

(2013) 10 MAD CK 0041

In the Madras High Court

Case No : C.M.A. No. 2271 of 2006 and M.P. No. 2 of 2006

M/s. National Insurance Company Ltd.

APPELLANT

Vs

R.S. Chandrasekaran and M/s. Mittal Brothers

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0041

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

Bench : Single Bench

Advocate : N.B. Surekha, for the Appellant; M.R. Thangavel for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 20.06.2005,

made in M.A.C.T.O.P. No. 447 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No. I),

Salem. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.A.C.T.O.P. No. 447 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District

Court, Fast Track Court No. 1), Salem, claiming a compensation of Rs. 5,00,000/- from the respondents for the injuries sustained by him in a

motor vehicle accident.

2. It was submitted that on 11.11.2002, at about 09.00 p.m., when the claimant was riding his M80 Motorcycle bearing registration No. TN27

A8771, from Salem New Bus Stand towards Old Bus Stand and when the vehicle was proceeding on the road from Salem Government Hospital

to 4 Road Junction, the first respondent's Maruthi Car bearing registration No. TN27 F9252, coming in the opposite direction and driven at a high

speed and in a rash and negligent manner, dashed against the motorcycle and caused the accident. As a result, the claimant sustained injuries and

was admitted at Sellappa Hospital, Salem, wherein he took treatment. Hence, the claimant had filed the claim petition against the respondents, who

are the owner and insurer of the car bearing registration No. TN27 F9252.

3. The first respondent, in their counter affidavit, denied the averments made in the claim petition regarding age, income and occupation of the

claimant, nature of injuries sustained and medical treatment taken. Further, it was submitted that the accident was not caused due to rash and

negligent driving of the car driver, as alleged in the claim petition. It was submitted that the claim was excessive.

4. The second respondent Insurance Company, in their counter affidavit, had denied the averments made in the claim petition regarding manner of

accident, age, income and occupation of the claimant, nature of injuries sustained and medical treatment taken. It was also submitted that the

accident was caused due to negligence of the claimant and that the Police had also filed a case against him. It was also submitted that the claim was

excessive.

5. On considering the averments of both sides, the Tribunal had framed three issues for consideration namely:

i. Whether the accident had happened due to the rash and negligent driving by the driver of the first respondent's Car?

ii. Whether the claimant is entitled to get compensation as prayed for? and

iii. To what other relief is the claimant entitled to get?

6. On the claimant's side, three witnesses were examined as P.Ws. 1 to 3 and ten documents were marked as Exs. P1 to P10 namely copy of

FIR, wound certificate, R.C. for possession of electric looms, copy of driving licence, medical receipts, hospital receipts, medical treatment record,

bill for medical test, disability certificate and X-rays. On the respondents' side, no witness was examined and no document was marked.

7. P.W. 1 had adduced evidence which is corroborative of the statements made in the claim regarding manner of accident and in support of his

evidence, he had marked Exs. P1 and P2.

8. P.W. 3 Mohan, eye-witness of the accident, had adduced evidence that on the date of occurrence of accident, when he and the claimant were travelling in separate M80 motorcycle and when they were proceeding on the bridge near Anna Park, the first respondent's Car, driven at high speed, had dashed against the claimant. Further, he deposed that as a pregnant woman in the car was being taken to the hospital for child birth, the car driver had not stopped it even after collision.

9. On scrutiny of Ex. P1, it is seen that FIR had been registered against the claimant based on the complaint given by the car driver. However, the Tribunal, on observing that the respondents had not produced any documentary or oral evidence to prove the contents of the FIR and to rebut the claim of P.W. 1 and P.W. 3, held that the accident had been caused by the rash and negligent driving of the first respondent's car driver.

10. P.W. 1 had further adduced evidence that due to the accident, he had sustained injuries on his right hip, right sole, right foot and hands and that he had been admitted at Chellappa Hospital, wherein he received treatment as an inpatient for 15 days. He deposed that he had again received treatment as an inpatient from 02.12.2002 to 15.12.2002 and that skin grafting was done on his sole. He deposed further that prior to the accident, he was working as a Weaver and earning Rs. 3,500/- per month and that due to injuries sustained in the accident, he is not able to work fast, climb up or down stairs and drive two wheelers and also not able to do his work as before and in support of his evidence, he had marked Exs. P3 to P8.

