

(2010) 03 MAD CK 0062
In the Madras High Court
Case No : C.M.A. No. 33 of 2004

D. Viswaraj	Vs	APPELLANT
R. Subramaniam, Mallika and United India Insurance Co. Ltd.		RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 03 MAD CK 0062

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

Bench : Single Bench

Advocate : Mani Narayanan, for the Appellant; C.V. Gopalakrishnan, for R3, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated

14.05.2003, made in M.C.O.P. No. 37 of 2003, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Gobichettipalayam,

awarding a compensation of Rs. 1,57,000/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of

payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/petitioner has filed the above appeal praying for additional compensation of Rs.

8,43,000/- together with interest.

3. The short facts of the case are as follows:

On 05.07.2002 at about 01.45 p.m. when the claimant and his daughter were proceeding towards their residence in their motorcycle with the

petitioner riding his motorcycle bearing registration No. TN33 Z7092 on the extreme left side of the Athani to Gobi road, the second respondent's

bus bearing registration No. TN27 D8001, driven by its driver i.e. the first respondent, at a high speed in a rash and negligent manner, dashed against the petitioner. Resultantly, the petitioner and his daughter sustained grievous injuries. The petitioner further stated that his motorcycle was also damaged. Immediately after the said accident, he was rushed to a private hospital at Gobichettipalayam for treatment. The petitioner underwent treatment for a period of two months in the said hospital. During the said treatment period, the petitioner had undergone surgical operation and a steel plate was fixed on the operated regions of his body. The said accident was registered against the driver of the bus by the Gobichettipalayam Police Station in Crime No. 466/2002 Under Sections 279 and 337 of I.P.C. The said accident had happened only due to the rash and negligent driving of the first respondent. Hence, the driver of the bus, the first respondent; the owner of the bus, the second respondent and the insurer of the bus, the third respondent are jointly and severally liable to pay compensation to the petitioner.

4. The Third respondent has filed a counter statement and opposed the claim petition stating that the accident had happened only due to the rash and negligent driving of the petitioner. Further, the petitioner has to prove his age, income, occupation, nature of accident, injuries and permanent disability sustained by him.

5. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Who had committed the accident?

(ii) What is the quantum of compensation, which the petitioner is entitled to get?

6. On the petitioner's side two witnesses were examined as PW1 and PW2 and 41 documents were marked as Exs.P1 to P41. On the respondents' side no witness was examined and no documents were marked.

7. The petitioner was examined as PW1. The PW1 had adduced evidence stating that at the time of the said accident he was aged about 43 years

old and was working in the Tamil Nadu Electricity Board and was drawing a salary of Rs. 15,500/- per month. The petitioner, to prove his age

and income, has marked Exs.P10-School Certificate and P11-Salary Certificate. Further, the PW1 had adduced evidence stating that the

respondent's bus came in a rash and negligent manner and dashed against the

motorcycle. Hence, he and his daughter sustained grievous injuries.

The FIR has also been registered against the driver of the respondent's bus and Charge Sheet has also been filed. After considering the First

Information Report, Charge Sheet and evidence of the petitioner, the Tribunal had come to the conclusion that the respondents are jointly or

severally liable to pay compensation to the petitioner. The Doctor after examining the petitioner had issued a Certificate stating that the claimant

sustained 38% disability, which was marked as Ex.P39. The petitioner further stated that he was an inpatient for more than two months in a private

hospital at Gobichettipalayam. During the said period, he underwent surgical operation and a steel plate had been fixed. The claimant further

adduced evidence stating that he spent huge amount for medical expenses including the Doctor fees etc.,

8. After considering the evidence of the PW1 and PW2 and documents marked as exhibits, the Tribunal granted a compensation as follows:

1. Rs. 6,000/- granted under the head of pain and suffering due to the two simple injuries,

2. Rs. 50,000/- granted under the head of two grievous injuries, besides Rs. 10,000/- under the head of pain and suffering,

