

(2010) 07 MAD CK 0060
In the Madras High Court
Case No : C.M.A. No. 2145 of 2000

A. Solaiyan

APPELLANT

Vs

W.S. Jagannath Babu and The National Insurance Co. Ltd.,
Motor Third Party Cell

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 184
Penal Code, 1860 (IPC) — Section 337

Citation : (2010) 07 MAD CK 0060

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

Bench : Single Bench

Advocate : R. Kalaiarasan, for the Appellant; V.S. Sowmya, for N. Rosi Naidu,
for R2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against the award dated 21.07.2000, made in M.C.O.P. No. 1388 of

1997, by the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2. Background facts in a nutshell are as follows:

On 03.01.1997 at about 22.30 hours the appellant-claimant was walking along Royapettah High Road, from south to north direction. While he

was proceeding opposite to TUCS Complex, a motorcycle bearing registration No. TN01 J4863, belongs to the first respondent herein, came in a

rash and negligent manner and also at high speed and hit against the injured. Due to which, the petitioner sustained severe injuries in right leg. He

claimed a sum of Rs. 1,50,000/- as compensation. The motorcycle insured with the second respondent Insurance Company, who resisted the

claim. On pleadings the Tribunal framed the following issues:

1. Who is responsible for the accident?
2. What is the compensation, the petitioner 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 rider of the motorcycle and awarded a compensation of Rs. 52,700/- with interest at 12% per annum from the date of petition and the details

of the same are as under:

Loss of earning from 04.01.1997 Rs. 4,000/-

to 03.07.1997

Transport to hospital Rs. 2,000/-

Extra nourishment Rs. 1,000/-

Damage to cloths and articles Rs. 200/-

Attendants charges Rs. 3,000/-

Medical expenses Rs. 3,000/-

Pain and suffering Rs. 7,000/-

Permanent disability Rs. 25,000/-

Loss of earning power Rs. 7,500/-

Total... Rs. 52,700/-

Aggrieved by that award, the appellant-claimant has filed the present appeal for enhancement.

3. The Learned Counsel appearing for the claimant-appellant submitted that the Tribunal ought to have awarded compensation as claimed by the

claimant and the amount awarded under various heads is very low and the Tribunal has not followed the principles of assessment before passing

the award. He further submitted that the amount awarded by the Tribunal is very low and meagre and seeks to enhance the compensation.

4. The Learned Counsel appearing for the second respondent-Insurance Company submitted that the Tribunal had considered all the relevant

materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the

Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the Counsel. On the side of the claimant, the claimant himself was examined as PW1 and documents Exs.P1 to P8 were marked. On the

side of the respondents, no one was examined and no documents were marked to substantiate their claim. Ex.P1 is the Discharge Summary. Ex.P2

is the Bills. Ex.P3 is the photo with negative. Ex.P4 is the copy of the First Information Report. Ex.P5 is the xerox copy of the Rough Sketch.

Ex.P6 is the xerox copy of the Charge Sheet. Ex.P7 is the Disability Certificate (marked with consent) and Ex.P8 is the X-ray (marked with

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

only due to the rash and negligent driving of the rider of the motorcycle and the second respondent-Insurance Company is liable to pay

compensation to the claimant. The finding is based on valid materials and evidence and the same is confirmed.

6. At the time of the accident, the claimant was aged about 48 years old. He is an assistant cook in Karaikudi Hotel at Chennai. He was earning a

sum of Rs. 1,500/- per month. But, no salary certificate has been produced to prove the same. The rider of the motorcycle, who caused the

accident was charge sheeted by J-2, Adyar Traffic Investigation, Adyar Police Station, Chennai for the offence u/s 337 of I.P.C and Section 184

of M.V. Act. Due to the said accident, the injured sustained three fractures in the right leg and multiple abrasions all over his body. After the said

accident, he took treatment at C.M.O. Government Royapettah Hospital, Chennai and as outpatient from 04.01.1997 to 06.01.1997. Later, he

took treatment at Battar Clinic, Pudukottai. Further, due to the said accident, the injured is unable to walk, carry on any work as before. After

considering the facts and circumstances of the case, the Tribunal awarded a sum of Rs. 4,000/- towards loss of income during the treatment

period, which is very reasonable and the same is confirmed. The Tribunal awarded a sum of Rs. 2,000/- towards transport expenses. After the

said accident, the injured taken treatment at C.M.O. Government Royapettah Hospital, Chennai and later, he took treatment at Battar Clinic,

Pudukottai. Therefore, it is reasonable to award a sum of Rs. 4,000/- under this head as against Rs. 2,000/- awarded by the Tribunal. Further, the

Tribunal awarded a sum of Rs. 1,000/- towards extra-nourishment, which is very low. Considering the facts and circumstances of the case, it is

reasonable to award a sum of Rs. 4,000/- under this head as against Rs. 1,000/- awarded by the Tribunal. The Tribunal awarded a sum of Rs.

200/- towards damage to cloths, Rs. 3,000/- towards attendant charges and Rs. 3,000/- towards medical expenses. After taking into

consideration the facts and circumstances of the case, the amounts awarded by the Tribunal under these heads are very reasonable and the same

are confirmed. The Tribunal awarded a sum of Rs. 7,000/- towards pain and suffering. The injured sustained three fractures and multiple abrasions

all over his body. Therefore, it is reasonable to award a sum of Rs. 10,000/- under this head as against Rs. 7,000/- awarded by the Tribunal.

Further, the Tribunal awarded a sum of Rs. 25,000/- towards loss due to 55% disability. Ex.P1 is discharge summary, Ex.P7 is the disability

certificate and Ex.P8 is the X-ray. One Dr. Thiyagarajan has given Ex.P7 disability certificate. But, no Doctor was examined in the present case.

The Tribunal also not disputed the disability of 55%. Normally, the Courts award Rs. 1,000/- to Rs. 2,000/- per percentage of disability. After

taking into consideration of the facts and circumstances of the case, it is reasonable to award Rs. 60,000/- under this head as against Rs. 25,000/-

awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 7,500/- towards loss of earning power. When the Tribunal already awarded

compensation towards permanent disability, the amount awarded towards loss of earning power is unwarranted and the same is deleted. The

Tribunal has fixed the rate of interest at 12% p.a from the date of petition. The accident occurred on 03.01.1997. Keeping in view the prevailing

rate of interest during that period, the rate of interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the

modified compensation as per the above discussion are as under:

Loss of earning power Rs. 4,000/-

Transport to hospital Rs. 4,000/-

Extra nourishment Rs. 4,000/-

Damage to cloths Rs. 200/-

Attendant charges Rs. 3,000/-

Medical expenses Rs. 3,000/-

Pain and suffering Rs. 10,000/-

Loss due to 55% disability Rs. 60,000/-

Total... Rs. 88,200/-

Less: Already awarded amount Rs. 52,700/-

Enhanced amount Rs. 35,500/-

Therefore, the claimant is entitled to the enhanced compensation of Rs. 35,500/- with interest at 7.5% per annum from the date of petition.

7. The second respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 35,500/- with interest at 7.5% from the date of petition within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant-claimant is permitted to withdraw the same on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.