondent

is held liable as the driver-cum-owner of the Maruthi Car bearing registration No. KL01 U2693; insured with the second Respondent. Hence, the

Respondents 1 and 2 are vicariously, jointly and severally held liable to pay compensation to the Petitioner. As such, the Petitioner claimed a

compensation of Rs. 3,00,000/- before the Tribunal.

4. The second Respondent/Oriental Insurance Co., Ltd., in their Counter, had resisted the claim petition, which reads as follows:

This Respondent submits that the petition is not maintainable. The Petitioner has given completely false version about the accident. She has stopped

that she succumbed to previous injuries but she is still alive to lay the claim. She has even gone to the extent of stating that the first Respondent has

been charge-sheeted by the Sullur Police vide Crime No. 388 of 2002. But, it is the first Respondent, who has lodged the complaint in Crime No.

388 of 2002 against the Petitioner's husband/rider of the scooter. The first Respondent had parked her car safely on the left hand side of the road

in order to drop a person. He opened the left back door in order to get down. At that time, the third Respondent who was driving the two

wheeler/scooter bearing registration No. TN39 E7602 in a rash and negligent manner overtook the car from the left side ie. on the wrong side and

hit against the door. Hence, the Petitioner and the rider fell down and sustained injuries. The first Respondent's car had been damaged. She has

laid ""own damages"" claim with M/s. The Oriental Insurance Co., Ltd., under comprehensive policy coverage. The fact being so, the Petitioner has

cleverly twisted the facts to match her false claim. Her husband being the tortfeasor she is not entitled to any relief as per law. She cannot claim

compensation from the victim on their insurance company for her husband's fault. Therefore, this petition is not maintainable and to be dismissed in

limine

The second Respondent prayed accordingly.

5. The learned Motor Accident Claims Tribunal had framed two issues for the consideration namely:

(i) Who is responsible for the accident?

(ii) What is the quantum of compensation, which the Petitioner is entitled to get? From whom, the compensation is to be claimed?

6. On the Petitioner's side, the Petitioner was examined as PW1 and Dr. Sekar was examined as PW2 and nine documents were marked as

Exs.P1 to P9 namely Ex.P1-Copy of the First Information Report, Ex.P2-Copy of the Wound Certificate, Ex.P3-Discharge Summary, Ex.P4-

Medical Bills, Ex.P5-Prescriptions, Ex.P6-Disability Certificate, Exs.P7 and P8-C.T.Scan Reports, Ex.P9-X-ray. On the second Respondent's

side, the first Respondent was examined as RW1 and her driving licence was marked as Ex.R1.

7. The PW1, the claimant, had adduced evidence stating that 29.06.2002, at about 05.30 p.m. her husband and herself were travelling on a

Scooter bearing registration No. TN39 E7602 on the Trichy road by the left side of the road and at that point of time, the first Respondent drove

the Maruthi Car bearing registration No. KL01 U2693 in the same direction at high speed and overtook the scooter, after which he stopped the

car and suddenly opened the left of the car door, without noticing the scooter coming in the same direction. Further, she had adduced evidence

stating that she was rushed to the KG Hospital for medical treatment. She had sustained injuries on her right fore head, right hand radius bone

fracture, injury right eyebrow, right side face, right hand fore arm, left leg knee portion and left hand fore arm. In order to prove the nature of

injuries and mode of treatment she had marked Ex.P2-Wound Certificate, Ex.P3-Medical Discharge Summary, Ex.P4-Medical expenses

particulars and Ex.P5-Doctor Prescriptions.

8. PW2, Dr. Sekar had adduced evidence stating that the injured had undergone surgical operation for fracture injuries. He had found bone

fracture on the right hand radius bone, blood clotting on her skull. He assessed the disability as 57%. In order to prove his statement Ex.P6-

Disability Certificate, Exs.P7 and P8-CT Scan Reports and Ex.P9-X-ray.