3. Rs. 15,000/- granted under the head of loss of income during the treatment period,

4. Rs. 2,000/- granted under the head of medical expenses,

5. Rs. 5,000/- granted under the head of medical expenses, on the strength of Ex.P22 Medical Bill series,

6. Rs. 50,000/- granted under the head of medical expenses, on the strength of Ex.P24,

7. Rs. 4,000/- granted under the head of transport expenses,

8. Rs. 15,000/- granted under the head of disability based on the disability certificate issued by Doctor and marked as Ex.P39 stating that the

claimant sustained 38% disability in the said accident,

In total, the Tribunal awarded a compensation of Rs. 1,57,000/- to the petitioner, 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 and directed the respondents to deposit the said compensation amount within a

period of two months from the date of its Order, into the Court. In turn the said

compensation amount has to be deposited in any one of a nationalised bank, for a period of three years, in a fixed deposit scheme. The Advocate fees was fixed at Rs. 6,140/-.

9. Learned Counsel appearing for the appellant argued that the compensation amount of Rs. 1,57,000/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation, is on the lower side; that the Tribunal further erred in granting only Rs. 15,000/- for permanent injury; that the Tribunal failed to consider the medical bills, which are marked before the Tribunal. The learned Counsel pointed out that the Tribunal has not properly assessed the award under the heads of attendant charges and loss of income.

10. The learned Counsel further argued that the Tribunal awarded a sum of Rs. 6,000/- under the head of two simple injuries and also awarded a sum of Rs. 50,000/- under the head of two grievous injuries are not pertinent. The learned Counsel further argued that the award amount of Rs. 15,000/- under the head of permanent disability is also not pertinent.

11. Learned Counsel appearing for the third respondent suggested that for 38% disability, the claimant is entitled to get Rs. 76,000/- only, even if the Court set aside the award under the head of simple injuries and grievous injuries. As such, the learned Counsel argued that the award and decree passed by the Tribunal is fair and equitable. There is no error in the said award and decree passed by the Tribunal.

12. Considering the facts and circumstances of the case, arguments advanced by the learned Counsel appearing on either sides and on scrutiny of the findings of the Tribunal, this Court is of the view that the Tribunal failed to consider that another operation has to be done for removing the steel plate from the operated portions of the body of the claimant and had also failed to consider the nutrition expenses. Further, the Tribunal has not granted any amount under the head of attendant charges. Hence, this Court is inclined to grant additional compensation amount to the claimant as follows:

1. This Court grants a sum of Rs. 76,000/- under the head of 38% disability sustained by the claimant (1% disability carries Rs. 2,000/),
2. This Court sets aside the award amount granted under the head of grievous and simple injuries and awards a sum of Rs. 25,000/- for another

operation for removing steel plate from the operated portion,

3. This Court grants a sum of Rs. 10,000/- under the head of nutrition,

4. The Tribunal awarded a sum of Rs. 15,000/- under the head of loss of income during the period of treatment. Considering the salary of the

claimant, this Court enhances the award amount to Rs. 31,000/- under the same head.

5. This Court grants a sum of Rs. 75,000/- under the head of medical expenses (including X"ray, Doctor fees, medicines, bandage ,scan, lab test,

Doctor consultation fees, surgical operation expenditure etc.,

In total, this Court grants a sum of Rs. 2,17,000/- as compensation to the claimant. The Tribunal awarded a sum of Rs. 1,57,000/- 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. This Court awards a sum of

Rs. 60,000/- as additional compensation amount to the claimant. The additional compensation amount will carry interest at the rate of 7.5% per

annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 37 of 2003, on the file of

the Motor Accident Claims Tribunal, Fast Track Court No. II, Gobichettipalayam, as this is found to be fair and equitable.

13. Therefore, this Court directs the third respondent to deposit the additional compensation amount of Rs. 60,000/- together with interest at the

rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 37 of

2003, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Gobichettipalayam, within a period of four weeks from the date

of receipt of a copy of this order.

14. After such deposit being made into the credit of the M.C.O.P. No. 37 of 2003, on the file of the Motor Accident Claims Tribunal, Fast Track

Court No. II, Gobichettipalayam, the claimant is at liberty to withdraw the compensation amount after filing necessary payment out application in

accordance with law.

15. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 14.05.2003, made in M.C.O.P. No.

37 of 2003, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Gobichettipalayam, is modified. There shall be no order

as to costs.