

(2013) 10 MAD CK 0192

In the Madras High Court

Case No : C.M.A. No. 4056 of 2008 and M.P. No. 1 of 2008

Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

Ellamma and Bajaj Tempo Ltd.

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0192

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant;

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 26.11.2007, made in M.C.O.P. No. 3 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 3 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur, claiming compensation of a sum of Rs. 5,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 12.07.2005, at about 12.30 p.m., when the claimant and one Gopi were sitting under a Tamarind tree near Nanjappa Saw Mill, at Royakottai, the first respondent's minidor auto (for new registration), driven by it's driver in a rash and negligent manner, dashed against the claimant and the said Gopi. The claimant sustained grievous injuries on both her hip, left thigh, right chest and stomach and she took treatment in Government Hospital, Dharmapuri, as an inpatient for one week and subsequently took treatment at a private hospital in Nallampati. At the time of accident, the claimant was aged 50 years and was running a flower shop and earning Rs. 5,000/- per month. Due to the disability sustained in the accident, she is not able to do her work as before.

Hence, the claimant had filed the claim petition against the respondents, who are the owner and insurer of the first minor auto (for new registration).

3. The second respondent, in their counter affidavit, has denied the averments made in the claim that the accident had been caused by the rash and negligent driving by the driver of the first respondent's auto and that it had been covered under a policy insurance with the second respondent. It was submitted that the first respondent's auto driver did not have a valid licence to drive it at the time of accident. It was submitted that the claimant had sustained only simple injuries and had not sustained grievous injury or disability as alleged in the claim petition. The averments made in the claim petition regarding age, income and occupation of the claimant was also not admitted. It was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

- i. Was the accident caused by the rash and negligent driving by the driver of the first respondent's auto? and
- ii. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

5. In the same accident, another claim had been filed by the injured Gopi in M.C.O.P. No. 2 of 2006, claiming compensation from the same respondents for the injuries sustained by him. Hence, the Tribunal conducted a joint trial and common award was passed. On the side of the claimant, the claimant in M.C.O.P. No. 2 of 2006 namely Gopi was examined as P.W. 1, the claimant in M.C.O.P. No. 3 of 2006 namely Ellamma was examined as P.W. 2 and one Dr. T.V. Gandhi was examined as P.W. 3 and ten documents were marked as Exs. P1 to P10 namely copy of FIR, copy of wound certificates, copy of policy, medical reports and bills, X-rays, bills, disability certificate and school certificate of Gopi. On the side of the respondent, no witness was let in and no document was marked.

6. P.W. 1 and P.W. 2 had adduced evidence which is on similar lines to the statements made by them in their claim regarding manner of accident and in support of their evidence, they had marked Exs. P1 to P10. On scrutiny of Ex. P1, it is seen that the FIR had been filed against the driver of the unregistered auto of the first respondent. Though it was contended on the second respondent's side that the accident was caused by the negligence of the claimant, the Tribunal observed that they had not examined the driver of the first respondent's auto to back their contentions. Hence, the Tribunal, on scrutiny of evidence of P.Ws. 1 and 2 and Ex. P1, held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's auto. On scrutiny of Ex. P3, it is seen that the first respondent's auto had been insured with the second respondent at the time of accident. Hence, the Tribunal held that the respondents liable to pay compensation to the claimant.

7. P.W. 2 had adduced evidence that due to the accident, she had sustained injuries on her left hand joint and also sustained fracture of bones in her left knee as well as the fracture of the 4th, 5th and 6th rib bones and also injuries in her right chest. She deposed further that she had taken treatment at a private hospital at Royakottai and subsequently received treatment at Dharmapuri Government Hospital and that she had been bedridden for six months due to the accident. She deposed that prior to the accident, she was running a flower shop and earning Rs. 5,000/- per month and that after the accident she is not able to do her work as before and in support of her evidence she had marked Exs. P5 and P5.

8. P.W. 3 Dr. T.V. Gandhi had adduced evidence that he had examined the claimant on 29.09.2007 and that he had observed that the fracture of 4th, 5th and 6th rib bones of the claimant's right chest had been malunited by two degrees and that due to this she would not be able to lift heavy objects or do any hand manual labour, certified that the disability sustained by the claimant was 20%.

9. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 60,000/- towards pain and suffering, Rs. 30,000/- was awarded for disability of 20%, Rs. 30,000/- was awarded for loss of earning capacity and Rs. 5,000/- was awarded for medical expenses, transport expenses and nutrition. In total, the Tribunal awarded a sum of Rs. 1,25,000/- as compensation to the claimant and directed the second respondent Insurance Company to deposit the said sum 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, with costs, within a period of two months, from the date of receipt of a copy of it's order.

10. Aggrieved by the said Award, the second respondent Insurance Company has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal erred in holding the appellant liable in respect of an accident, where there is no motor policy issued by the appellant for the vehicle. It is contended that the Tribunal failed to appreciate that the policy bearing No. 650200/31/04/6404799 was issued by the National Insurance Co., Ltd., Coimbatore-18. It is contended that the Tribunal erred in deciding the claim without even looking at the documents properly. Hence, it is prayed to set aside the award passed against the appellant.

12. Now, the learned counsel appearing for the appellant Insurance Company has produced a copy of the insurance policy stating that the said vehicle had been insured with the National Insurance Company, Coimbatore. The Xerox copy produced cannot be taken as a valid document.

13. On considering the facts and circumstances of the case and arguments advanced by the learned counsel for the appellant Insurance Company and on perusing the impugned award of the Tribunal, this Court does not find any

discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. This Court is of the view that the FIR had been registered against the driver of the offending vehicle. The claimant had marked Ex. p3 policy copy in the presence of the learned counsel, who was appearing for the Insurance Company. Further, the respondents have not let in any oral or documentary evidence to disprove Ex. P3 and had failed to produce the copy of the insurance policy, to show that the vehicle had been insured with National Insurance Company, Coimbatore. At this stage, this Court cannot entertain the Xerox copy of the insurance policy produced before the Court, without determining the veracity of the policy. Therefore, if the contentions of the Insurance Company regarding policy is a bona fide one, the company is at liberty to initiate separate legal proceedings for recovery of the said amount from the alleged National Insurance Company, Coimbatore.

14. The quantum of compensation awarded is not on the higher side. However, the mode of assessment is not proper. Hence, this Court restructures the compensation as follows:

- i. Rs. 40,000/- is awarded towards disability,
- ii. Rs. 5,000/- is awarded towards medical expenses,
- iii. Rs. 15,000/- is awarded towards pain and suffering,
- iv. Rs. 10,000/- is awarded towards transport expenses,
- v. Rs. 10,000/- is awarded towards nutrition,
- vi. Rs. 10,000/- is awarded towards attender charges,
- vii. Rs. 10,000/- is awarded towards loss of earning during medical treatment period,
- viii. Rs. 25,000/- is awarded towards loss of amenities and loss of comfort, since the claimant's 4th, 5th and 6th rib bones had been fractured and malunited as per medical evidence and as it is also permanent in nature.

As such, the quantum of compensation is confirmed.

15. This Court has already directed the appellant Insurance Company to deposit the entire compensation amount with accrued interest thereon, to the credit of M.C.O.P. No. 3 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur.

16. Now, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon, lying in the credit of M.C.O.P. No. 3 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur, after filing a memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated 26.11.2007, made in M.C.O.P. No. 3 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur, is modified. Consequently, connected

miscellaneous petition is closed. No costs.