

(2010) 09 MAD CK 0054

In the Madras High Court

Case No : C.M.A. No. 1242 of 2006 and M.P. No. 1 of 2006

Muthummal

APPELLANT

Vs

P. Balasubramaniam and The New India Assurance Co.,
Limited

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0054

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

Bench : Single Bench

Advocate : A.K. Kumaraswamy, for the Appellant; R. Balu, for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant against the Award and Decree, dated 28.06.2004,

made in M.C.O.P. No. 396 of 2003, on the file of the Motor Accidents Claims Tribunal, 2nd Additional Sub Court, Erode, awarding a

compensation of Rs. 32,600/-, together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of

the compensation.

2. Having not been satisfied with the said award and decree passed by the Motor Accident Claims Tribunal, the claimant filed the appeal praying

for additional compensation of Rs. 50,000/with interest.

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

On 19.02.2003, at about 7.00 a.m., the claimant was proceeding on the Bhavani-Chitode road, from South to North, at that point of time, the first

Respondent vehicle herein bearing registration No. TN34A 0972 was coming from opposite direction at high speed in a rash and negligent manner

and dashed against the claimant. In the result, she sustained bone fracture injuries on her right leg below the knee. Immediately he was taken to the

Erode Government Hospital, wherein she was admitted as inpatient from 19.02.2003 to 28.02.2003. The claimant further stated in her claim

petition that she is a coolie at the time of accident. After the accident, she was unable to carryout her normal work as usual. Hence she claimed a

sum of Rs. 1,25,000/- with interest from the 2nd Respondent -Insurance Company.

4. The 2nd Respondent / the New India Insurance Company had resisted the claim by way of filing counter statement stating that the claimant has

no evidence to prove her age and income. Further, the claimant was proceeding in the wrong direction and dashed against the vehicle. Due to her

negligence, the said accident had happened. As such, she is not liable to receive any compensation from the Insurance Company. The 2nd

Respondent further stated that the injured underwent treatment at a Government Hospital, as such there was no medical expenses incurred by the

claimant. Further, the claim amount is also excessive, hence, he prays to dismiss the claim petition.

5. After considering the plea of the claimant and the counter statement of the 2nd Respondent, the Motor Accident Claims Tribunal framed two

issues for consideration namely:

(i) Whether the accident had happened due to the Respondent's rash and negligent driving by the first Respondent..

(ii) Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

6. On the Petitioner's side, two witnesses were examined namely, PW1 Muthammal and PW2 Doctor Sundaravadivelu and nine documents were

marked as Exs P1 to P9namely Ex.P1-First Information Report, Ex.P2- Motor Expenses Report, Ex.P3 -Charge Sheet, Ex.P4- Accident

Register, Ex.P5- Discharge Summary, Ex.P6-Jugment, Ex.P7 - Disability certificate, Ex.P8-Xray receipt, Ex.P9-Xray. On the Respondents' side

no documents were marked and no witnesses were examined.

7. PW1 had adduced evidence, stating that on 19.02.2003 at about 7.00 a.m.,

she was proceeding from south to north on the Chitode and Bavani road, at that point of time, the first Respondent's vehicle came behind and dashed against the claimant. In the result, she sustained bone fracture injury on the right leg below the knee. PW1 further adduced evidence stating that immediately she was taken to the Government Hospital, Erode, wherein she was admitted as inpatient. The investigation officer registered First Information Report against the driver of the offending vehicle, which was marked as Ex.P1, The charge sheet was also filed and driver of the vehicle was punished and the charge sheet was marked as Ex.P3, judgment Copy was marked as Ex.P6. PW.1 further adduced evidence stating that she was admitted on 19.02.2003 at Erode Government Hospital as inpatient, wherein she had undergone treatment for about 20 days and was discharged from the hospital on 08.03.2003. After discharge from the hospital, the claimant underwent treatment for some period as out patient. P.W.1 further adduced evidence stating that at the time of accident, she was 50 years old and he was a coolie worker. After the said accident, she is unable to carryout any work for the past six months and she is bedridden.

