

(2010) 03 MAD CK 0117
In the Madras High Court
Case No : C.M.A. No. 388 of 2005

A. Loganathan

APPELLANT

Vs

K. Arumugam and The United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 179, 184
Penal Code, 1860 (IPC) — Section 338(2)

Citation : (2010) 03 MAD CK 0117

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

Bench : Single Bench

Advocate : J. Mahalingam, for the Appellant; S. Udayakumar, for R2, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated

05.07.2004, made in M.C.O.P. No. 2920 of 1998, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. IV, Chennai,

awarding a compensation of Rs. 91,000/- with 9% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/petitioner has filed the above appeal praying for enhancement of compensation with

interest.

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

On 17.03.1996, at about 7.45 p.m. while the petitioner was travelling by cycle at Arcot road, from east to west on the southern side of the road, a

lorry bearing registration No. TAB 9626 driven rashly and negligently by its driver in a manner endangering the public safety came at a dangerous

speed from the opposite direction on the wrong side of the road and dashed against the petitioner. In the result, the petitioner sustained grievous

injuries. Immediately, he was rushed to the Vijaya Hospital and subsequently for further medical treatment he was admitted as inpatient at Sri

Ramachandra Hospital at Chennai from 18.03.1996. The claimant sustained Compound Grade-I fracture in both the bones of his right leg,

communitted collis fracture of left wrist, injury over the right eye, facial injuries and other serious multiple injuries all over his body.

4. The claimant was aged about 23 years and he was a labourer⁵. He was earning a sum of Rs. 100/- per day. The claimant claimed

compensation of Rs. 2,00,000, for sustaining his grievous injuries, under the peculiar damages and non peculiar damages.

5. Regarding the said accident, the Traffic Investigation Wing, Pondi Bazaar Police Station, Chennai registered a case, against the first

respondent/driver of the offending vehicle, in Crime No. 1118/1996 u/s 338 of I.P.C and 184 and 179 of Motor Vehicles Act. The said vehicle

was insured with the second respondent/the United India Insurance Co., Ltd., as such, the second respondent is liable to pay the compensation to

the injured claimant.

6. The second respondent, in their counter statement, resisted the claim petition. The second respondent denied that the accident had happened

due to the rash and negligent driving by the driver. The accident had occurred due to the rider of the cycle i.e. claimant. As such, the second

respondent is not liable to pay any compensation to the claimant. The respondent further puts the claimant to stick to the proof of the injuries,

period of treatment, alleged disability and the loss of income. In any event, the claim amount is highly excessive. The respondent denies the validity

of the vehicle records, the driving licence of the driver and the insurance coverage at the time of accident. Further, the respondent prays to permit

the respondent u/s 170(b) of the Motor Vehicles Act, to raise all defences that are available to the insured first respondent in case he remains

exparte. Therefore, the respondent prayed to dismiss the claim petition with costs.

7. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Who is responsible for the accident?

(ii) Is the petitioner entitled to get compensation as claimed in his claim petition? If so, what is the quantum of compensation, which he is entitled to get?

8. On the petitioner's side, the petitioner was examined as PW1, Dr.Saichandran was examined as PW2 and one Amaladoss, Sub-inspector, who is attached to the Traffic Investigation Department was examined as PW3 and twelve documents were marked as Exs.P1 to P12 namely Ex.P1, Medical Bills; Exs.P2 and P3-Discharge Certificates; Exs.P4 and P10, X-ray; Ex.P5, O.P.Chit; Ex.P6, Medical Prescriptions; Exs.P7 and P8, Medical Bills; Ex.P9, Disability Certificate; Ex.P11, FIR and Ex.P12, Sketch. On the respondents' side no witness was examined and no documents were marked.

9. The PW1 had adduced in his evidence that on 17.03.1996, at about 7.45 p.m. he was a pillion rider travelling on the motorcycle from west to east on the Arcot Road at Kodambakkam. At that time, the first respondent's lorry bearing registration No. TAB 9626 driven by its driver in a rash and negligent manner and dashed against the pillion rider. As a result, he sustained grievous injuries. The PW3 adduced evidence stating that he had registered a criminal case against the driver of the lorry. The driver pleaded guilty before the Tribunal Court and paid a sum of Rs. 1,000/- as fine. The Ex.P11, FIR and Ex.P12, Sketch were marked. On the strength of the PW1 and PW3's evidence and after perusing Exs.P11 and P12, the Tribunal has come to a conclusion that the accident had happened due to the rash and negligent driving of the lorry. The said lorry insured with the second respondent. Hence, the second respondent is liable to pay compensation to the claimant.

10. The PW1 had further adduced evidence stating that in his knee bone got fractured and right side head sustained injuries. For his fractured leg a steel rod was fixed by surgically. On his right side head surgery was conducted. Further, the PW1 underwent treatment at Vijaya Hospital, Chennai and Sri Ramachandra Medical College Hospital at Porur. Supporting his medical treatment and nature of injuries, he has marked Exs.P3, P4, P5, P6, P7 and P8. After the treatment, the claimant is unable to stand, unable to perform his normal routine work and getting bouts of

giddiness due to the said accident.

