
(2013) 10 MAD CK 0105
In the Madras High Court
Case No : C.M.A. No. 1690 of 2006

Mathizhagan

APPELLANT

Vs

K.V.B. Chandrasekar Rao and The New India Insurance
Company Ltd.

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0105

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

Bench : Single Bench

Advocate : V. Parivallal, for the Appellant; R. Sivakumar for R2, for the
Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 31.01.2005., made in M.C.O.P. No. 247 of 2004, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Ranipet, Vellore District. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 247 of 2004, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Ranipet, Vellore District, claiming a sum of Rs. 2,00,000/- as compensation from the respondents for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 27.02.2001, at 10.45 p.m., when the claimant was proceeding as a passenger in a Minidor lorry bearing registration No. TN04 C8145, along with one Vijayakumar and when the lorry was proceeding on Tirutani-Sholingar Main Road and near Buchinaidu Gandigai Junction Road, the first respondent's lorry bearing registration No. AP9 V2662, which was proceeding ahead of the mini lorry, was suddenly stopped, without any signal and as a result, the mini lorry had dashed against the lorry. Due to the impact, the claimant had sustained multiple grievous injuries. Hence, the claimant had

filed the claim petition against the respondents, who are the owner and insurer of the lorry bearing registration No. AP9 V2662.

3. The second respondent Insurance Company, in their counter affidavit, had submitted that the driver of the mini lorry bearing registration No. TN04 C8145 did not have a valid licence and that the mini lorry was not covered under a valid permit and also not covered under a valid policy of insurance. It is also submitted that the claimant had travelled as an unauthorized passenger in the mini lorry, which was a goods vehicle. The averments made in the claim petition regarding medical expenses, disability and loss of income was also not admitted. It was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed four issues namely:

i. Whether the accident occurred by the rash and negligent driving of the driver of the first respondent's lorry?

ii. Whether the claimant has also contributed negligence for the occurrence of the accident?

iii. Whether the claimant is entitled to get compensation? and

iv. If so, what is the quantum?

5. On the claimant's side two witnesses were examined as P.Ws. 1 and 2 and 20 documents were marked as Exs. P1 to P20 namely copy of FIR, copy of accident register, copy of M.V.I's report of mini lorry, copy of M.V.I's report of lorry, copy of charge sheet, copy of Judgment, copy of Sri Ramachandra Medical Hospital Certificate, copy of discharge summary, marriage invitation, Sri Ramachandra Medical Hospital, Chennai, bills, medical bills, drug bills, discharge summary, copy of I.D. Card, pay certificate, X-ray report and disability certificate. On the respondents' side one witness was examined as R.W. 1 and five documents were marked as Exs. R1 to R5 namely copy of FIR, copy of investigation report, copy of notice and return covers.

6. P.W. 1, the claimant, had adduced evidence, which is on similar lines to the statements made in the claim petition regarding manner of accident. On scrutiny of Ex. P5, it is seen that charge sheet had been filed against the driver of the first respondent's lorry. On scrutiny of Exs. P3 and P4, it is seen that the accident had not been caused due to any mechanism failure of the vehicles involved in the accident. On scrutiny of Ex. P6, it is seen that the driver of the first respondent's lorry had admitted his guilt and paid the fine before the Criminal Court.

7. R.W. 1 N.P. Kesavan, Development Officer of the second respondent firm, had adduced evidence that FIR had been lodged only against the driver of the mini lorry and that from the rough sketch marked, it is evident that only the mini lorry had dashed against the back of the trailer lorry. He had also adduced evidence

that the mini lorry was not covered under a policy of insurance at the time of accident and that the claimant had manipulated to file the charge sheet against the driver of the tipper lorry and the name of the accused was changed in the charge sheet.

8. He deposed further that only three persons were allowed to travel on the front seat of the mini lorry, whereas four persons namely the claimant along with another person had travelled along with the driver and cleaner at the time of accident, which is against policy conditions and as such the second respondent is not liable to pay compensation to the claimant. He further adduced evidence that the claimant is working as a Police Constable even now and earning the same salary and as such he had not sustained any disability. In support of his evidence, he had marked Exs. R1 to R5.

