

(2012) 04 MAD CK 0136
In the Madras High Court
Case No : C.M.A. No. 1499 of 2009

A. Sundarrajan

APPELLANT

Vs

V. Samson Prakesh 44, Taylors Road Kilpauk, Chennai-10.
(R1 set exparte before Trial Court) and The New India
Assurance Co. Ltd., 46, Moore Street, 'Regina Mansion'
Chennai-1

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Citation : (2012) 04 MAD CK 0136

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Advocate : R. Kalai Arasan, for the Appellant; G. Udayasankar for R2. R1-
exparte., for the Respondent

Judgement

Honourable Mr. Justice R. Karupiah

1. The appellant has filed this civil miscellaneous appeal praying for enhanced compensation as against the award dated 29.12.2008 passed in MACTOP. No. 986 of 2005 on the file of Motor Accidents Claims Tribunal, Chennai (VI Small Causes Court, Chennai). The appellant/claimant has filed claim petition for compensation of Rs. 4,00,000 for injuries sustained by him by contending that on 29.8.2004 at about 17.45 hours, when he was crossing Kilpauk Garden Salai at pedestrian cross near cemetery ,the first respondent's car bearing Regn. No. TN-01-T-3897 came along Kilpauk Garden Salai in rash and negligent manner and dashed against the petitioner and he sustained injuries and was taken to M.N.Orthopeadic Hospital, Kilpauk and then admitted to Kilpauk Medical College Hospital on 30.8.2004 and taken treatment as out-patient for injuries and due to accident, he was unable to attend any work and therefore the petitioner claimed compensation of Rs. 45,000/- for loss of earning during treatment period, Rs. 10,000/- as transport expenses, Rs. 10,000/- towards extra nourishment, Rs. 2000/- towards damage to clothing and articles, Rs. 5000/- towards medical

expenses and Rs. 10,000/- compensation for attendants, Rs. 75,000/- for pain and suffering, Rs. 1,00,000/- for permanent disability and Rs. 1,43,000/- for loss of earning power and in all, he claimed Rs. 4 lakhs from the respondents who are owner and insurer of the vehicle.

2. The first respondent who is the owner of the vehicle remained exparte. Before the Tribunal, on the side of the second respondent-insurance company, denied the abovesaid contention of the petitioner regarding negligence and also stated that the claimant should prove age, occupation, monthly income, place, date and time of accident, nature of injuries, period of treatment, medical expenses, disability and the accident occurred due to the rash and negligent driving of the first respondent vehicle and also contended that the amount of compensation claimed is excessive.

3. Before the Tribunal, on the side of the claimant, the claimant himself deposed as P.W.1 and also examined on his side one Doctor Thiru. K.J. Mathiazhagan as PW.2 and marked Ex.P1, copy of FIR, Ex.P2, Prescription issued by M.N. Orthopaedic Hospital, Ex.P3, wound certificate issued by Kilpauk Medical College Hospital, Ex.P4, O.P chits by Kilpauk Medical College Hospital, Ex.P5-X-ray and Ex.P6-Disability Certificate issued by PW.2. On the side of the respondent, no witness was examined and no document was marked.

4. On considering the abovesaid oral and documentary evidence adduced on the side of the petitioner, the Tribunal has held that the accident has occurred only due to the rash and negligent driving of the first respondent driver and the second respondent-insurance company is liable to pay compensation as insurer of first respondent vehicle and also passed the total compensation of Rs. 34,000/- as under:-

Loss of earning for one month

- Rs. 5,000.00

Transport to hospital, extra nourishment, damage to articles

- Rs. 3,500.00

Medical expenses

- Rs. 2,000.00

Attendants charges

- Rs. 500.00

Pain and suffering

- Rs. 3,000.00

Permanent disability

- Rs. 20,000.00

- Rs. 34,000.00

5. The learned counsel for the appellant has mainly contended that the award passed by the Tribunal on various heads are very low and also contended that the Tribunal has not awarded any amount for loss of earning power and therefore requested to enhance the claim.

