

(2013) 09 MAD CK 0231

In the Madras High Court

Case No : C.M.A. No. 2465 of 2004 and C.M.P. No. 28 of 2008

Mythili

APPELLANT

Vs

R. Sekar, M. Sekar and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0231

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

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant;

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant herein/claimant was proceeding on his Scooter bearing Registration No. TN-33-D-0433, along with his Minor daughter namely Mythili, on the Perunthurai Main road on 12.06.2000, at about 3.00 p.m. and at that point of time, a van bearing Registration No. TCI-7291, coming from the opposite direction and driven in a negligent manner, dashed against the Scooter. As a result, the claimant and his daughter had sustained injuries. Hence, two separate claim petitions have been filed. The claimant has filed the petition in M.C.O.P. No. 360 of 2001, on the file of the Motor Accident Claims Tribunal/ Second Additional Sub Court, Erode and claimed compensation of a sum of Rs. 3,00,000/-. The Insurance Company had filed counter statement and resisted the claim petition. The respondent denied that the accident had been caused by the driver of the van. The respondent submitted that the driver of the van did not have a valid licence. Actually, the claimant had driven the scooter in a negligent manner and dashed against the van. The respondent denied the averments in the claim regarding age, income, occupation, nature of injuries, mode of treatment and disability.

2. The Motor Accidents Claims Tribunal framed two issues for consideration in the case namely: (1) Whether the accident had been committed by the 1st

respondent due to his rash and negligent driving? and (2) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

3. The Tribunal had passed common order in both claim petitions. For the present appeal, the below mentioned documents had been marked by the claimant namely: F.I.R.; Rough sketch; Observation mahazar; Wound Certificate; Motor Vehicle Inspector's report; Charge sheet; Judgment copy; Medical bills; X-rays and Disability Certificate. PW 1 had adduced evidence that when he and his daughter were proceeding on the Perunthurai Main Road on his scooter bearing Registration No. TN-33-D-0433, the 1st respondent's van bearing Registration No. TCI-7291, driven by its driver in a negligent manner had dashed against the scooter and as a result, both had sustained injuries. He further stated that he had sustained injuries on his chin and upper jaw and hence he had taken first aid at K.M.C. Hospital, Perunthurai. Therefore, he had undergone treatment for a period of two days at K.G. Hospital, Perunthurai, wherein artificial teeth were fixed in his upper jaw with metal wires. He had spent a sum of Rs. 5,500/- for medical expenses. PW 3 Doctor had spoken on the same line as PW 1 about the nature of injuries and mode of injuries and had assessed the disability at 15%.

4. After recording the evidence of the witnesses, the Tribunal had granted compensation of a sum of Rs. 47,000/- with interest at the rate of 9% per annum. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal. The above appeal has been filed in the year 2004, summons has been served on the National Insurance Company, who has contested the case. But in spite of it, no one had appeared on behalf of the Insurance Company in final hearing. Hence, this Court is constrained to pass final order on the basis of available records and on hearing the arguments of the learned counsel.

5. The learned counsel for the claimant argued that the claimant had sustained fracture of chin and upper jaw and artificial teeth was fixed in the upper jaw by metal wires and he had spent a sum of Rs. 10,000/- for medical expenses. After fixing artificial teeth, the claimant is unable to chew food materials as usual and as such he had sustained permanent disability and discomfort. The Doctor had assessed the disability at 15%.

6. On verifying the factual position of the case and arguments advanced by the learned counsel for the appellant and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the quantum of compensation awarded is on the lower side, since the claimant's teeth had fallen and he is feeling permanent discomfort while chewing food. Hence, this Court reassesses the compensation as follows:-

Rs. 22,500/- is awarded for disability; Rs. 10,000/- is awarded for pain and suffering; Rs. 10,000/- towards medical expenses; Rs. 5,000/- for transport; Rs. 7,500/- for nutrition; Rs. 7,500/- towards attender charges and Rs. 5,000/- for

loss of earning during medical treatment period and Rs. 10,000/- for loss of amenities and loss of comfort due to disfigurement of his mouth. In total, this Court awards Rs. 77,500/- as compensation to the claimant, as it is found to be appropriate in the instant case. After subtracting the initial compensation of a sum of Rs. 47,000/-, this Court awards Rs. 30,500/- 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 date of payment of compensation. This Court directs the National Insurance Company herein to execute this Court's order within a period of 4 weeks from the date of receipt of this order, by way of deposit before the trial Court.

7. After such deposit having been made, it is open to the claimant to withdraw the additional compensation amount, with interest thereon, lying in the credit of M.C.O.P. No. 359 of 2001, on the file of the Motor Accident Claims Tribunal/ Second Additional Subordinate Court, Erode, after filing a memo. along with a copy of this order. In the result, the above appeal is partly allowed. Consequently, the award and decree passed in M.C.O.P. No. 359 of 2001, on the file of Motor Accident Claims Tribunal/Second Additional Subordinate Court, Erode, dated 08.01.2004, is modified. No costs. Consequently, connected miscellaneous petition is closed.