9. The Tribunal, on scrutiny of oral and documentary evidence, opined that both the drivers of the vehicles had contributed negligence to the occurrence of the accident and apportioned the negligence equally among the drivers of the vehicles. On scrutiny of Ex. P2, it is seen that the claimant had sustained lacerated injury over the right knee measuring 1.5 c.m., X 3 c.m., X 1 c.m., and had also sustained contusion in his right thigh with clinical fracture measuring 15 c.ms., X 15 c.ms.

10. P.W. 2 Dr. Riaz Ahamed had adduced evidence that the claimant had sustained fracture in the thigh and right knee. He certified that the disability sustained by the claimant was 50%.

11. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 35,000/- for disability, Rs. 35,000/- for pain and suffering, Rs. 53,000/- for medical expenses, Rs. 2,000/- for nutrition and Rs. 3,000/- for transport expenses. In total, the Tribunal had assessed the compensation as Rs. 1,28,000/-. The Tribunal, after deducting Rs. 64,000/- for the contributory negligence on the part of the driver of the mini lorry, awarded a sum of Rs. 64,000/- as compensation to the claimant and directed the second respondent Insurance Company to pay the said compensation with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, with costs, within a period of two months from the date of its order.

12. Not being satisfied with the quantum of compensation, the claimant has preferred the present civil miscellaneous appeal.

13. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal erred in awarding only 50% of the compensation assessed in spite of the fact that the Police after investigation had filed the charge sheet only against the driver of the first respondent's lorry. It is contended that the award granted under the head of pain and suffering and disability was on the lower side as the claimant's movements had been restricted due to injuries sustained and he had been given the work only as a writer in the Police Department. It is also

contended that the Tribunal ought to have considered the plight of the appellant/claimant that the disability sustained by him has affected his future prospectus of promotion. Hence, it is prayed to set aside the order as far as the contributory negligence of the appellant is concerned and to grant additional compensation of Rs. 1,36,000/-.

14. The learned counsel for the Insurance Company has submitted that the Doctor had assessed the disability at 50%, which is on the higher side. Further, in the said case, two vehicles were involved namely the mini lorry, in which the claimant had travelled as an authorised passenger and the first respondent's lorry, as such contributory negligence had been attributed. However, adequate compensation has already been granted by the Tribunal.

15. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding contributory negligence and liability. However, the quantum of compensation is on the lower side. Therefore, this Court reassesses the compensation amount as follows:

- i. Rs. 1,00,000/- is awarded under the head of disability,
- ii. Rs. 53,000/- is awarded under the head of medical expenses,
- iii. Rs. 15,000/- is awarded under the head of pain and suffering,
- iv. Rs. 10,000/- is awarded under the head of attender charges,
- v. Rs. 10,000/- is awarded under the head of nutrition,
- vi. Rs. 10,000/- is awarded under the head of transport expenses,
- vii. Rs. 15,000/- is awarded under the head of loss of earning during medical treatment period and convalescence period, and
- viii. Rs. 25,000/- is awarded under the head of loss of amenities and loss of comfort.

In total, this Court awards Rs. 2,38,000/- as total compensation. After deducting 50% for the contributory negligence, this Court awards Rs. 1,19,000/- as compensation as it is found to be appropriate in the instant case. After subtracting initial compensation amount of Rs. 64,000/- this Court awards Rs. 55,000/- as additional compensation. 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.

16. This Court directs the second respondent herein/Insurance Company to execute this Court's Judgment, by way of depositing the compensation amount, to the credit of M.C.O.P. No. 247 of 2004, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Ranipet, Vellore District, within a period of four weeks from the date of receipt of a copy of this Judgment.

17. After such a deposit having been made, it is open to the claimant to withdraw the additional compensation amount, lying in the credit of M.C.O.P. No. 247 of 2004, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Ranipet, Vellore District, with accrued interest thereon, after filing a memo, along with a copy of this Judgment. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 31.01.2005, made in M.C.O.P. No. 247 of 2004, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. II, Ranipet, Vellore District, is modified. No costs.