

(2010) 08 MAD CK 0258
In the Madras High Court
Case No : C.M.A. No. 3768 of 2005

K. Nagaraj

APPELLANT

Vs

Veeram Tradings and National Insurance Company Ltd.

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0258

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

Bench : Single Bench

Advocate : N. Veerasamy, for the Appellant; Srinivasan Ramalingam, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against the award dated 08.04.2004 made in M.C.O.P No. 200 of 1999 by the Motor Accident Claims Tribunal, Kancheepuram, (Additional District Judge, Fast Track Court-II, Kancheepuram).

2. Background facts in a nutshell are as follows:

One injured Nagaraj met with motor traffic accident on 24.02.1999 at about 02.30 A.M. The said injured was proceeding in a cycle from Tolgate towards his residence on the extreme left side of the Highway road. While he was nearing State Bank Colony Quarters, a lorry bearing registration No. TN-28-E-4422 belonging to the 1st respondent from Kancheepuram towards Chengalpattu came in a rash and negligent manner and suddenly turned the left side of the road and hit the cyclist. Due to the impact, the injured sustained multiple injuries. He was admitted in Kancheepuram Government Hospital. He claimed a sum of Rs. 4,00,000/- as compensation. The said lorry was insured with the second respondent insurance company who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whose negligence the accident was occurred?

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

3. What is the other relief, 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 driver of the lorry and awarded compensation of Rs. 1,44,000/- with interest @ 9% per annum from the date of claim petition and the details of the same are as under.

Transportation = Rs. 4,000/- Medical expenses and extra nourishment = Rs. 50,000/- Pain and suffering = Rs. 10,000/- Loss due to 35% disability = Rs. 50,000/- Loss of income = Rs. 10,000/- Loss of earning power = Rs. 20,000/-
----- Total = Rs. 1,44,000/- -----

Aggrieved by that award, the claimant has filed the present appeal for enhancement.

3. The learned Counsel appearing for the claimant submitted that the Tribunal has awarded a very low and meagre sum of compensation without any basis and justification and the Tribunal ought to have awarded compensation as claimed by the claimant. Further, the Tribunal has not considered the relevant materials and also not followed the principles of assessment before passing the award. Therefore, the award passed by the Tribunal is not in accordance with law and it is a fit case for enhancement.

4. Learned Counsel for the second 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. It is a question of fact and it is not a perverse order. The finding is based on valid materials and evidence. 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 claimant, P.Ws.1 to 3 were examined and documents Exs.P1 to P133 were marked. On the side of the 2nd respondent insurance company, no one was examined and no document was marked to substantiate their claim. P.W.1 is the claimant. P.W.2 is Dr. A. Vaithyalingam. P.W.3 is Dr. S. Gopalan. Ex.P1 dated 25.02.1999 is the copy of the FIR, Ex.P2 dated 24.02.1999 is the copy of the accident register, Ex.P3 is the treatment records given by Ramachandra Hospital, Ex.P4 to 133 are the series of medical bills, Ex.P123 dated 31.10.1996 is the copy of the provisional certificate, Ex.P124 is the copy of the diploma certificate, Ex.P125 is the mark sheet of the petitioner, Ex.P126 is the copy of the transfer certificate, Ex.P127 is the copy of the mark sheet in BBA, Ex.P128 is the copy of the certificate in English Typewriting Higher Grade, Ex.P129 is the copy of the certificate in Tamil Typewriting Higher Grade, Ex.P130 is the copy of the conductor certificate, Ex.P131 is X-ray of the claimant, Ex.P132 dated 03.07.2002 is the disability certificate issued by P.W.2 doctor, Ex.P133 dated 10.08.2003 is the disability certificate issued by P.W.3 doctor 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 driver of the lorry. 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 was aged about 22 years. P.W.1 is the claimant. In his evidence, it is stated that he is working as Data Entry Operator and he claimed that he was earning a sum of Rs. 3,000/- per month. In his evidence, it is further stated that only the driver of the lorry caused the accident and the driver was also charge sheeted by Kancheepuram Police Station in Cr. No. 167/1999. Due to the accident, he sustained following injuries and fracture:

1. Fracture of bone over his forehead.
2. Fracture of bone over his collar bone.
3. Fracture of bone over left and right hand. Injury over the right side forehead and operation below the right eye and right left thigh.

