
(2016) 09 MAD CK 0011

In the Madras High Court

Case No : C.M.A. (MD) No. 1374 of 2015 and M.P. (MD) No. 1 of 2015

HDFC ERGO General Insurance Co.

APPELLANT

Vs

Jayanthi, W/o. Ayyapparaj

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Citation : (2017) ACJ 1104 : (2016) 2 TNMAC 628

Hon'ble Judges : Mr. M. Sathyanarayanan and Ms. V.M. Velumani, JJ.

Bench : Division Bench

Advocate : Mr. G. Maruthiah, Advocate, for the Appellant; Mr. M. Vedasingh, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Mr. V.M. Velumani, J.—This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 18.10.2013 passed in MCOP No. 33 of 2012 on the file of the Motor Accidents Claims Tribunal-Chief Judicial Magistrate, Theni.

2. The facts in brief leading to the filing of this Civil Miscellaneous Appeal, are as follows:

(i) The appellant/Insurance Company is the second respondent and the first respondent is the claimant and the second respondent/owner of the bus is the first respondent in MCOP No.33 of 2012 on the file of the Court of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Theni. The first respondent filed a claim petition in MCOP No.33 of 2012 against the appellant and the second respondent claiming a sum of Rs.11,00,000/- with interest at 12% p.a. from the date of claim petition till realisation as compensation.

(ii) According to the first respondent/claimant, on 13.04.2012 about 11.30 a.m., she was travelling in a motorcycle bearing Registration No.TN-39-R-8353 as a Pillion rider from Veerapandi proceeding to her native place Thappukundu after worshipping Mariamman deity at Veerapandi and when she was nearing

Upparpatti Vilakku on Theni-Cumbum Main Road, Velmurugan bus bearing Registration No. TN-64-A-1577 belonging to the second respondent proceeding from north to south, driven by it's driver in a rash and negligent manner with very high speed, dashed against the motorcycle from behind. Due to the impact, the first respondent sustained multiple injuries all over her body and her right forearm completely crushed at the level of elbow and her four teeth on the lower jaw were shaking. Immediately, she has been taken to Theni Medical College Hospital for treatment. After first-aid, the first respondent has been taken to Meenakshi Mission Hospital at Madurai and admitted as an inpatient. Three surgeries were done and the right forearm of the first respondent at the level of elbow was totally amputated and four teeth were also removed and discharged from the hospital on 30.04.2012. Due to the injuries sustained by her, she completely lost her physical power. A complaint was given against the driver of the second respondent to the Veerapandai Police Station and a case was registered in Crime No. 81/2012 under Sections 279 and 337 I.P.C. and thereafter, it was altered to Section 338 I.P.C.

(iii) The first respondent was hale and healthy at the time of accident and was managing the entire agricultural operation and earning Rs.10,000/- per month in average. Due to the injuries sustained by her in the accident, she is not able to stand and walk for a long time. She is not able to do any work as before and suffered disfiguration on her face also due to the loss of teeth. She borrowed a sum of Rs.3,00,000/- from her relatives for her medical expenses.

(iv) According to the first respondent, the accident took place due to the rash and negligent driving by the driver of the second respondent, who is the owner of the Velmurugan bus and the appellant is the insurer of the bus and therefore, the claimant filed a claim petition claiming a sum of Rs.11,45,000/- as compensation, but restricted her claim to Rs.11,00,000/-.

(v) The appellant filed counter statement denying all the allegations. According to the appellant, the first respondent is not entitled for the compensation claimed. At the time of accident, the bus belonging to the second respondent, driven by it's driver in cautiously following the rules and regulations. The son of the first respondent was driving the motorcycle in a rash and negligent manner and suddenly crossed the road and due to his negligence only, the accident occurred. At the time of accident, the driver of the bus was not having a valid driving licence and permit. The first respondent/claimant with ulterior motive has not impleaded the owner and Insurer of the motorcycle, who is necessary and proper party. The claim petition is liable to be dismissed on the ground of non-joinder of necessary parties. In any event, the amount claimed is excessive.

(vi) Based on the pleadings, the Tribunal framed necessary points for consideration.

(vii) Before the Tribunal, the first respondent herself examined as P.W.1 and one Abdul Habab was examined as P.W.2 and one Dr. Kannan was examined as P.W.3

and marked 18 documents as Exs.P.1 to P.18. On behalf of the appellant, neither oral nor documentary evidence was let in.

(vii) The second respondent remained ex-parte before the Tribunal.

(ix) The Tribunal considering all the materials available on record, came to the conclusion that the accident took place only due to rash and negligent driving by the driver of the bus belonging to the second respondent and held that the appellant being Insurer of the vehicle is liable to pay compensation and directed the appellant and the second respondent to pay a sum of Rs.20,64,482/- as compensation with interest at the rate of 7.5% p.a., from the date of claim petition till realization under the following heads.

