
(2002) 11 MAD CK 0049
In the Madras High Court
Case No : L.P.A. No. 36 of 2002

A. Mohan

APPELLANT

Vs

K. Gunasekaran and The National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Citation : (2003) 2 ACC 300 : (2003) 1 LW 81 : (2003) 1 MLJ 406

Hon'ble Judges : S. Jagadeesan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : A.M. Viswantha Rao, for the Appellant; S. Arunkumar, for M. Rosi Naidu, for R2, for the Respondent

Final Decision : Allowed

Judgement

1. This Appeal is filed by the claimant against the order of the learned Judge passed in C.M.A. No. 511/2001, dated 25.4.2001, confirming the award passed in M.C.O.P. No. 733/1996.

2. The claimant while he was travelling in a Scooter TN-04-3950 on 29.9.1995 as a pillion rider, the driver of the autorickshaw bearing Regn. No.

TN-01-B 0174 drove the vehicle rashly and negligently on Saidapet ""Aattu Thotti Palam"" and came on the wrong side, proceeded from North to

South and hit the Scooter and thereby the appellant/claimant sustained injuries. The appellant, under Part I of the claim petition claimed a sum of

Rs.7,500/- towards loss of earning, Rs.500/- towards transport to hospital, Rs.6,000/- towards extra nourishment, Rs.3,500/- towards cost of

treatment, Rs.32,000/- towards cost of private treatment, Rs.10,000/- towards loss of amenities and enjoyment in life and Rs.10,000/- towards

future treatment. Under Part II of the said Act, the appellant/claimant claimed a

sum of Rs.10,000/- towards compensation for pain and suffering,
Rs.75,000/- towards compensation for continuing permanent disability and
Rs.1,20,00/- towards loss of earning power. In all, claimed a sum of
Rs.2,75,000/-.

3. The Tribunal had fixed the compensation of Rs.47,784/- by awarding
Rs.30,000/- towards partial and permanent disability as well as loss of
income, Rs.5,000/- towards pain and agony, Rs.2,000/- for conveyance besides
Rs.1,000/- towards food and nourishment. Even with respect to
medical expenses on the basis of Exs.P2, P5, P6, P7 and P9, the Tribunal
awarded a sum of Rs.9,784/-.

4. Not satisfied with the same, the appellant/claimant preferred an Appeal in
C.M.A. No. 511/2001 on the file of this Court. The learned Judge
confirmed the said award passed by the Tribunal and dismissed the Appeal.
Hence the present Appeal.

5. Learned counsel appearing for the appellant has submitted that the Tribunal
and the learned Judge have not appreciated the fact that the
appellant has incurred loss of income during the period from 29.9.1995 to
29.6.1996. He further submitted that on the basis of the disability
certificate produced and marked as Ex.P10 issued by P.W.2, the appellant should
have been awarded more amount. He also submitted that taking
into consideration the percentage of disability, the appellant should have been
awarded a substantial amount towards loss of future earning
capacity.

6. Learned counsel appearing for the 2nd respondent-Insurance Company has
submitted that the disability certificate issued by P.W.2 cannot be
relied on as he is not the Doctor who treated the appellant/claimant, and without
even conducting proper investigation, such a certificate had been
issued, and so the tribunal and the learned Judge are correct in rejecting the said
certificate in which it is stated that permanent disability of claimant
is at 75%. Learned counsel further submitted that the tribunal on the basis of the
evidence, has awarded just compensation, which has been
confirmed by the learned Judge and so the same need not be interfered with.

7. With respect to permanent disability, as per Ex.P10, the appellant/claimant
had sustained disability at 75%. P.W.2, the Doctor who issued
Ex.P10 has stated that the claimant was treated at the Government Royapettah

Hospital. He simply stated that he assessed and certified the disability as partial and permanent, at 75%. He has not furnished any details in support of his conclusion that the claimant had sustained disability at 75%. It is also not his case that he examined the claimant by taking X-ray etc., to find out the nature of injuries. P.W.2 is the Doctor who is in the habit of issuing similar certificates in most of the claim petitions and he used to give evidence in such cases regularly. He seems to be a stock witness for the claimants in the Motor Accident Claims Tribunal, Chennai. This observation of us is on the basis of the cases that we came across while dealing with the same. Unfortunately, he used to issue such certificates without even properly examining the claimants. Even to examine the fracture, he has to take X-ray to assess the nature of injuries. He cannot certify about the disability on physical verification regarding internal injury. From the oral evidence of this doctor from the cases we came across, we are able to see that he is not issuing such certificates after conducting proper and necessary examination of the patient concerned for whom he is issuing such certificates, and he has been issuing such certificates only for the purpose of the case as required by the claimants or their counsel without reflecting the correct position.

8. Further, the Apex Court in the decision in *State of Himachal Pradesh vs. Jai Lal*, 1999 8 Sup 401, has held as follows:-

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.

19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. This Court in the case of *Hazi Mohammed Ikramaul Heque vs. State of West Bengal* concurred with the finding of the High Court in

not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.

9. In view of the above discussions, the tribunal and the learned Judge are correct in not relying on Ex.P10, disability certificate issued by P.W.2.

The tribunal has assessed the permanent disability at 30% on the basis of evidence available on record. The said factual finding has been accepted

by the learned Judge. So, we are not inclined to interfere with the said factual findings of the tribunal, which has been accepted by the learned

Judge.

10. Learned counsel appearing for the appellant further submitted that towards loss of income, The Tribunal has not awarded the just

compensation. In fact, the tribunal has awarded a sum of Rs.30,000/- towards disability as well as loss of income. According to the learned

counsel, even if disability is fixed at 30%, the appellant/claimant is entitled to at least Rs.30,000/- towards the same. Relying on the evidence of

P.W.1, learned counsel also submitted that the claimant had established that he was working as an office boy and his monthly income was

Rs.1,500/-, and he is not in a position to walk and cycling. P.W.1 has also deposed that he is not working anywhere after the accident. On that

basis learned counsel submitted that proper and just compensation has to be fixed, considering the said aspect.

11. Though the above said fact regarding the job and monthly salary of the claimant has not been disputed specifically, the claimant also has not

proved the same by producing necessary documents or adducing independent evidence. So, the claim in respect of the loss of income cannot be

granted. To establish the fact the he is not able to walk and cycling, the claimant wants to rely on Ex.P10, the disability certificate issued by the

Doctor, P.W.2. On the basis that P.W.2, the Doctor has certified that permanent disability of the appellant/claimant is at 75%, learned counsel for

the appellant submitted that the claimant cannot walk and work further. We have already rejected the said certificate as it cannot be relied on. At

the same time, we cannot reject the case of the claimant in entirety. On the basis of the above said discussions, and to fix a just compensation for

loss of income both during the period the claimant was in the hospital and also in

future, we are inclined to fix a consolidated amount of

Rs.20,000/- to which he is entitled, in addition to the amount awarded by the Tribunal.

12. For all the reasons stated above, the award of the Tribunal and the order of the learned single Judge are modified holding that the claimant is

entitled to additional sum of Rs.20,000/-, over and above the amount awarded by the Tribunal, as confirmed by the learned Judge, with interest at

9% from the date of the petition, till date of payment. With the above modification, this Appeal is allowed accordingly. No costs.