(2008) 12 MAD CK 0307

In the Madras High Court

Case No : C.M.A. No''s. 384 and 385 of 2008 and M.P. No. 1 of 2008

Divisional Manager, United India Insurance Co. Ltd. APPELLANT

Vs

S. Sowkath Ali and Others RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Citation : (2010) ACJ 1726

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Sudhakar, J.—The insurance company has filed this appeal challenging the award dated 30.3.2007 made in M.C.O.P. Nos. 124 and 125 of 2005 on the file of Motor Accidents Claims Tribunal (Sub-Court), Hosur.

2. The brief facts relating to the accident are as follows:

It is a case of injury. The accident in this case happened on 17.12.2003. The injured Sowkath Ali, claimant in M.C.O.P. No. 124 of 2005 and Imtiaz, the injured-claimant in M.C.O.P. No. 125 of 2005 were travelling in an autorickshaw bearing registration No. TMR 1083 from Hosur to Nallur. When the autorickshaw was nearing Sithanapalli, at a curve, the driver of the autorickshaw drove the vehicle in a rash and negligent manner and lost control over the vehicle and it capsized. Due to the accident, the passengers Sowkath Ali and Imtiaz sustained grievous injuries. They were taken to the Government Hospital, Hosur, and thereafter, they were treated at Sanjay Gandhi Hospital at Bangalore.

3. The injured-claimant Sowkath Ali filed a claim in M.C.O.P. No. 124 of 2005 for compensation in a sum of Rs. 5,00,000 stating that his income was Rs. 6,000 per month. The other injured-claimant Imtiaz filed a claim in M.C.O.P. No. 125 of 2005 for compensation in a sum of Rs. 5,00,00 stating that his income was Rs. 6,000 per month.

4. In support of the claim, Sowkath Ali, the claimant in M.C.O.P. No. 124 of 2005 was examined as PW 1 and Imtiaz, the claimant in M.C.O.P. No. 125 of 2005 was examined as PW 2 and Dr. Gandhi was examined as PW 3. Exhs. P1 to P17 were marked. Exh. P1 is the copy of the first information report. Exh. P2 is the wound certificate given to Sowkath Ali. Exh. P3 is the copy of insurance policy relating to the autorickshaw. Exh. P4 is the copy of the Motor Vehicles Inspector''s report. Exh. P5 is the medical notes in respect of Sowkath Ali. Exh. P6 is the driving licence of Sowkath Ali. Exh. P7 is the wound certificate of Imtiaz. Exh. P8 is the medical notes in respect of Imtiaz. Exh. P9 is the medical bills. Exh. P10 is the wound certificate issued by Sanjay Gandhi Hospital for Imtiaz. Exh. P1 1 is the medical notes of Imtiaz given by JIPMER Hospital. Exh. P12 is the disability certificate of Sowkath Ali. Exh. P13 is the X-ray. Exh. P14 is the X-ray bill. Exh. P15 is the disability certificate of Imtiaz. Exh. P16 is the X-ray of Imtiaz. Exh. P17 is the X-ray bill of Imtiaz. An officer in R.T.O. office was examined as RW 1 and an officer of the insurance company was examined as RW 2. Exh. Rl is the copy of Motor Vehicle Inspector''s report.

5. Learned Counsel for the claimants stated that the injuries were caused to the claimants as a result of rash and negligent driving on the part of the driver of the autorickshaw insured with the appellant and supported the plea by oral and documentary evidence.

6. Learned Counsel for the appellant while accepting the plea with regard to the nature of the accident and the nature of negligence on the part of the driver of the autorickshaw, contended that though the vehicle in question had a valid insurance policy, the said vehicle however did not have valid fitness certificate so as to ply on the road on the date of the accident. The permit period expired and it was not renewed. Therefore, learned Counsel for the appellant insurance company pleaded that there is violation of the terms of the policy on the date of accident and consequently, their liability to compensate the claimant will not arise. The Tribunal did not accept the plea of the appellant and held that since the vehicle had a valid insurance policy and that the Motor Vehicle Inspector''s report did not say anything about the mechanical defect in the vehicle involved in the accident on the date of the accident, held that the insurance company is liable to compensate the claimants.

