
(2013) 09 MAD CK 0245
In the Madras High Court
Case No : C.M.A. No. 3228 of 2008

M/s. United India Insurance Co. Ltd.

APPELLANT

Vs

Vijayakumar and M/s. Kumaran Gin Pressing Pvt. Ltd.

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0245

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; S.S. Swaminathan, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 31.08.2007, made in M.C.O.P. No. 1070 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court-IV, Coimbatore. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 1070 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court-IV, Coimbatore, claiming a compensation of a sum of Rs. 10,00,000/- against the respondents, who were the owner and insurer of the vehicle, for the injuries sustained by him in a motor vehicle accident.

2. That on 16.08.2005, at about 21.45 hours, when the claimant was standing with one other person, along with a two wheeler bearing registration No. TN39 K7932, at the extreme left side of Nataraj Theatre Main Road, Tiruppur, the first respondent's van bearing registration No. TN39 S0601, came in a rash and negligent manner and dashed against the claimant. As a result, the claimant had sustained grievous injuries. Hence, he had filed the claim petition.

3. The second respondent Insurance Company had filed a counter statement and resisted the claim petition. They had stated in their counter statement that the

accident was caused by the rash and negligent riding of the moped bearing registration No. TN39 K7932, which had come on the wrong side of the road and also by the fact that three persons including the claimant had travelled in the moped. The averments made in the claim petition that the van was driven by one Dharmalingam at the time of the accident and that he was employed under the first respondent was also not admitted as the driver had not been arrayed as a party. Further, it was submitted that the claimant should prove that the driver of the van had a valid driving licence and that the van was covered under a valid permit and fitness certificate to ply on the road. The averments made in the claim petition regarding age, income, occupation, nature of injuries, medical treatment taken, loss of earning power and loss of income during treatment period, were also not admitted. It was submitted that the claim was excessive.

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

- i. Due to whose negligence the accident had occurred? and
- ii. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

5. In the same accident, another claim petition had been filed by the claimant in M.C.O.P. No. 1071 of 2005, claiming compensation from the same respondents for the injuries sustained by him in the accident. On the request made by the counsels for their respective claimants through a joint memo, a joint trial was conducted and common evidence was recorded. The claimant in M.C.O.P. No. 1070 of 2005 was examined as P.W. 1, the claimant in M.C.O.P. No. 1071 of 2005 was examined as P.W. 2, one Dr. Senthilkumar was examined as P.W. 3, one Appukuttan was examined as P.W. 4 and one Sathyendran was examined as P.W. 5 and 11 documents were marked as Exs. A1 to A11 namely FIR, wound certificates of P.W. 1 P.W. 2, discharge summaries of P.W. 1 and P.W. 2, medical bills issued to P.W. 1 and P.W. 2, disability certificates issued to P.W. 1 and P.W. 2 and X" rays taken for P.W. 1 and P.W. 2. On the side of the respondents, one Mr. M.C. Swaminathan was examined as R.W. 1 and no document was marked.

6. P.W. 1 and P.W. 2 had adduced evidence that on 16.08.2005, at about 21.45 hours, when they were standing with one Sathish by keeping the moped bearing registration No. TN39 K7932 with them, on the left side of the main road, near Nataraja Theatre, Tiruppur, the first respondent's van bearing registration No. TN39 S0601, came rashly from south to north, on the same road and dashed against them, due to which they had sustained injuries. In support of their evidence, they had marked Exs. A1 to A11.

7. P.W. 5 one Sathyendran, the eye-witness of the accident, had also adduced evidence, which is on similar lines to the evidence of P.W. 1 and P.W. 2 regarding manner of accident. On scrutiny of FIR, it is seen that the complaint regarding the accident had been given by one Rajan and based on the complaint, a case had been registered against the driver of the van as Crime No. 922 of 2005, by

Tiruppur North Police Station. It had been mentioned in FIR that when the said Rajan along with his friend were going on the said road, in a TVS 50 motorcycle, the petitioner in both the claim petitions and Satish were going in another TVS 50 motorcycle bearing registration No. TN39 K7932, in front of them and that the van bearing registration No. TN39 S0601, which came in the opposite direction and driven in a rash manner, had dashed against the TVS 50 motorcycle bearing registration No. TN39 K7932 and caused injuries to all the three persons. It is further seen that Sathish Kumar died on the way to the Hospital and the other two sustained injuries and were taken to Ganga Hospital, Coimbatore.

8. R.W. 1 Mr. Swaminathan, Assistant Manager of the second respondent Insurance Company, had adduced evidence that the claimants in both claim petitions and the deceased Sathish were proceeding in the TVS 50 motorcycle in a wrong direction and that the accident had occurred due to the rash and negligent driving of the motorcyclist, who had lost his control over the vehicle, as two other pillion riders were seated in the vehicle.

