

(2010) 07 MAD CK 0098
In the Madras High Court
Case No : C.M.A. No. 300 of 2004

J. Saradha

APPELLANT

Vs

T.N. Munian and The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

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

Citation : (2010) 07 MAD CK 0098

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : R. Karthikeyan, for the Appellant; T.M. Venkataraman, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against award dated 14.10.2003 made in M.C.O.P No. 397 of 2001

by the Motor Accident Claims Tribunal, Tiruvannamalai.

2. Background facts in a nutshell are as follows:

One injured Saradha met with motor vehicle accident on 22.03.2001 at about 11.00 A.M. While the injured was going on the extreme left side of

the road at Nadalaganandal village, a Tractor & Trailer bearing registration No. TN.25/4709 and Trailer bearing registration No. TN.25/C.1875

came in a rash and negligent manner and hit the injured pedestrian. Due to the impact, the claimant sustained fracture on the left knee and right

knee, injuries on right chin, and also multiple injuries all over the body. After the accident, he was admitted in Tiruvannamalai Government Hospital.

She claimed a sum of Rs. 5,00,000/- as compensation. The said Tractor was insured with the second respondent insurance company who resisted

the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the Tractor & Trailer or not?

2. What is the compensation, the claimant is entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of

the Tractor & Trailer and awarded compensation of Rs. 85,000/- with interest @ 9% per annum from the date of claim and the details of the same

are as under:

Loss due to 75% disability = Rs. 75,000/-

Grievous injuries = Rs. 10,000/-

Total = Rs. 85,000/-

Aggrieved by that award, the appellant-Insurance company has filed the present appeal.

3. The learned Counsel appearing for the claimant vehemently contented that the Tribunal has awarded a very low and meagre sum of

compensation. Further, the Tribunal has not considered the relevant material and has not awarded any amount towards pain and suffering, medical

expenses and nourishment and also not followed the principles of assessment. Therefore, it is a fit case for enhancement.

4. The Learned Counsel appearing for the respondent insurance company submitted that the Tribunal has considered all the facts and

circumstances of the case and awarded a just, fair and reasonable compensation is based on valid materials and evidence. It is a question of fact

and it is not a perverse order. Therefore, the award passed by the Tribunal is in accordance with law and the same should be confirmed.

5. Heard the Counsel. On the side of the claimants, P.Ws.1 and 2 were examined and documents Exs.P1 to P5 were marked. On the side of the

respondent insurance company, no one was examined and no document was marked to substantiate their claim. P.W.1 is the claimant. PW2 is Dr.

Raveendran. Ex.P1 is the copy of the First Information Report. Ex.P2 is the motor vehicle inspector's report, Ex.P3 is the wound certificate,

Ex.P4 is the copy of the discharge summary, Ex.P5 is the permanent disability certificate were marked. After considering the above oral and

documentary evidence, the Tribunal has given a categorical finding that the accident had occurred only due to the rash and negligent driving of the

Tractor & Trailer. It is a question of fact. The finding is based on valid materials and evidence and therefore, the same is confirmed.

6. At the time of the accident, the injured/claimant was aged about 32 years. She is agricultural cooly and claimed that she was earning Rs. 2,100/-

per month. In her evidence, it is stated that the accident had occurred only due to the rash and negligent driving of the Tractor & Trailer and the

driver of the Tractor & Trailer was also charge-sheeted by Vettavalam Police Station, in Cr. No. 84/2001 under Sections 279, 337 of IPC.

P.W.2. is Dr. Raveendran. In his evidence, it is stated that due to the accident, the injured sustained fracture on the left knee and right knee,

injuries on right chin, and also multiple injuries all over the body. After the accident, she was admitted in Government Hospital, Tiruvannamalai. He

examined the claimant and determined the disability at 75%. Ex.P5 is the disability certificate. Ex.P3 is the wound certificate. P.W.2. doctor in his

evidence has stated that the left leg of the claimant was amputated and due to the same, she is unable to move, walk, sit and stand freely. In his

evidence, it is further stated that the 75% disability certainly affects the earning capacity of the injured. After considering the above oral and

documentary evidence, the Tribunal awarded a sum of Rs. 75,000/- for loss due to 75% disability. Normally Courts award Rs. 1,000/- to Rs.

2,000/- per percentage of disability. The injured is an agricultural cooly and 75% disability would certainly affects the earning capacity. After taking

into consideration of the same, it is reasonable to award a sum of Rs. 2,000/- per percentage of disability. Therefore, the loss of income due to

75% disability is works out to Rs. 1,50,000/- (Rs. 2000 x 75). The Tribunal also awarded a sum of Rs. 10,000/- towards grievous injuries which

is unwarranted and therefore, the same is deleted. Further, the Tribunal has not awarded any sum towards pain and suffering. The injured was in

the hospital more than a month for taking treatment and also lost her left leg. Therefore, it is reasonable to award a sum of Rs. 20,000/- under that

head and the Tribunal has not awarded any sum towards extra nourishment and transport charges. After taking into consideration of the facts and

circumstances of the case, it is reasonable to award a consolidated sum of Rs. 15,000/- towards extra nourishment and transport charges. The

injured was in the hospital for a period of 40 days both Tiruvannamalai as well as Chennai. After discharge, she was taking treatment as outpatient.

Therefore, it is reasonable to award a sum of Rs. 15,000/- towards attendant charges. Further, the Tribunal has not awarded any sum towards

medical expenses. She was taking treatment in Government Hospital, Tiruvannamalai, naturally, she would have incurred some expenditure

towards medical expenses. After considering the above, it is reasonable to award a sum of Rs. 5,000/- under that head. The interest rate awarded

by the Tribunal is 9% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that

period, award of interest at 9% per annum is reasonable and the same is confirmed. The modified amount of the compensation are as under:

Loss of income = Rs. 1,50,000/-

Pain and suffering = Rs. 20,000/-

Extra nourishment and

Transport charges = Rs. 15,000/-

Attendant charges = Rs. 15,000/-

Medical expenses = Rs. 5,000/-

Total = Rs. 2,05,000/-

(less) Amount awarded by the

Tribunal = Rs. 85,000/-

Total = Rs. 1,20,000/-

7. In the result, the claimant is entitled to enhanced compensation of Rs. 1,20,000/- with interest @ 9% per annum from the date of petition. The

second respondent insurance company is directed to deposit the enhanced compensation of Rs. 1,20,000/- with interest @ 7.5% per annum

within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same, on

making proper application.

8. With the above modifications, the appeal is disposed of. No costs.