7. In appeal, the learned Counsel for the appellant contended that since the vehicle in this case did not have a valid fitness certificate and was allowed to be used by the owner contrary to the terms and conditions of the insurance policy, they are not liable to compensate the claimants. There is a breach of condition of policy and on that ground, the owner alone is liable to compensate the claimants. Learned Counsel for the claimants, on the other hand, relied on the decision of a Division Bench of this Court in Velammal and Others Vs. P. Kanagu and Others, . In this case, the following two issues were considered by the Division Bench:

(I) The vehicle was covered by an insurance policy on the date of accident is not in dispute. But the insurer seeks to avoid its liability on the ground of violation of policy conditions, namely,-

(i) The vehicle has no valid fitness certificate.

(ii) The vehicle was driven by a driver who did not possess the authorisation to drive maxicab or the driver was not possessed of a valid licence to drive the maxicab.

8. The Division Bench while holding that the insurance company is not liable for violation of policy condition, held that the insurer in so far as a claim by third parties is concerned, has to first pay the claimant and proceed against the owner of the vehicle to recover the amount paid by it. The relevant portion reads as follows:

In the result, we hold that the insurer cannot avoid the liability to answer the claim of the third parties, but the insurer is at liberty to proceed against the owner of the vehicle and recover the amount paid by it after paying the claimants-appellants herein.

9. Following the ratio laid down in the above said Division Bench judgment, in this case, since the vehicle in question did not have a valid fitness certificate on the date of accident, there is violation of policy condition and the owner will be liable for the breach. The insurance company, as far as the third party claim is concerned will at the first instance pay the claimant and recover the same from the owner of the vehicle in accordance with law.

10. As far as the compensation is concerned, the nature of injuries suffered by Sowkath Ali are as follows: Fracture of both bones on the right leg and grievous injuries all over the body. Initially, he took treatment at the Government Hospital at Hosur and then at Sanjay Gandhi Hospital at Bangalore as inpatient from 17.12.2003 to 31.12.2003 and at that time, he underwent an operation and rod was fixed in his leg. As there was fracture of both bones in the right leg, the claimant, a driver by occupation could not work and earn as before. The disability was assessed at 35 per cent by the doctor. Therefore, the Tribunal for the disability granted Rs. 50,000 and Rs. 25,000 towards pain and suffering and Rs. 30,000 for loss of earning capacity and Rs. 5,000 for extra nourishment. In all, the Tribunal granted the following amounts with interest at 9 per cent interest:

Sl. Head Amount granted No. by the Tribunal 1. For disability 35 per cent Rs. 50,000 2. Pain and suffering Rs. 25,000 3. Loss of earning capacity Rs. 30,000 4. Extra nourishment Rs. 5,000 ------------ Total Rs. 1,10,000 ------------

11. The Tribunal granted reasonable amount for pain and suffering and for disability assessed at 35 per cent. However, no reason has been given as to how a sum of Rs. 30,000 was granted towards loss of earning capacity and it cannot be justified as it will amount to grant of compensation on two heads on one issue. There is no proof that earning capacity is affected consequent to the injury. The claimant, however, will be entitled to attendant charges, for loss of income during the period of treatment, and enhanced compensation for extra

nourishment and transport expenses. Considering the evidence of fracture of both bones of the right leg, the age and the period of treatment in the hospital, the following amount is granted under various heads and the award stands modified as follows:

-- Sl. Head Amount granted Amount granted No. by the Tribunal by this Court -- 1. For disability 35 per cent Rs. 50,000 Rs. 50,000 2. Pain and suffering Rs. 25,000 Rs. 25,000 3. Loss of earning capacity Rs. 30,000 4. Loss of income during treatment ... Rs. 9,000 5. Attendant charges ... Rs. 5,000 6. Transport expenses ... Rs. 5,000 7. Extra nourishment Rs. 5,000 Rs. 5,000 -- Total Rs. 1,10,000 Rs. 99,000 --

12. Insofar as Imtiaz is concerned, he suffered fracture of lumbar vertebrae and fracture of pelvis bone resulting in paraplegia. He was treated in Sanjay Gandhi Hospital at Bangalore from 17.12.2003 to 31.1.2004 as inpatient. Bone grafting was done to him on 23.12.2003. Thereafter, he took further treatment in JIPMER Hospital at Pondicherry till 19.3.2005. The medical treatment includes bone grafting.

