
(2008) 03 MAD CK 0049
In the Madras High Court
Case No : C.M.A. No. 896 of 2002

K.V. Selvaraj

APPELLANT

Vs

R. Sundaram and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 03 MAD CK 0049

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Ramya V. Rao, for the Appellant; K.S. Narasimhan, for the Respondent

Judgement

R. Banumathi, J.—Being dissatisfied with the quantum of Rs. 30,750/- for the personal injuries sustained by the claimant, claimant has preferred this appeal.

2. Brief facts which are necessary for disposal of this appeal are as follows: On 28.11.1997 at about 12.45 hours, when the petitioner was waiting

for signal at 2nd Main Road, R.A. Puram, Oil Tanker Lorry bearing Registration No. TDF 2259, which was driven in a rash and negligent manner

came from behind and hit the petitioner. Due to the accident, claimant had sustained head injuries. After the accident, claimant was admitted in

Kaliappa Hospital and had taken treatment as in-patient. Alleging that the accident was due to the rash and negligent driving of tanker lorry,

claimant had filed petition u/s 166 MV Act, claiming compensation of Rs. 1,50,000/-.

3. Opposing the claim, second respondent/Insurance Company has filed counter stating that the accident was due to the negligence of the claimant

and that the claimant is not entitled to any compensation. The Insurance Company has also disputed age, income of the claimant and nature of

injuries, duration of treatment and the alleged permanent disability.

4. Before the tribunal, claimant examined himself as PW-1. Dr. Thiagarajan was examined as PW - 2. Exs. P-1 to P-11 were marked on the side

of the claimant. The respondents have neither examined any witness nor marked any documents. Upon consideration of oral and documentary

evidence, the tribunal held that the accident was due to the negligent driving of the tanker lorry and held that the insured and the insurer are jointly

and severally liable to pay the compensation. Based on the evidence of P. Ws 1 and 2 and Ex. P-11 - Disability Certificate, tribunal has awarded

compensation of Rs. 30,750/-. Challenging the quantum of compensation, the learned Counsel for the appellant has submitted that the appellant

had undergone prolonged treatment in the hospital. While so, the tribunal has awarded only Rs. 30,750/-, which is very much on the lower side.

5. The learned Counsel for the appellant further submitted that the Tribunal erred in clubbing the heads ""Pain and Suffering"" and ""Permanent

Disability"" and in awarding a meagre sum of Rs. 15,000/- under both heads. The learned Counsel submitted that the quantum of compensation of

Rs. 30,756/- is substantially enhanced.

6. The learned Counsel for the second respondent Insurance Company Mr. K.S. Narasimhan has submitted that the quantum of compensation

awarded by the Tribunal is just and reasonable and the same need not be interfered with. In any event, the learned Counsel for the second

respondent has fairly conceded that the Tribunal ought not to have clubbed the heads ""Permanent Disability"" and ""Pain and suffering"".

7. It is not necessary to narrate the entire facts as to how the accident has occurred, who was responsible and who was rash and negligent in

driving the vehicle. It is for the reason that the Tribunal has recorded the findings on the above aspects in favour of the claimant. Secondly, those

findings of the Tribunal are not under challenge.

8. Only the quantum of compensation is disputed. In the accident, claimant had sustained fracture of skull. Immediately after the accident, claimant

was admitted at Kaliappa Hospital. There was bleeding over the scalp and bleeding from both ears. There was also abrasion over the face and

lacerated injury all over the scalp. Haematoma over the occipital region and skull were noticed. X-ray for the skull was taken which disclosed,

fracture of temporal bone. There was also small extra dural haematoma. A team of Doctors examined the claimant. The claimant had taken

treatment as in-patient from 28.11.1997 to 01.12. 1997 and thereafter, continued his treatment as out-patient. In his evidence, PW-1 has stated

that even after treatment, he has been suffering from headache and giddiness and that he finds it difficult to carry on his normal work.

9. PW-2 Dr. Thiagarajan has examined the claimant on 19.04.2001 and assessed the permanent disability at 45%. PW-2 had noticed post

traumatic headache and giddiness. Pain over right temporal bone was also noticed. Movement of neck muscles is restricted and turning of head is

restricted. PW-2 had noticed discharge through right ear. Assessing permanent disability at 45%, in his evidence, PW-2 has stated that there is a

possibility that the claimant would develop frequent headache and giddiness due to the skull bone fracture and the injuries.

10. For the skull bone fracture, claimant had taken treatment as in-patient for three days and thereafter, continued his treatment as out-patient.

Having regard to the duration of treatment, the Tribunal ought to have awarded a substantial amount for pain and suffering. As rightly submitted by

the learned Counsel for the claimant, the Tribunal erred in combining both the heads - "pain and suffering and permanent disability" and awarding

consolidated sum of Rs. 15,000/-. The Tribunal ought to have awarded compensation separately under the heads "pain and suffering and

permanent disability". Having regard to the nature of injuries and duration of treatment, the compensation amount of Rs. 15,000/- awarded by the

Tribunal under the heads "pain and suffering and permanent disability" is modified as Rs. 15,000/- under the head "pain and suffering". Since the

claimant had suffered skull bone fracture and is said to be having frequent headache and giddiness, compensation amount of Rs. 40,000/- is

awarded for permanent disability.

11. Though the claimant had taken treatment as in-patient only for three days, the claimant is said to have taken treatment as out-patient. At the

time of accident, claimant was working as a librarian in Private Library. He was getting salary of Rs. 1,920/-. Since the claimant had sustained

head injuries, claimant may not have attended duty for about two to three months. Compensation of Rs. 6,000/- is awarded for loss of income.

12. The Court has to make a judicious attempt to award damages, so as to compensate the Claimant for the loss suffered by him. Such

compensation is what is termed as ""just compensation"". The Court while assessing the compensation should have regard to the degree of

deprivation and the loss caused by such deprivation. The Supreme Court and this Court had repeatedly held that in bodily injury cases while

assessing compensation, the Court should take into account all the relevant circumstances, evidence and the legal principles governing

quantification of compensation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the

injured for the deprivation suffered by him throughout his life. They should not be only token damages.

13. Having regard to the nature of injuries, duration of treatment and the permanent disability, the compensation amount of Rs. 30,750/- is

enhanced to Rs. 80,750/- as under:

Compensation for:

Awarded by Appeal Amount Enhanced amount Permanent Disability

Tribunal Rs. Awarded Rs.

- 40000 40000 Medical expenses

14750 14750 affirmed Transport charges

500 2500 2000 Extra nourishment

500 2500 2000 Pain and Suffering

& Permanent Disability

15,000/- 15,000/-

(restricted to pain - Loss of income

& suffering

- 6000 6000

Total 30750 80750 50,000/-

14. In the result,

The compensation amount of Rs. 30,750/- is enhanced to Rs. 80,750/- and this C.M.A. is partly allowed;

Enhanced compensation of Rs. 50,000/- is payable with interest @ 7.5.% from the date of Petition till the date of deposit;

The compensation amount of Rs. 30,750/- awarded by the Tribunal is payable with interest @ 9% from the date of Petition;

The enhanced amount along with accrued interest shall be deposited within a period of three months from the date of receipt of copy of this order;

On such deposit, the claimant is entitled to withdraw the entire compensation amount payable to him.

There is no order as to costs in this appeal.