
(2011) 01 MAD CK 0414
In the Madras High Court
Case No : C.M.A. No. 3267 of 2003

Mani	Vs	APPELLANT
N. Radhakrishnan and United India Insurance Company Ltd.		RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0414

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : J. Mahalingam, for the Appellant; C. Ramesh Babu, for R-2, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant / claimant against the judgment and Decree dated 01.03.2002 passed in M.C.O.P. No. 2508 of 1998 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, on awarding a compensation of Rs. 49,400/- together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation.

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

On 27.07.1996, the Petitioner was proceeding on his bicycle from Thirumalaipillai Road at about 10.30 p.m., when at that time, a scooter bearing registration No. TN01-K-6972 driven by its rider in a rash and reckless manner and hit behind the cyclist, as a result, he sustained grievous injuries. Hence, the claim petition filed against the Respondents for compensation a sum of Rs. 1,00,000/-with interest.

3. The Insurance Company had filed a counter statement and resisted the claim petition. The Respondent denied the age, income and occupation of the claimant and also denied the date, time and place of accident, which was caused by the rider of the scooter. The vehicle was not possessing valid records and the rider was not in possession of a valid driving licence, besides the claim amount is

excessive.

4. On the pleas of both parties, the Tribunal had framed two issues for consideration namely:

1. Who was responsible for the accident?

2. Whether the claimant is entitled to get compensation? If so what is the quantum of compensation?

5. On the side of the claimant four witnesses had been examined namely, P.W.1 claimant herein, P.W.2 Dr. A. Sai Chandran, P.W.3 Sankar and P.W.4 Thirunaavukarasu and six documents were marked namely, Ex.P.1 Accident Register, Ex.P.2 Discharge Certificate, Ex.P.3 O.P. Sheet, Ex.P.4 Disability certificate, Ex.P.5 X-ray and Ex.P.6 First Information Report.

On the side of the Respondents no witnesses were examined and no documents were marked.

6. PW1 had adduced evidence stating that on 27.07.1996 at about 10.30 p.m., he was proceeding on his bicycle on the Thirumalaipillai Road, when at that point of time, the first Respondent's scooter ridden by its rider in a rash and reckless manner and dashed against him, as a result, he had sustained injuries. The said accident was witnessed by PW3 and he spoke in tandem regarding the accident. PW2 doctor had adduced evidence stating that the claimant's right hand bone was fractured and not-united and he assessed the disability as 30%. PW1 further stated that immediately after the accident, he was taken to the Government Hospital, Royapettah, wherein he had undergone treatment for a period of two days. Thereafter, he had undergone treatment at Puthur bone setting centre, subsequently, he underwent treatment as an outpatient.

7. On considering the evidence of the witnesses, the Tribunal had awarded a sum of Rs. 49,400/-with interest at the rate of 9% per annum.

8. Having not been satisfied with the award, the claimant has filed the above appeal for an additional compensation a sum of Rs. 50,600/-with interest.

9. The learned Counsel for the Appellant argued that the claimant had undergone treatment at the Royapettah Government Hospital and at the Puthur bone setting centre for which transport and nutrition expenses had taken up more, but the Tribunal had awarded a sum of Rs. 200/-each which is meager, attender and medical expenses

10. Learned Counsel for the Insurance Company argued that the claimant had sustained simple injuries, but the Doctor had assessed the disability as 30% which is on the higher side. The claimant went on the wrong side and dashed against the scooter, as such the accident had happened. Therefore, contributory negligence is attributed.

11. On considering the facts and circumstances of the case and arguments

advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the claimant had sustained 30% disability, he had undergone conventional treatment at the Royapettah Government Hospital, but since it proved unsatisfactory, he had undergone treatment at the Puthur bone setting centre an ayurvedic form of treatment, so the mode of these treatments clearly proves that he had sustained bone fracture injuries to substantiate the same the doctor had given the disability as 30%. Therefore, the claimant is entitled to receive an adequate compensation, hence this Court awards the compensation as follows:

Rs.30,000/-, Rs. 15,000/-, Rs. 5,000/-, Rs. 2,000/-Rs.2,000/-, Rs. 3,000/-, Rs. 1,400 and Rs. 3,000/-granted towards disability, pain and suffering, loss of income during medical treatment period, nourishment, transport, medical expenses, discomfort and attender charges respectively. In total, this Court awards a sum of Rs. 61,400/-as compensation, which is fair and justifiable. Therefore, this Court grants the additional compensation a sum of Rs. 12,000/-. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Therefore, this Court directs the United India Insurance Company Ltd., to deposit the above mentioned amount to the credit of M.C.O.P. No. 2508 of 1998 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, within a period of six weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimant to withdraw the modified compensation amount lying in the credit of M.C.O.P. No. 2508 of 1998 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, after filing a Memo along with this order.

12. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai made in M.C.O.P. No. 2508 of 1998, dated 01.03.2002 is modified. There is no order as to costs.