After the accident, immediately he was admitted in Government Hospital, Kancheepuram and later, he was referred to Ramachandra Hospital, Porur, where, he was taken treatment for a period of 17 days as inpatient and after discharge also, he was taking treatment as outpatient. Due to the accident, he often getting head-ache and unable to walk and could not work as before. After taking into consideration of the facts and circumstances of the case, the Tribunal awarded a sum of Rs. 4,000/- towards transportation which is very low and meagre. After the accident, he was admitted in Government Hospital, Kancheepuram and later, he was referred to Ramachandra Hospital, Porur, where, he was taken treatment for a period of 17 days as inpatient and he visited the hospital by Taxi. After discharge also, he was taking treatment in Ramachandra Hospital, Porur, as outpatient. Taking into consideration of the same, it is reasonable to award a sum of Rs. 6,000/- towards transportation as against Rs. 4,000/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 50,000/- towards medial expenses and extra nourishment. Ex.P4 to 133 are the series of medical bills in which, it is stated that the medical expenses incurred at Rs. 42,260/-. It is an actual expenditure. After taking into consideration of the same, the Tribunal awarded a consolidated sum of Rs. 50,000/- towards medial expenses and extra nourishment which is reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 10,000/- towards pain and suffering. He was taken treatment for a period of 17 days as inpatient and after discharge also, he was taking treatment as outpatient. After taking into consideration of the same, and the nature of injury as stated above, it is reasonable to award a sum of Rs. 15,000/- towards pain and suffering as against Rs. 10,000/- awarded by the Tribunal. P.W.2 is Dr.A.Vaithyalingam, who examined the claimant. He determined the disability at 40%. Ex.P132 is the disability certificate given by him. In his evidence, it is stated that there is a fracture in left wrist and due to the same, he is unable to lift heavy articles by his left hand and unable to do

work as before. P.W.3 is Dr.S.Gopalan, who is the ophthalmologist, examined the claimant. He determined the disability at 30%. Ex.P133 is the disability certificate given by him. In his evidence, it is stated that the injured sustained head injury and also injury on the forehead and nerves were also very much affected. Due to the same, he often getting giddiness and his eye sight also affected. Even though there is 70% disability assessed by both P.W.2. as well as P.W.3 doctors, the Tribunal reduced the same at 35% and awarded Rs. 50,000/- towards loss due to 35% disability. Once, the experts determined the disability the same could not reduce without adducing any concrete evidence. Therefore, it is reasonable to fix the disability at 70% assessed by both P.W.2. as well as P.W.3 doctors. Normally, Courts award a sum of Rs. 1,000/- to Rs. 2,000/- per percentage of disability. After taking into consideration of the nature of injuries, it is reasonable to award Rs. 2,000/- per percentage of disability. If Rs. 2,000/- is awarded, the loss due to 70% disability is works out to Rs. 1,40,000/- (Rs. 2,000 x 70). Therefore, the claimant is entitled to Rs. 1,40,000/- towards loss due to 70% disability as against Rs. 50,000/- awarded by the Tribunal. After awarding a sum of Rs. 50,000/- for loss due to 35% disability, the Tribunal ought not to have awarded a sum of Rs. 20,000/- towards loss of earning power and Rs. 10,000/- towards loss of income which are unwarranted and accordingly deleted. Further, the Tribunal has not awarded any sum towards attendance charges. After taking into consideration of the facts and circumstances of the case, it is reasonable to award a sum of Rs. 3,000/- towards attendance charges. The Tribunal awarded interest of 9% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that period, the interest of 9% awarded by the Tribunal is reasonable and therefore the same is confirmed. The modified amount of the compensation are as under:

Medical expenses = Rs. 50,000/- Transport charges = Rs. 6,000/- Pain and suffering = Rs. 15,000/- Loss due to 40% disability = Rs. 1,40,000/- Attendant Charges = Rs. 3,000/- ----- Total = Rs. 2,14,000/-

(Less) Amount awarded by the Tribunal = Rs. 1,44,000/- -----
Enhanced compensation = Rs. 70,000/- -----

7. In the result, the claimant is entitled to enhanced compensation of Rs. 70,000/- with interest @ 9% per annum from the date of claim petition. The 2nd respondent insurance company is directed to deposit the enhanced compensation of Rs. 70,000/- with interest @ 9% 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.