13. The disability has been assessed at 80 per cent and considering the nature of injury which resulted in the claimant being declared as a paraplegia after the accident and also taking note of long period of treatment in the hospital where several surgical procedures were done and the continuing disability even today, the decision of the Apex Court in the case of Sunil Kumar Vs. Ram Singh Gaud and Others, , was applied to the facts of this case to adopt the multiplier 17. Tribunal granted compensation of Rs. 6,12,000 for pecuniaryloss (Rs. 3,000 x 12 = Rs. 36,000 x 17 = Rs. 6,12,000). It also granted amounts on various other heads with 9 per cent interest as follows:

Sl. Head Amount granted No. by the Tribunal 1. For pecuniary loss Rs. 6,12,000 2. Pain and suffering Rs. 80,000 3. For future attendant charges Rs. 2,04,000 4. Medical expenses Rs. 34,000 5. Loss of amenities and permanent disability Rs. 60,000 ------------ Total Rs. 9,90,000 ------------

14. Considering the serious nature of ailment consequent to the injuries and further taking note of the fact that he has become totally immobile consequent to the injuries as recorded by the Presiding Officer of Lok Adalat, the amounts granted on one head or the other head have to be suitably modified.

15. Keeping in line with the decision of the Apex Court in Sunil Kumar Vs. Ram Singh Gaud and Others, , the compensation granted by the Tribunal for pecuniary loss by adopting 17 multiplier in the case of 23 years old injured-claimant amounting to Rs. 6,12,000 is justified. As far as attendant charges are concerned considering the lump sum payment, as against Rs. 1,000 per month

granted by the Tribunal, it can be taken as Rs. 500 per month. Rs. 6,000 x 17 = Rs. 1,02,000. A sum of Rs. 80,000 granted towards pain and suffering is confirmed as it will remain lifelong. A sum of Rs. 34,000 granted towards medical expenses is confirmed as it is as per records. The sum of Rs. 60,000 granted towards loss of amenities is confirmed in view of the doctor''s evidence which states that claimant is a paraplegic. The award stands modified as follows:

-- Sl. Head Amount granted Amount granted No. by the Tribunal by this Court -- 1. For pecuniary loss Rs. 6,12,000 Rs. 6,12,000 2. Pain and suffering Rs. 80,000 Rs. 80,000 3. For future attendant charges Rs. 2,04,000 Rs. 1,02,000 4. Medical expenses Rs. 34,000 Rs. 34,000 5. Loss of amenities Rs. 60,000 Rs. 60,000 -- Total Rs. 9,90,000 Rs. 8,88,000 --

16. In both the cases, considering the date of accident, the facts and circumstances of the case and taking note of the fact that the award was passed in the year 2007 and following the Apex Court''s decision in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , the rate of interest stands reduced to 7.5 per cent as against 9 per cent per annum ordered by the Tribunal.

17. In the result, the civil miscellaneous appeals are allowed in part as follows:

(i) The award of the Claims Tribunal in M.C.O.P. No. 124 of 2005 is reduced to Rs. 99,000 from Rs. 1,10,000.

(ii) The award of the Claims Tribunal in M.C.O.P. No. 125 of 2005 is reduced to Rs. 8,88,000 from Rs. 9,90,000.

(iii) The rate of interest is reduced to 7.5 per cent per annum from 9 per cent per annum.

(iv) Learned Counsel for the appellant stated that as per the conditional order of this Court dated 12.2.2008, the entire amount has already been deposited.

(v) The claimants in both the cases are permitted to withdraw the amount as per order of this Court. The appellant in both the cases is permitted to withdraw the excess amount after settling the claims.

(vi) Consequently, connected miscellaneous petition is closed.

(vii) There will be no order as to costs.