11. P.W. 2 Dr. S. Rajamanickam, Orthopedist, had adduced evidence that he had examined the claimant on 07.03.2005. He deposed that the claimant had been admitted at his hospital on 11.11.2002 and that he had given him treatment to set right the fracture of bone in three different places on his right sole and that a skin grafting surgical operation was carried out. He deposed that the fractured bones had been malunited and that the movements of his toes have been restricted. Further, he deposed that the claimant would not be able to walk fast or climb up or down stairs and that he would not be able to ride a cycle. He certified that the disability sustained by the claimant was 30% and in support of his evidence he had marked Exs. P9 and P10.

12. On scrutiny of Ex. P2, it is seen that the claimant had sustained two grievous injuries and three simple injuries. On scrutiny of Ex. P3, it is seen that the claimant was having three looms. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 35,000/- towards pain and suffering, transport expenses and for loss of income during medical treatment period, Rs. 30,000/- was awarded for medical expenses and Rs. 60,000/- was awarded for disability and future of loss of earning capacity. In total, the Tribunal awarded a sum of Rs. 1,25,000/- as compensation to the claimant and directed the respondents to pay the compensation amount 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, with costs, within a period of one month from the date of it's order.

13. Aggrieved by the award passed by the Tribunal, the second respondent Insurance Company has preferred the present civil miscellaneous appeal.

14. The learned counsel for the appellant has contended in the appeal that the Tribunal erred in relying only upon the evidence of P.W. 1 and P.W.

3 to come to the conclusion that the driver of the car belonging to the first respondent is negligent and failed to see that Ex. P1 FIR had been laid

against the claimant himself. It is contended that the Tribunal failed to see that there are contradictions in the evidence of P.W. 1. In the pleadings, it

is pleaded that the car coming in the opposite direction had hit against him, whereas in his evidence he had deposed that the car coming from

behind hit him and caused the accident. Further, it is contended that the award of Rs. 35,000/- for pain and suffering, transport to hospital and loss

of income during period of treatment and Rs. 60,000/- for disability and future loss of income is erroneous as the Tribunal had held that the

claimant had not produced any document to establish his income. It is contended further that the award passed was excessive and hence it is

prayed to set aside the award passed by the Tribunal.

15. The very competent counsel for the claimant has submitted that the accident had been committed by the driver of the car. The claimant had

sustained 30% disability since he had sustained bone fracture injuries and the muscles in his right sole were crushed and therefore a skin grafting

surgery was conducted. Further, he had been hospitalized for a period of 25 days as an inpatient. The Tribunal had not granted adequate

compensation under the relevant heads namely attender charges, nutrition and transport. After the accident, he is unable to do his avocations as a

powerloom weaver.

16. 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 does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum

of compensation. This court is of the further view that the rate of interest fixed by the Tribunal at 9% per annum is an admissible one and not an

exorbitant one. Therefore, the rate of interest remains unchanged. This Court is of the view that as per medical evidence, a skin grafting surgery

was conducted and that the claimant had sustained 30% disability and he had been hospitalized for 25 days, as an inpatient and he had spent Rs.

21,000/- for medical expenses. Therefore, the claimant is entitled to receive attender charges, loss of earning and loss of comfort and medical

expenses. Considering this aspect, the quantum of compensation is not on the higher side. Further, the appellant Insurance Company cannot

challenge the liability since they had not adduced evidence before the Tribunal and had not marked the rough sketch and as such the contentions

regarding negligence is rejected.

17. This Court has already directed the appellant Insurance Company to deposit the entire award amount with accrued interest thereon to the

credit of M.A.C.T.O.P. No. 447 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No. I),

Salem.

18. Now, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon, lying in the credit of M.A.C.T.O.P.

No. 447 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No. I), Salem, after filing a

memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated

20.06.2005, made in M.A.C.T.O.P. No. 447 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track

Court No. I), Salem, is confirmed. Consequently, connected miscellaneous petition is closed. No costs.