
(2009) 10 MAD CK 0233
In the Madras High Court
Case No : C.M.A. No. 1028 of 2005

Balamani and National Insurance Company Limited	APPELLANT
Vs	
Subramani	RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 168
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2009) 10 MAD CK 0233

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

Bench : Single Bench

Advocate : R. Sunil Kumar, for R. Yashod Varadhan, for the Appellant; Arivudai Nambi, for T. Murugamanickam, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The civil miscellaneous appeal has been filed by the first and second appellants against the judgment and decree passed by the Motor Accidents Claim Tribunal/Subordinate Court, Aathur in MCOP No. 51 of 1998 dated 31.10.2003 awarding a total compensation of Rs. 1,50,000/- to the claimants and have prayed for setting aside the award.

2. The short facts of the claim case are as follows:

On 07.05.1996, the petitioner was travelling in the lorry TN-27-Z-5547 as its cleaner, one Selvam @ Nagarathinam was the driver of the lorry and it was driven by him from Neyveli to go to Pugalar paper Mills, with coal. While so, at about 00.30 hours at Padamudipalayam near Parimala Muthammal Kalyana Mandapam, the driver of the lorry drove the vehicle in a rash and negligent manner with high speed and dashed behind a lorry bearing registration No. MDI 0922, which was parked at the left side of the road. In the result, the petitioner sustained severe injuries on his hip, right foot, cheek, left thigh etc. Immediately, he was taken to Government Hospital, Vellore. After preliminary treatment, he was admitted at Government Mohan Kumaramangalam Medical College Hospital,

Salem. There, he was treated as an inpatient from 08.05.1996 to 24.06.1996. Emergently lap rotomy operation for external fixation of pelvis was done on 08.05.1996. Two screws on both side iliac crest passed and fixed with external fixator. Further compression was also given. Due to the bone injuries he is unable to use his right leg as before. Still he is under treatment due to rupture of urethra and he is unable to pass urine normally. During passing of urine, it causes him severe pain. There is no normal erection of penis. Due to fracture of pelvis bone, he is unable to sit squat normally. There is severe pain in his hip and there is no guarantee for his future married life.

Regarding the said accident, the vellore police registered a case against the driver of the lorry bearing registration No. TN-27-Z-5547 on an alleged offence under Sections 279 and 337 of IPC in Crime No. 187 of 1996. The first respondent is the owner of the lorry and the second respondent is insurer of lorry. Hence the petitioner has claimed a compensation of Rs. 3,00,000/- against the respondents.

3. The first respondent has filed the counter statement and resisted the claim of the petitioner. The first respondent does not admit the salary and age, but she admitted that the petitioner was a cleaner in the said lorry. Further, the first respondent denied the loss of income, permanent disability, medical expenses etc., The first respondent admitted that her lorry bearing registration No. TN-27-Z-5547 has been insured with the second respondent namely the National Insurance Company Limited Aathur. The lorry bearing registration No. MDI 0922 was parked on the left side of the road, without any signal, and so the accident happened. As such, the first respondent is not liable to pay any compensation to the petitioner. Further, the petitioner underwent treatment only in the Government Hospital, Salem. Under the circumstance, the petitioner is not entitled to get any compensation for medical expenses.

4. The second respondent has filed a counter statement and also resisted the claim of the petitioner stating that they did not admit the age, income and occupation of the petitioner. The lorry bearing registration No. MDI 0922 is also involved in the said accident. As such, the owner of the lorry and the insurance company are also necessary parties in this case. Further, the first respondent lorry driver does not have valid driving licence. Further, the claim of the petitioner is on the higher side and the second respondent prayed for dismissal of claim petition.