9. The first Respondent had examined as RW1. She had denied the statement of the PW1 and adduced evidence stating that the rider of the

scooter coming at high speed dashed against the opened car door. As such, the accident had occurred. So, the Respondent is not responsible for

the said accident. Originally, the First Information Report was registered against the rider of the scooter on the basis of the Respondent's

complaint. Subsequently, the same was closed and not proceeded upon.

10. After considering the evidence of PW1, PW2 and RW1 and documents, which were marked as exhibits, the learned Tribunal fastened the

liability on the side of the first Respondent, therefore the first and second Respondents are jointly and severally liable to pay compensation and

awarded the compensation as follows:

i. Rs. 55,000/- under the head of pain and suffering and disability,

ii. Rs. 5,000/- under the head of mental agony,

iii. Rs. 1,42,230/- under the head of medical expenses,

iv. Rs. 500/- under the head of extra-nourishment,

v. Rs. 500/- under the head of transport expenses,

In total, the Tribunal awarded a sum of Rs. 2,03,230/- as compensation to the Petitioner, together with interest at the rate of 7.5% per annum from

the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the first and second Respondents to

deposit the compensation amount of Rs. 2,03,230/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till

the date of payment of compensation, within a period of two months from the date of its order. In turn, the said amount to be deposited, under a

fixed deposit scheme, in a nationalised bank for a period three years. Accordingly ordered.

11. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to scale down the award and

decree passed by the Tribunal.

12. The learned Counsel appearing for the Appellant/Insurance Company argued that it was the committance of negligence on the part of the

Scooter rider. As such, the Tribunal fixed the entire liability on the side of the Respondent, which is not sustainable. Further, the learned Counsel

argued the Tribunal without any basis awarded a sum of Rs. 55,000/- under the head of pain and suffering and disability, therefore, which is an

arbitrary manner. As such, the learned Counsel prays before this Court to scale down the compensation awarded by the Tribunal.

13. Learned Counsel appearing for the first Respondent/claimant argued that the Tribunal had awarded a sum of Rs. 500/- under the head of

extra-nourishment, which is on the lower side. The medical expenses alone amount to Rs. 1,42,000/-. The balance compensation is inadequate

since the claimant had undergone surgical operation for bone fractures. Further, the learned Counsel argued that the Tribunal failed to consider the

compensation under the head of attender charges, loss of income. Further, the learned Counsel argued that the award amount of Rs. 5,000/- under

the head of mental agony is on the lower side. Therefore, the learned Counsel prays before this Court to dismiss the appeal filed by the Appellant.

14. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing on either side and the award

and decree passed by the Tribunal, this Court is of the view that the quantum of compensation is not on the higher side, since the claimant had

spent a sum of Rs. 1,42,230/-towards the medical expenses. The rest of the compensation is not on the higher side, considering the nature of

injuries, mode of treatment including surgical operation and during of treatment while hospitalised. Therefore, this Court is unwilling to interfere with

the findings of the Tribunal on two issues namely liability and quantum of compensation. Hence, this Court confirms the order of the Tribunal, which

is fair and equitable.

15. On 07.12.2006, this Court enforced a condition on the Appellant/Insurance Company to deposit the entire compensation amount, into the

credit of the M.C.O.P. No. 99 of 2004, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Coimbatore.

16. As the accident had happened in the year 2002, it is open to the first Respondent/claimant to withdraw the entire compensation amount,

awarded by the learned Tribunal, with accrued interest thereon and costs, lying in the credit of the M.C.O.P. No. 99 of 2004, on the file of the

Motor Accident Claims Tribunal, Principal Subordinate Court, Coimbatore, by making proper payment out application, subject to the deduction

of withdrawals, if any, in accordance with law.

17. In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 30.01.2006, made in M.C.O.P. No. 99 of 2004,

passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Coimbatore is confirmed. Consequently, connected miscellaneous

petition is closed. No costs.