6. The learned counsel for the second respondent-insurance company has contended that considering the nature of injuries sustained by the petitioner and taking into consideration as out patient treatment and the disability assessed by the doctor, the Tribunal has correctly passed award and therefore there is no need to interfere with the abovesaid finding.

7. Heard the arguments of the learned counsel on either side and perused the records.

8. The Tribunal has discussed in detail about the oral evidence of PW.1 who is the injured petitioner and also considering the criminal court's records Ex.P1-FIR, and no contra evidence on the side of the respondents, the Tribunal has correctly concluded that the accident was occurred only due to rash and negligent driving of the first respondent vehicle and since the abovesaid vehicle was insured with the second respondent, the second respondent-insurance company is liable to pay compensation. The second respondent has not challenged the abovesaid finding by way of appeal or cross-appeal.

9. With regard to the quantum, the learned counsel for the appellant has contended that the award passed by the Tribunal on various heads are very low and the Tribunal has not properly considered the nature of injuries, period of treatment, disability, expenses and other factors and therefore prayed for enhancement of the award.

10. Admittedly, the claimant has sustained injuries in the accident. On perusal of oral evidence of PW.1 and PW.2, who are injured and the doctor who issued the disability certificate and Ex.P2 prescription issued by M.N.Orthopaedic Hospital, Ex.P3 Wound certificate issued by Kilpauk Medical College Hospital, Ex.P4 O.P chits issued by Kilpauk Medical College Hospital, Ex.P5 X-ray and Ex.P6 Disability certificate issued to PW.1, the Tribunal has discussed about Exs.P2 and P3 and accepted that the petitioner has sustained grievous injuries i.e suffered undisplaced fracture of neck of 5th Meta Carpal bone in right hand, BE slab was applied and further the petitioner has taken treatment as out-patient and due to the injuries, the petitioner sustained 20% disability.

11. The award passed by the Tribunal on various heads are very low as correctly contended by the learned counsel for the appellant considering the nature of injuries, period of treatment, disability, loss of income, medical expenses etc., this Court feels that the award passed by the Tribunal is to be modified and enhanced.

12. With regard to permanent disability, the Tribunal has awarded only Rs.

20,000/- . Considering the nature of injuries, period of treatment and disability of 20%, the compensation for permanent disability is to be enhanced from Rs. 20,000/- to Rs. 30,000/-. The Tribunal has awarded Rs. 5000/- for loss of earning during treatment period. The abovesaid amount is reasonable and no need to interfere. The Tribunal has passed award of Rs. 3,500/- for transport expenses, extra-nourishment and damage to dress materials together. Since the abovesaid amount is very low, it should be enhanced as Rs. 2,000/- each head viz. transport expenses, extra-nourishment and damage to dress-material totally Rs. 6000/-. The Tribunal has awarded only Rs. 2,000/- for medical expenses. Considering the treatment, this amount has to be enhanced as Rs. 3,000/-. The Tribunal has awarded only Rs. 3,000/- for pain and suffering. It is also considered as very low. Therefore, it has to be enhanced as Rs. 5,000/-. The Tribunal has awarded only Rs. 500/- for attendants charges. Considering the nature of injuries and treatment and disability, it has to be enhanced as Rs. 1,000/-.

13. Accordingly, in this appeal, the award amount passed by the Tribunal is modified and fixed as under:-

Permanent disability

Rs. 30,000.00

Loss of earning

Rs. 5,000.00

Transport expenses

Rs. 2,000.00

Extra nourishment

Rs. 2,000.00

Damage to clothes

Rs. 2,000.00

Medical expenses

Rs. 3,000.00

Pain and suffering

Rs. 5,000.00

Attendant charges

Rs. 1,000.00

Total

Rs. 50,000.00

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is enhanced from Rs. 34,000/- to Rs. 50,000/- with interest at 7.5% per annum. No costs. Both sides accepted that the entire award amount passed by the Tribunal has been deposited and withdrawn by this appellant. Therefore, the second respondent-insurance company is directed to deposit the enhanced award amount alone with interest at 7.5% per annum within a period of four weeks from the date of receipt of copy of this Judgment and the appellant is permitted to withdraw the same.