9. The Tribunal had observed that no direct evidence had been placed on the side of the second respondent to either prove that the accident had occurred solely due to the rash and negligent act of the rider of the TVS50, who had permitted two persons to travel as pillion riders on the vehicle or to prove that the driver of the van was not rash and negligent. The Tribunal, on observing that as three persons had travelled on the TVS50 motorcycle, which can freely accommodate only two persons, held that the rider and claimant had also contributed to the occurrence of accident and fixed the contributory negligence on the part of the claimant at 25% and that of the driver of the van at 75%. The Tribunal therefore held that the respondents 1 and 2 being the owner and the insurer of the van is liable to pay 75% of the compensation assessed to the claimant.

10. On scrutiny of Ex. A2 wound certificate and Ex. A3 discharge summary, it is seen that the claimant had sustained Grade II injuries, Open, book type pelvic fracture and acute respiratory distress syndrome and external application for stabilization of pelvis, debridement and PSS of perennial laceration and tracheostomy was done by surgery on 17.08.2005 and 26.08.2005 and that the said injuries are grievous in nature.

11. P.W. 3 Dr. Senthil Kumar, Ortho Surgeon, who examined the claimant on 01.03.2007, had issued a certificate in Ex. A8 about the permanent partial disability, being suffered by the claimant, due to restricted movement of both hip joints, loss of muscle power at both hips, frequent passing of urine, difficulty in doing daily activities on loss of stability at 53.89%.

12. The Tribunal on observing that no documentary evidence had been marked to prove that the claimant was earning a sum of Rs. 5,000/- per month, as a Table Supervisor in Dhanalakshmi Printers, held that the notional income of the petitioner could only be taken as Rs. 4,000/- per month. The Tribunal, on holding that the loss of earning power sustained by the claimant was 50% and adopting

a multiplier of 17, as was relevant to the age of the petitioner i.e., 34 years as per Ex. A9, awarded a sum of Rs. 4,08,000/- as compensation under the head of loss of earning; Rs. 2,44,000/- was awarded towards medical expenses as per Ex. A4; Rs. 25,000/- was awarded for pain and suffering; Rs. 2,000/- was awarded for transport expenses; Rs. 5,000/- was awarded for nutrition and Rs. 5,000/- was awarded for loss of income during medical treatment and convalescence period. In total, the Tribunal had assessed a sum of Rs. 6,90,000/- as compensation and on deducting 25% of this amount for contributory negligence of the claimant, had awarded a sum of Rs. 5,17,500/- as compensation and directed the second respondent Insurance Company to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation with costs, within a period of two months from the date of its 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 appearing for the appellant Insurance Company has argued that the Tribunal had failed to see that the accident had occurred solely due to the negligence of the claimant himself in as much as three persons were travelling on a two wheeler and as such the Tribunal had erred in holding the appellant liable to pay 75% of the compensation assessed. It is also contended that the Tribunal had erred in fixing loss of earning power by applying multiplier method, without any satisfactory evidence to show that the claimant had sustained permanent loss of income. Further, it is contended that the Tribunal had failed to note that the disability assessed by the Doctor was excessive. Further, it is contended that the Tribunal had erred in fixing the income of the claimant at Rs. 4,000/- per month, without any basis. Hence, it was prayed to set aside the award passed by the Tribunal.

15. The learned counsel appearing for the claimant has submitted that the claimant had sustained multiple bone fracture injuries and had been hospitalized at Government Hospital, Tiruppur and at Ganga Hospital, Coimbatore, wherein a surgical operation was conducted. The claimant's hip movement had also been restricted. The Doctor had assessed the disability at 50%. After the accident, the claimant is unable to do his avocation. Therefore, the Tribunal had adopted multiplier method to assess compensation.

16. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned Award of the Tribunal, this Court does not find any discrepancy regarding contributory negligence and liability. However, the Tribunal had granted compensation under the head of disability after adopting multiplier method, which is not appropriate. Therefore, this Court reassesses the compensation as follows:

i. Rs. 1,00,000/- is awarded towards disability,

- ii. Rs. 2,44,000/- is awarded towards medical expenses,
- iii. Rs. 15,000/- is awarded towards pain and suffering,
- iv. Rs. 10,000/- is awarded for towards attender charges,
- v. Rs. 15,000/- is awarded towards nutrition,
- vi. Rs. 15,000/- is awarded towards transport expenses,
- vii. Rs. 15,000/- is awarded towards loss of earnings during medical treatment period, and
- viii. Rs. 1,86,000/- is awarded towards loss of amenities and loss of comfort, since the claimant had sustained 50% disability due to bone fracture injuries.

In total, this Court awards Rs. 6,00,000/- as compensation. After deducting 25% for contributory negligence of the claimant, this Court grants Rs. 4,50,000/- as compensation to the claimant as it is found to be appropriate in the instant case. The rate of interest remains unchanged.

17. This Court had already directed the appellant Insurance Company to deposit the entire compensation amount. Now, it is open to the claimant to withdraw the award amount of Rs. 4,50,000/- with proportionate interest thereon, as per this Court's modified order, lying in the credit of M.C.O.P. No. 1070 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court-IV, Coimbatore. Likewise, the appellant Insurance Company is at liberty to withdraw the excess compensation amount with proportionate interest thereon, after filing a memo. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 31.08.2007, made in M.C.O.P. No. 1070 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court-IV, Coimbatore, is modified. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.