Sl. No.

Heads

Amount

1.

Disability

13,77,000

2.

Pain and suffering

2,00,000

3.

Nutritious food

2,00,000

4.

Transport expenses

50,000

5.

Medical expenses

1,87,482

6.

Attendant expenses

50,000

Total

20,64,482

3. Aggrieved by the said award, the appellant Insurance Company has come out with the present appeal.

4. The learned counsel for the appellant contended that;

(a) the Tribunal erred in holding that the first respondent suffered disability at 85% as per the certificate of P.W.3- Doctor;

(b) the Tribunal failed to see that as per Section 2(1) (4) of Workmen Compensation Act, the maximum disability is only at 70%;

(c) the Tribunal erred in holding that the first respondent will be getting income at Rs.9,000/- per month in the absence of any evidence. It has been held that in the absence of any evidence of agricultural income, the income can be fixed at Rs.3,000/- per month only; and

(d) the Tribunal awarded exorbitant amount under other heads also. The Tribunal failed to see that the first respondent herself has claimed only Rs.4,200/- towards Transportation, whereas the Tribunal has awarded a sum of Rs.50,000/- towards Transportation, which is highly unsustainable.

5. Per contra, the learned counsel for the first respondent has produced evidence to show that she is a small Agriculturist and that she worked in the field along with workers. Therefore, the Tribunal has rightly fixed the income of the first respondent at Rs.9,000/- per month. The first respondent had let in evidence to show that she has actually suffered 85% disability. The maximum disability fixed in the Workmen Compensation Act, is not applicable to a claim made under the Motor Vehicles Act. The Tribunal has properly considered the evidence of Doctors and other documents has awarded just and proper compensation and prayed for dismissal of the Civil Miscellaneous Appeal.

6. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

7. The point for consideration in this civil miscellaneous appeal is,

(i) Whether the compensation awarded by the Tribunal is just compensation or excessive?

8. The first respondent, who was injured in the accident has given evidence about the manner in which, the accident took place and percentage of disability suffered by her. She has examined the Doctor and also produced the supporting documents. The appellant has not let in any evidence to disprove the claim of the first respondent. Therefore, the conclusion of the Tribunal that the first respondent suffered 85% of disability is based on acceptable evidence. There is no reason or circumstance warranting interference by this Court with the said conclusion.

9. As far as the income earned by the first respondent through the agricultural

activities is concerned, she has not produced any document except the oral evidence, but she has produced Ex.P.5 to show that she has taken training for doing agricultural activities. There is no contra evidence to disprove the statement of the first respondent that she was working in her own agricultural field along with other workers. The Tribunal fixed the income of the first respondent at Rs.9,000/- per month, which is excessive. Considering the facts and evidence, a sum of Rs.7,500/- per month will be the proper income, which the first respondent would have earned. Therefore, the first respondent is entitled to Rs.11,47,500/- [Rs.7,500 x 12 x 15 x 85/100] towards disability. The first respondent was taking treatment in a private hospital from 13.04.2012 to 30.04.2012, the Tribunal has awarded a sum of Rs.2,00,000/- towards pain and suffering; Rs.2,00,000/- towards extra nourishment; Rs.50,000/- towards transportation charges; and Rs.50,000/- towards attendant charges. These amounts are excessive and the same are reduced to Rs.1,00,000/- towards pain and suffering; Rs.1,00,000/- towards extra nourishment; Rs.25,000/- towards transportation charges; and Rs.25,000/- towards attendant charges. The award of the Tribunal with regard to medical expenses and rate of interest are confirmed.

10. This Court on reappraisal of the materials in the form of oral and documentary evidence, is inclined to award the following amounts as compensation.

Sl. No.

Heads

Amount awarded by the Tribunal

Amount Awarded by this Court

Award confirmed/reduced

1.

Disability

13,77,000

11,47,500

Reduced by Rs.2,29,500/-

2.

Pain and suffering

2,00,000

1,00,000

Reduced by Rs.1,00,000/-

3.

Nutritious food

2,00,000

1,00,000

Reduced by Rs.1,00,000/-

4.

Transportation charges

50000

25000

Reduced by Rs.25,000/-

5.

Medical expenses

1,87,482

1,87,482

Confirmed

6.

Attendant charges

50000

25000

Reduced by Rs.25,000/-

Total

20,64,482

15,84,982

Reduced by Rs.4,79,500/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the award and decree insofar as the compensation is reduced to Rs.15,84,982/- with interest at 7.5% p.a. from the date of petition till the date of realisation. The appellant/Insurance Company is granted six weeks time to deposit the compensation amount, less the amount already deposited if any and on such deposit, the first respondent/claimant is permitted to withdraw the compensation amount, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.