5. On the side of the respondent/claimant, three witnesses were examined namely PW1, Subramani, who was the claimant and PW2, one Venkatachalam, who was the eye witness and PW3, Dr. Ram Prasad, who extended his medical evidence to support the petitioner's claim. On the side of the claimant, 8 documents were marked as Ex.P1 to Ex.P8 namely 1) first information report as Ex.P1 2) wound certificate as Ex.P2, 3) Motor vehicle inspector's report as Ex.P3 4) charge sheet as Ex.P4, 5) Judicial Magistrate's order as Ex.P5 6) Photo as Ex.P6 7) disability certificate as Ex.P7, 8) X-ray as Ex.P8. On the side of the first

and second appellants/respondents no witnesses were examined, no documents were marked.

6. On an oral and documentary evidence, the Tribunal has awarded a total compensation of Rs. 1,50,000/- along with interest at the rate of 9% per annum from the date of filing of the petition, till the date of payment of compensation.

7. The learned Motor Accident Claims Tribunal, Subordinate Judge, Aathur framed two issues namely, 1) Whose negligence was responsible for the said accident. 2) Whether the claimant is entitled to get compensation, if so what is the quantum of compensation.

8. The learned Tribunal after considering the claimants evidence and PW2, eye witness's evidence, and other connected records, marked by Ex.P1 namely first information report, motor vehicle inspectors report, charge sheet, judgment of criminal Court has come to a conclusion that the accident was caused due to the rash and negligent driving of the driver of the first respondent. As such, the negligence was proved. Hence, the first respondent lorry owner and insurance company are liable to pay compensation to the claimants.

9. Regarding the quantum of compensation, the claimant was a cleaner of the first respondent's lorry bearing registration No. TN-27-Z-5547. The same was admitted by the first respondent. Regarding nature of injuries, the claimant stated in his evidence, that he was admitted in the Government Hospital, Salem for 47 days as inpatient. During the said period of treatment, there was an operation carried out on his abdomen and also operation on both sides of his hip. Due to this accident, he has become impotent. This was stated by the doctor of the hospital. Further, the Doctor has stated that he could not marry and lead married life. The claimant further stated that he has been injured all over his body including chest, cheek, leg palms etc., supporting his evidence, PW3 one Ram prasad was examined, who stated that he had examined the claimant and had taken x-ray on hip portion. It was also found that his right leg has been shortened by 1" as compared to left leg, due to the accident. So, he cannot stand and sit for a long stretch of time. The doctor certified that the claimant has a disability of 20%. The doctor also marked Ex.P7 and Ex.P8, disability certificate and X-ray respectively.

10. The learned Tribunal considered Ex.P2, wound certificate, wherein seven injuries were grievous and the same was certified by one Dr. Muthulakshmi. Considering all the above factors, the Tribunal has awarded the compensation as under:

For loss of income - Rs. 20,000/-; For transport expenditure - Rs. 2,000/-; for nutrition - Rs. 3,000; Pain and suffering - Rs. 30,000; for permanent disability - Rs. 50,000/-; For loss of earning Rs. 25,000/-; For medical expenses - Rs. 20,000; In total a sum of Rs. 1,50,000/- was awarded by the Tribunal together with interest at the rate of 9% from the date of filing the claim petitioner till date of payment of compensation within a period of two months.

11. The learned Counsel for the appellant submitted that the award of Rs. 30,000/- passed by the Tribunal towards the head of pain and suffering was an error. On the head of permanent disability Rs. 50,000/- has been awarded, which is excessive. Further Rs. 20,000/- awarded under the head of medical expenses and Rs. 25,000/- awarded under the loss of earning capacity are also high.