8. PW.2 Doctor, had adduced evidence stating that her right leg movement was reduced to 35½. Further her right leg became short by 1 centimeter, as such, she is unable to walk, and squat. The Doctor further adduced evidence stating that after verifying the medical records, examining the Xrays and assessed the disability as 25% to the claimant. The disability certificate is marked as Ex.P7. After considering the evidence of PW1 and PW2 and wound certificate, age and income of the claimant, the Motor Accident Claims Tribunal awarded a compensation as follows:

25% permanent disability
 for grievous injuries - Rs.27,500/-
 Pain and sufferings - Rs. 5,000/-
 Medical Expenses - Rs. 100

TOTAL -Rs.32,600

9. In total Tribunal awarded a sum of Rs. 32,600/- together with the interest at the rate of 9% from the date of filing the claim petition till the date of payment of compensation. Further the Tribunal directed the Insurance company to deposit the said award amount within a period of eight weeks from the date of its order. Inturn the said amount to be deposited in a Nationalised Bank, for a period of three years under the fixed deposit scheme. The Tribunal further fixed a sum of Rs. 1,380/- as Advocate fee. Accordingly ordered.

10. Having not been satisfied with the award and decree passed by the Motor Accident Claim Tribunal, the claimant has filed the above appeal for additional compensation of Rs. 50,000/-

11. The learned Counsel for the Appellant argued that the claimant is a coolie, after the said accidents she is unable to carryout her normal work.

Further she underwent treatment as inpatient in the hospital for about one month. The Doctor also assessed the disability as 25%. Further learned

Counsel argued that the First Information Report against the offending vehicle and he was punished by the learned Judicial Magistrate. Motor

accident Claim Tribunal had come to correct conclusion regarding liability. But, the Motor Accident Claims Tribunal awarded only a sum of Rs.

32,600/- which is on the lower side, considering the nature of the injuries to the claimant. Hence he seeks additional compensation.

12. Learned Counsel for the first Respondent argued that the claimant underwent treatment at Government Hospital, as such, expenses have not

incurred. The learned Counsel further argued that there is no proof for age and income of the claimant. Doctor issued certificate that the claimant

sustained 25% disability which is on the higher side. After considering evidence of PW1 and PW2 and counter statement by Respondent, the

Motor Accident Claims Tribunal awarded a sum of Rs. 32,600/- with interest is reasonable and proper. As such there is no discrepancy in the said

award passed by the Motor Accident Tribunal. Therefore he seeks to dismiss the appeal.

13. Considering the facts and circumstances of the case, arguments adduced by the learned Counsel appearing on either side, the award and

decree passed by Motor Accident Claims Tribunal, this Court is of the view that the claimant is a Coolie worker and she sustained bone fracture

injury on her right leg and she had undergone treatment from 19.02.2003 to 08.03.2003 as inpatient in Government Hospital, Erode, hence this

Court decided to enhance the compensation as follows:

Loss of Income - Rs.50,000/-

Pain and Sufferings - Rs.10,000/-

Nutrition - Rs. 5,000/-

Transport Expenses - Rs. 5,000/-

TOTAL - Rs.70,000/-

In total, this Court awards Rs. 70,000/- with interest from the date of filing the claim petition till the date of payment of compensation which is fair

and equitable.

14. Originally, the Motor Accident Claims Tribunal awarded a sum of Rs. 32,600/- with 9% interest as compensation. After deducting the award

passed by the Motor Accident Claims Tribunal, this Court awards Rs. 31,400/- together with interest at the rate of 7.5% annum from the date of

claim petition till the date of payment of compensation.

15. Therefore this Court hereby directs the 2nd Respondent /Insurance company to deposit a sum of Rs. 31,400/- together with interest at the rate

of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, into the Credit of MCOP No. 396 of 2003

on the file of Motor Accident Claims Tribunal, Sub Judge, Erode, within a period of six weeks from the date of receipt of a copy of this Order.

After such deposit being made, it is open to the claimant to withdraw the said amount with accrued interest, lying in the credit of the MCOP No.

396 of 2003, on the file of Motor Accident Claims Tribunal / 2nd Additional Judge, Erode after filing necessary application in accordance with

law.

16. In the result, the Civil Miscellaneous Appeal is partly allowed, and the award and decree passed in the M.C.O.P. No. 396 of 2003 dated

28.06.2004, on the file of the Motor Accident Claims Tribunal and Additional Sub Judge, Erode is modified.

Consequently, connected miscellaneous petition is closed. No costs.