

(2011) 06 MAD CK 0134

In the Madras High Court

Case No : C.M.A. No. 1503 of 2011 and M.P. No. 1 of 2011

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

A. Pushpa and N.R. Sivakumar

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 3, 5

Citation : (2011) 06 MAD CK 0134

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 above appeal has been filed by the Appellant/ICICI Lombard General Insurance Co. Ltd., against the judgment and

decree made in M.C.O.P. No. 4427 of 2006, dated 18.08.2010, on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes,

Chennai.

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

On 06.11.2006 at about 18.30 hours, when the Petitioner was standing at the extreme edge of the Ashok Nagar, 4th Avenue Main road, a

motorcycle bearing Registration No. TN-09-AR-1959, came from north to south direction, in a rash and negligent manner and dashed against the

Petitioner. As a result, the Petitioner had sustained grievous injuries. She had initially taken first aid at Bhavani Hospital and then admitted and

treated as inpatient in the Government General Hospital till 09.11.2006. Hence, the Petitioner has filed a claim against the Respondents for a sum

of Rs. 3,50,000/-. The first Respondent is the owner of the motorcycle and the second Respondent is its insurer.

3. The second Respondent, ICICI Lombard General Insurance Co. Ltd., in his counter has resisted the claim and denied the averments in the

claim regarding age, income and occupation of Petitioner, place, date and time of accident, nature of injuries sustained by her, period of treatment,

medical expenditure and disability sustained by her. It was also stated that the motorcycle had not been insured with them at the time of accident. It

was also stated that the claim was excessive and that the accident had occurred only due to the reckless act of the Petitioner and that the rider of

motorcycle had not been rash and negligent in his riding.

4. On the averments of both parties, the Tribunal had framed three issues for consideration, namely;

(i) On whose negligence was the accident caused?

(ii) Who is liable to pay compensation to the Petitioner?

(iii) Whether the Petitioner is entitled to compensation? If so, what is the quantum?

5. On behalf of the Petitioner, two witnesses were examined and eleven documents were marked as Exs.P1 to P11 viz., copy of the accident

register, discharge summary (Ex.P2 to Ex.P5), lab report, medical bills, loss of pay certificate, copy of FIR, X-ray and Disability Certificate. On

the Respondents side, two witnesses were examined and six documents were marked as Ex.R1 to R6 viz., certified copy of driving licence extract,

true copy of insurance policy, notice dated 07.07.2009 issued to owner and driver of vehicle, copy of discharge summary (Exs.R4 and R5) and

copy of case diary.

6. PW1, the Petitioner herein, had adduced evidence which was in consonance with the averments made in the claim regarding manner of accident.

Ex.P9 is the F.I.R., registered against the first Respondent's vehicle rider. As no contra evidence had been let in by the Respondents side to

disprove the evidence of PW1 and as the first Respondent's vehicle rider was not examined. The Tribunal held that the accident had been caused

by the rash and negligent riding of the rider of the first Respondent's motorcycle.

7. On the side of the second Respondent, RW1 and RW2 were examined. RW1 is the Legal Manager of the second Respondent's office and

RW2 is the Special Sub-Inspector of Police, Traffic Investigation. Both RW1 and RW2 had deposed that the rider of the motorcycle was charged

for not holding valid driving licence. Ex.R1 is the certified extract of driving licence issued by the Regional Transport Office and on perusal, it is

seen that the holder of the driving licence, viz., Vellaingiri was possessing driving licence to drive light motor vehicle only. Ex.R4 is the charge sheet

laid against the rider of motorcycle and Ex.R5 is the copy of charge sheet laid against the owner of the motorcycle. As per Ex.R6, the case was

deposed and both the owner and rider of motorcycle had pleaded guilty and paid the fine amount. Hence, the Tribunal after scrutiny of evidence of

RW1 and RW2 and Exs.R1 to R6, it is seen that the rider of the motorcycle did not have a valid driving licence on the date of accident. However,

the Tribunal, on considering that the Petitioner is a third party to the contract of Insurance and that the interest of the third party is to be protected,

held the second Respondent liable to pay compensation and permitted the second Respondent to recover the same from the owner of the vehicle

without initiating any separate proceedings.

