
(2013) 09 MAD CK 0105
In the Madras High Court
Case No : C.M.A.No. 1833 of 2011

Manoj Mohan Kumar

APPELLANT

Vs

C. Sundar Raj and The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0105

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : A. Kalaiarasan, for the Appellant; N. Vijayaraghavan, for R.2, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Subbiah, J.—Being dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (II Judge, Small

Causes Court), Chennai, by order dated 9.11.2010 made in M.A.C.T.O.P.No. 1484 of 2007, the present appeal has been filed by the claimant.

The claim petition was filed by the injured victim Manoj Mohan Kumar, claiming a sum of Rs. 25,00,000/- as compensation for the disability

suffered by him in the road accident that had occurred on 1.1.2007, involving the two wheeler insured with the second respondent insurance company.

2. It is the case of the claimant before the Tribunal that on 1.1.2007 at about 10.40 p.m., he was travelling as a pillion rider in a motor cycle

bearing Registration No. TN-74-Y-403 from Parrys to Guindy along Anna Salai. The said motor cycle was driven by his friend R. Abinash, in a

rash and negligent manner as a result of which, the said two wheeler hit against

the centre median, opposite to Mosque, Thousand Light and lost its control and fell down. In that accident, the claimant sustained severe injuries in his right leg. Immediately, he was taken to Government General hospital, Chennai. On 2.1.2007, he was discharged from the Government General hospital and admitted at Apollo Hospital. On the same day, he was discharged from Apollo hospital and admitted at St. Isabel's Hospital, Mylapore and in the said hospital, he has taken treatment from 2.1.2007 to 11.3.2007 as inpatient. Again, from 12.3.2007 to 8.4.2007 he took treatment in Kuppuswamy Naidu Memorial Hospital, Coimbatore as inpatient. Again, in the same hospital, he took treatment from 27.6.2007 to 29.6.2007 as inpatient. After that, he took treatment in Kovai Deepam Hospital from 30.1.2010 to 5.2.2010 as inpatient. In the said accident, the claimant suffered sectoral fracture of post medial aspect of lower end of right femur, oblique fracture patella with loss of bone, open fracture with dislocation right knee leading to removal of right knee, deep cut injury bone deep wound in right thigh 10 x 12 cms, both of cruciate ligaments and collateral ligaments torn and lacerated, multiple chondral and sub-chondral flakes from articular surface and other multiple injuries. Hence, he has made a claim as against the owner of the two wheeler and its insurer, who are the respondents herein, claiming a sum of Rs. 25,00,000/- as compensation.

3. Resisting the claim petition, the insurance company has filed a counter affidavit denying the nature of injuries, period of treatment and alleged disability sustained by the injured victim. Further, in the counter affidavit, it has been stated that the insurance company is not liable to pay any compensation and sought for dismissal of the claim petition.

4. In order to prove the claim, on the side of the claimant, the claimant examined himself as P.W.1, besides examining one P.R. Rajan as P.W.2 and Dr. K.J. Mathiazhagan as P.W.3 and marked 24 documents as Exs. P.1 to P.24. On the side of the respondents, no evidence was adduced.

5. The Tribunal after analysing the entire evidence, both oral and documentary, has awarded a sum of Rs. 5,40,000/- as compensation. Being not satisfied with the said award amount, the claimant has preferred the present appeal.

6. Learned counsel appearing for the appellant/injured victim submitted that the

disability suffered by the injured victim on account of the fracture injuries sustained by him in the accident was assessed as 65%. But the Tribunal has awarded inadequate compensation under different heads, which ultimately resulted in awarding only a meagre sum of Rs. 5,40,000/- as compensation. Out of Rs. 5,40,000/-, major portion of the amount was awarded under the head of medical expenses, which has been supported by documentary evidence. Except the actual amount spent by the injured victim under the head of medical expenses, in respect of all other heads, only meagre amounts were awarded. Therefore, proper enhancement has to be made in the award under the other heads by way of re-assessment.

7. Per contra, learned counsel appearing for the insurance company made his submissions supporting the award passed by the Tribunal.

8. Keeping the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

9. We find that on account of the accident, the injured victim had suffered fracture of post medial aspect of lower end of right femur, oblique

fracture patella with loss of bone, open fracture with dislocation right knee leading to removal of right knee, deep cut injury bone deep wound in

right thigh 10 x 12 cms, both of cruciate ligaments and collateral ligaments torn and lacerated, multiple chondral and sub-chondral flakes from

articular surface and other multiple injuries fracture of post medial aspect of lower end of right femur, oblique fracture patella with loss of bone,

open fracture with dislocation right knee leading to removal of right knee, deep cut injury bone deep wound in right thigh 10 x 12 cms, both of

cruciate ligaments and collateral ligaments torn and lacerated, multiple chondral and sub-chondral flakes from articular surface and other multiple

injuries all over the body.

10. In order to prove the injuries sustained by the victim, Ex. P.3, the discharge summary of Apollo Hospital, Ex. P.5, the discharge summary of

St. Isabel's Hospital, Mylapore, Exs. P.12 and P.13 discharge summaries of Kuppusamy Naidu Memorial Hospital for the treatment taken from

12.3.2007 to 8.4.2007 and 27.6.2007 to 29.6.2007 and Ex. P.16, the discharge summary of Kovai Deepam Hospital were filed.

11. The doctor, who was examined as P.W.3, has assessed the disability suffered

by the victim as 65%. Further, the evidence of P.W.3 would show that on account of the injuries sustained by the victim, his right knee is completely fused and there is nil movement in the right knee and the patella is completely removed. Though the disability was assessed as 65%, the Tribunal has awarded only a sum of Rs. 1,00,000/- under the head of permanent disability.

12. Considering the nature of injuries sustained by the victim and considering the disability suffered by the victim, we are of the opinion that the amount of Rs. 1,00,000/- awarded by the Tribunal under the head of permanent disability is definitely on the lower side and hence, the same is hereby enhanced to a sum of Rs. 2,00,000/-. Further, considering the long duration of the treatment taken by the victim, we are of the opinion that a sum of Rs. 20,000/- which was awarded by the Tribunal under the head of pain and suffering needs proper enhancement. Accordingly, the said amount is enhanced to Rs. 1,00,000/- as just and proper compensation under the said head. Further, on account of the disability, it is difficult for the victim to carry on his avocation as he was doing before the accident. Therefore, he is entitled for compensation under the head of loss amenities. Considering the facts and circumstances of the case, a sum of Rs. 1,30,000/- is awarded under the head of loss of amenities. Further, we find that the Tribunal has not awarded any amount towards attendant charges. The victim took treatment in various hospitals for a period of eight months. When he was in the hospital, either his family members or other attendants must have attended him and therefore, he is entitled for compensation under the said head and a sum of Rs. 30,000/- is awarded under the head of attendant charges. Thus, the total compensation of Rs. 5,40,000/- awarded by the Tribunal is hereby enhanced to Rs. 8,80,000/- as under:-

13. In the result, the compensation awarded by the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai in M.A.C.T.O.P.No. 1484 of 2007 dated 9.11.2010 is enhanced to Rs. 8,80,000/-, payable with interest at the rate of 7.5% per annum and the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent insurance company is directed to deposit the enhanced award amount with interest at the rate of 7.5% per annum from the date of claim

petition till the date of payment, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the injured victim/claimant is permitted to withdraw the entire amount with proportionate interest.