12. The appellant, in support of his case has referred a case reported in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, wherein in the head notes it is sated as follows:

Motor Vehicles Act, 1988, Section 168 - Power of Motor Accident Claims Tribunal to fix compensation - Whether compensation could be awarded separately on account of permanent disability and on account under any head should be adequate and reasonable to achieve statutory goal - Approach of Tribunal in awarding compensation should be on larger perspective of justice, equity and good conscience and technical issues should be eschewed - Quantum of damages should be in accordance with injury and injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses - It is open to Tribunal to award different sums of damages higher than those claimed under particular head of damage so long as Tribunal does not exceed total amount claimed. - Damages awarded for non-pecuniary damages for pain, suffering and loss of amenities cannot be reduced even if quantum of pecuniary damages payable is high - Motor accidents Claim Tribunal should itemise award under each of head namely Pecuniary Losses and Non-pecuniary Losses - Under head Non-pecuniary Losses Tribunal shall consider (a) pain and suffering; (b) loss of amenity; (c) loss of expectation of life, hardship, mental stress, etc; and d) loss of prospect of marriage - Under head Pecuniary Losses, Tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning if any from date of accident till date of trial. When loss of earning capacity is compensated as also non-pecuniary losses under (a) to (d) permanent disability need not be separately itemized.

13. In the above cited judgment, when loss of earning capacity is compensated as also non-pecuniary losses under (a) to (d) permanent disability need not be separately itemised.

14. The learned Counsel for the respondent argued that the respondent/claimant, due to the accident, has lost his prospects of marriage life. Further, he has suffered for 47 days as inpatient at a Government Hospital. The claimant underwent three surgeries on both the sides of his hip and abdomen. The claimant was young and his earning was proportionate his physical strength. This ability has been totally destroyed due to the accident.

15. For the foregoing reasons and on consideration of the facts and circumstances of the case and arguments of the learned appellants' counsel and argument for the learned Counsel for the respondent, this Court opines that an

award of Rs. 1,50,000/- awarded by the Motor Accidents Claim Tribunal/Subordinate Court, Aathur in MCOP No. 51 of 1998 dated 31.10.2003 together with interest at the rate of 9% from the date of filing of petition till payment is equitable and fair. The learned Counsel cited a judgment that loss of earning capacity and loss due to permanent disability cannot be taken under different heads. This Court agrees with the above judgment on this ground. But, this Court feels that the quantum of compensation awarded is fair. The only variance is that the award granted under the heads were not correct. But the quantum of compensation is fair. Hence, this Court has re-structured the quantum of compensation awarded and has also granted compensation under the head;

Pecuniary loss:

1) Loss of earning capacity and loss of future earnings = Rs. 40,000 (due to 20% disability)

2) Medical expenses, other expenses and loss of earning for two month = Rs. 24,000/-

3. Transport expenses = Rs. 2,000

Non Pecuniary losses:

1. Pain and suffering = Rs. 35,000/-

2. Loss of expectation of life, hardship and mental stress = Rs. 9,000/-

3. Loss of Marital life = Rs. 40,000/-

(Loss of prospect of marriage)

16. In total, a sum of Rs. 1,50,000/- is awarded by this Court as compensation to the claimant, with 9% interest from the date of filing the claim petition, till date of compensation. This Court is of the opinion that even if the claimant had not claimed the compensation proper under the correct heads and even if the Tribunal had not structured the compensation properly under itemised heads, this Court can restructure and award the compensation in an itemised manner for clarity and to avoid confusion.

17. Therefore, this Court hereby directs the second respondent/National Insurance Company Limited to deposit the balance compensation amount, if any to the credit of MCOP No. 51 of 1998 on the file of Motor Accidents Claims Tribunal/Subordinate Court, Aathur, within a period of six weeks from the date of receipt of a copy of this order. The accident took place in the year 1996. So, it is open to the respondent/claimant to receive the balance amount lying to the credit of MCOP No. 51 of 1998 on the file of Motor Accidents Claims Tribunal/Subordinate Court, Aathur, by filing necessary payment out application in accordance with law.

18. In the result, the civil miscellaneous appeal is dismissed and the award passed by the Motor Accidents Claims Tribunal/Subordinate Court, Aathur in

MCOP No. 51 of 1998 is restructured and confirmed. The parties are directed to bear their own cost in this appeal.