8. PW1 had adduced evidence that she sustained head injury, fracture of left femur, contusion in left foot, abrasion in her left hand and multiple

injuries. The doctor who had examined the Petitioner was examined as PW2. PW2 adduced evidence, that the Petitioner had sustained fracture of

left femur, which is now mal-united and that bone grafting had also been done; that there is stiffness of knee and muscle and the Petitioner could

not fold the knee above 60 degrees and extension has also been reduced to 20 degrees; that the muscle power is 3/5 and the Petitioner has

difficulty to sit with cross leg position. He had certified that the Petitioner had sustained 65% disability and in support of his evidence had marked

Ex.10, X-ray and Ex.P11, the disability certificate. The Tribunal, on holding that PW2 was not an Ortho Specialist and that no X-ray report had

been filed to show mal-union of left femur, held that the disability sustained by Petitioner was 55%.

9. The Tribunal on scrutiny of Ex.P8, the loss of pay certificate, held that monthly income of Petitioner was Rs. 2,678/-. It is also seen that the

Petitioner had incurred loss of pay up to 31.07.2007. Hence the Tribunal, on considering that the Petitioner had taken treatment at Government

General Hospital and at Public Health Centre, West Mambalam held that she would have been immobilized at least for four months for taking

treatment for injuries sustained. Based on the oral and documentary evidence, the Tribunal awarded a compensation of Rs. 2,10,847/- to the

Petitioner. The breakup of compensation is as follows:

Loss of income for four months .. Rs. 10,712/-

(2678/- x 4 months)

transportation .. Rs. 5,000/-

Nutrition .. Rs. 5,000/-

Damage to clothes .. Rs. 500/-

Medical expenses (as per Ex.P7) .. Rs. 64,635/-

for pain and suffering .. Rs. 15,000/-

For loss of income due to disability of.. Rs. 1,10,000/-

55% (Rs.2000 for 1%)

10. The Tribunal further directed the second Respondent to deposit the award, with interest at the rate of 7.5% per annum from the date of

petition till the date of deposit, within two months from the date of its order.

11. Aggrieved by the said award passed by the tribunal, the second Respondent/ ICICI Lombard General Insurance Co. Ltd., has filed the present

appeal to set-aside the award passed by the Tribunal.

12. The learned Counsel for the Appellant has argued that the lower Court had erred in fastening liability on the insurer in a case where the driver

of the vehicle, Velliangiri was not holding a valid driving licence to drive the vehicle on the date of accident. The lower Court ought to have seen

that both the owner and rider were charge sheeted u/s 3 and 5 of Motor Vehicles Act, 1988 and as such breach of policy of insurance was

proved. It was also pointed out that the lower Court has erred in accepting disability at 55% at the instance of a stock witness PW2 in such

proceedings and granting huge sums under various heads. It was also pointed out that the compensation of Rs. 2,10,850/- under various heads

was excessive and made without any basis.

13. The learned Counsel for the claimant argued that the Tribunal after well considering the evidence of the witnesses and perusal of documentary

evidence, including medical records and loss of pay certificate, had assessed the said compensation. The Tribunal had not considered the award

under the head of "attender charges", which is necessary in the instant case.

14. On considering the facts and circumstances of the case and arguments advanced by the learned Counsel for the Appellant and on perusing the

impugned award of the Tribunal, this Court is of the considered opinion that the learned Tribunal had properly assessed the compensation and

awarded the same to the claimants. Regarding attender charges, it can be included in the award granted under the head of "loss of income during

medical treatment period". As such, the award of the Tribunal is confirmed as it is found to be fair and justifiable. At the time of accident, the rider

of the motorcycle did not have a valid driving licence. Hence, the Appellant is at liberty to recover the said compensation from the owner of the

vehicle. Therefore, this Court directs the Appellant/ICICI Lombard General Insurance Co. Ltd., to comply with the impugned order of the learned

Tribunal within a period of six weeks from the date of receipt of this order, after deducting deposits made earlier. After such deposit being made, it

is open to the claimant to withdraw the entire compensation amount lying in the credit of M.C.O.P. No. 4427 of 2006, on the file of the Motor

Accidents Claims Tribunal, III Court of Small Causes, Chennai, after filing a Memo along with this order.

15. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims

Tribunal in M.C.O.P. No. 4427 of 2006, dated 18.08.2010 on the file of IIIrd Small Causes Court, Chennai is confirmed. There is no order as to

costs. Consequently, connected miscellaneous petition is closed.