11. The PW2, Dr.Saichandran, had adduced evidence stating that he examined the claimant and issued a 45% Disability Certificate sustained by

the claimant. The claimant's right leg two bones were fractured and a steel rod was fixed in the operated portion. The leg movement was reduced

by 20% only. He was marked two documents namely Ex.P9, the Disability Certificate and Ex.P10-X"ray.

12. Considering the nature of injuries, mode of medical treatment and medical expenses incurred by the claimant besides the age of the claimant,

occupation and income, the Tribunal has awarded as follows:

1. For loss of earning during the treatment, a sum of Rs. 500/-,
2. For transport expenses, a sum of Rs. 500/-,
3. For nutrition, a sum of Rs. 1,000/-,
4. For medical expenses, a sum of Rs. 20,000/-,
5. For loss of earning, a sum of Rs. 4,000/-,
6. For shock and loss of pleasure, a sum of Rs. 7,000/-,
7. For pain and suffering, a sum of Rs. 8,000/-,
8. For permanent disability, a sum of Rs. 40,000/-,
9. For loss of earning power, a sum of Rs. 10,000/-,

In total, the Tribunal awarded a sum of Rs. 91,000/- as compensation to the claimant, together with interest at the rate of 9% per annum from the

date of filing the claim petition till the date of payment of compensation. The interest excluding from the period of 17.07.2002 to 13.02.2003.

Further, the Tribunal directed the second respondent to deposit the compensation amount with accrued interest within a period of eight weeks

from the date of this Order. The Tribunal permitted the claimant to withdraw a sum of Rs. 41,000/- with accrued interest. The Tribunal further

ordered a sum of Rs. 50,000/- to be deposited in Indian bank, Parrys Branch, for a period of three years. The Advocate fees fixed at the rate of

Rs. 4,700/-.

13. Aggreived by the said award and decree, the claimant has filed the above appeal for enhancement of compensation of Rs. 1,09,000/- with

interest. The learned Counsel appearing for the appellant has argued that the

award of Rs. 91,000/- is on the lower side. Further, the claimant was admitted as inpatient at Ramachandra Hospital from 18.03.1996 to 08.04.1996. Again, he was at the same hospital from 25.04.1996 to

22.05.1996. During this period, the claimant lost his usual income. The Tribunal failed to apply a multiplier method for computing compensation.

The Tribunal had not properly awarded a compensation under the head of pain and suffering, medical expenses, mental and physical shock, discomfort, expectation of life, extra nourishment and transport.

14. In support of his contention, the learned Counsel appearing for the appellant cited a Judgment made in Sunil Kumar Vs. Ram Singh Gaud and

Others, , the relevant head notes of which are as follows:

Quantum - Injury - Leg - Three fractures in leg including one at tibia - Injured aged 29, truck driver, drawing Rs. 4,000 p.m. suffered 45 per cent

permanent disability and would not be able to drive - Tribunal awarded Rs. 45,000 for permanent disability, Rs. 21,000 towards medical

expenses, Rs. 6,000 for physical pain and mental agony; total Rs. 72,000 which was upheld by the High Court - Apex Court assessed loss of

earning capacity at Rs. 1,200 p.m., adopted multiplier of 18 and allowed Rs. 2,59,200 for loss of earning capacity - Award of Rs. 72,000

enhanced to Rs. 3,31,200.

15. The learned Counsel appearing for the second respondent argued that the Tribunal had awarded the compensation under the proper heads

after considering the documentary evidence and oral evidence of the claimant and the Doctor's evidence. There is no error in the said award

granted by the Tribunal, the award is reasonable and fair as such, the appeal is not maintainable.

16. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal and arguments advanced by the learned Counsel

appearing on either side, this Court is of the view that the award of the Tribunal has to be enhanced as follows:

1. Rs.90,000/- awarded under the head of permanent disability and loss of income,

2. Rs.10,000/- awarded under the head of pain and suffering,

3. Rs.5,000/- awarded under the head of transport expenses,

4. Rs.5,000/- awarded under the head of nutrition,

5. Rs.20,000/- awarded under the head of medical expenses,

In total, this Court awarded a compensation of Rs. 1,30,000/-. After deducting the Tribunal award amount of Rs. 91,000/-, this Court awards a

sum of Rs. 39,000/- as additional compensation. The additional compensation amount will carry interest at the rate of 7.5% from the date of filing

the petition till the date of payment of compensation. The interest is excluded for a period of 17.07.2002 to 13.02.2003.

17. Therefore, this Court directs the second respondent/the United India Insurance Co., Ltd., to deposit the additional compensation amount of

Rs. 39,000/- together with interest at the rate of 7.5% for the period as observed above, within a period of four weeks from the date of receipt of

the order, into the credit of the M.C.O.P. No. 2920 of 1998, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. IV,

Chennai. After such deposit made, it is open to the claimant to withdraw the additional award amount of compensation with accrued interest

thereon after filing necessary payment out application in accordance with law.

18. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 05.07.2004, in M.C.O.P. No. 2920

of 1998, passed by the Motor Accident Claims Tribunal, Small Causes Court No. IV, Chennai, is modified. There is no order as to costs.