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(2010) 09 MAD CK 0157

In the Madras High Court

Case No : C.M.A. No. 1340 of 2004

N. Ghouse — APPELLANT

Vs

P. Udayakumar and United India Insurance Company Ltd. — RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0157

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : K. Sivakumar, for the Appellant; D. Bhaskaran, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against the award dated 04.04.2002 made in M.C.O.P No. 2962 of 1997 by the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

2. Background facts in a nutshell are as follows:

One injured Ghouse met with motor traffic accident on 04.06.1997 at about 03.00 P.M. While the said injured was proceeding in his motor cycle bearing registration No. TN-09-D-9508 in New Mamallapuram road, a Lorry bearing registration No. TDW 5783 came in a rash and negligent manner with high speed and the driver of the Lorry suddenly turned the vehicle and hit the motor cycle. Due to the impact, the injured sustained grievous injuries and fracture. He was admitted in Sugam Hospital, Chennai. He claimed a sum of Rs. 3,00,000/- as compensation. The said lorry was insured with the second respondent insurance company who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whose negligence caused the accident?

2. What is the compensation, the claimant is entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and awarded compensation of Rs. 50,500/- with interest @ 9% per annum from the date of claim petition and the details of the same are as under.

Loss of income during treatment period = Rs. 8,000/- Conveyance expenses = Rs. 1,000/- Extra nourishment = Rs. 1,000/- Damage to clothe = Rs. 500/- Medical expenses = Rs. 5,000/- Pain and suffering = Rs. 5,000/- Loss due to 35% disability = Rs. 25,000/- Loss of earning power = Rs. 5,000/- ------------------ Total = Rs. 50,500/- ------------------

Aggrieved by that award, the claimant has filed the present appeal for enhancement.

3. The learned Counsel appearing for the claimant submitted that the Tribunal has awarded a very low and meagre sum of compensation without any basis and justification and the Tribunal ought to have awarded compensation as claimed by the claimant. Further, the Tribunal has not considered the relevant materials and also not followed the principles of assessment before passing the award. Therefore, the award passed by the Tribunal is not in accordance with law and it is a fit case for enhancement.

4. Learned Counsel for the second respondent insurance company submitted that the Tribunal has considered all the facts and circumstances of the case and awarded a just, fair and reasonable compensation. It is a question of fact and it is not a perverse order. The finding is based on valid materials and evidence. Therefore, the award passed by the Tribunal is in accordance with law and the same should be confirmed.

5. Heard the counsel. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P8 were marked. On the side of the 2nd respondent insurance company, no one was examined and no document was marked to substantiate their claim. P.W.1 is one Noor Mohammed, who is the father of the deceased. P.W.2 is Dr. Saichandran. Ex.P1 is the discharge summary, Ex.P2 is the series of receipts, Ex.P3 and P4 are the medical receipts, Ex.P5 is the certified copy of the FIR, Ex.P6 is the certified copy of the charge sheet, Ex.P7 is the copy of the judgment of Criminal Court, Ex.P8 is the disability certificate were marked. After considering the above oral and documentary evidence, the Tribunal has given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. It is a question of fact. The finding is based on valid materials and evidence and therefore, the same is confirmed.

6. At the time of the accident, the injured was aged about 25 years. P.W.1 is the father of the injured. In his evidence, it is stated that the claimant is working as a Test Driver in Enfield Motors, Madras. He claimed that the injured was earning Rs. 140/- per day. In his evidence, it is further stated that only the driver of the lorry caused the accident and the driver was also charge sheeted by J-4 Mamallapuram Police Station in Cr. No. 467/1997. Due to the accident, the claimant sustained following injuries and fracture:

Fracture of L1 body with mild foraminal encroachment of fractured Vertebra, and other serious multiple injuries, all over the body.

After the accident, immediately he was admitted in Sugam Hospital, Chennai, where, he was taken treatment more than a month as inpatient and after discharge also, he was taking treatment as outpatient. P.W.2 is Dr. Saichandran who examined the claimant. He determined the disability at 30%. Ex.P8 is the disability certificate. Ex.P.1 is the discharge summary. After considering the oral and documentary evidence, the Tribunal awarded a sum of Rs. 8,000/- towards loss of income during treatment period. There is no dispute that the claimant was taking treatment in Sugam Hospital, Chennai, more than a month as inpatient and Ex.P1 is also corroborate the same. Due to the injury, he was taking treatment continuously as outpatient and naturally, he would not have attended the work for that period. Therefore, it is reasonable to award a sum of Rs. 10,000/- towards loss of income during treatment period as against Rs. 8,000/- awarded by the Tribunal. Further, the Tribunal has awarded a sum of Rs. 1,000/- towards extra nourishment and Rs. 1,000/- towards conveyance expenses. The amount awarded under these heads are very low and meagre and after taking into consideration of the facts and circumstances of the case, it is reasonable to award a sum of Rs. 2,500/- each, towards extra nourishment and conveyance expenses as against Rs. 1,000/- towards extra nourishment and Rs. 1,000/- towards conveyance expenses awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 500/- towards damage to clothe, which is reasonable and the same is confirmed. Furthermore, the Tribunal awarded a sum of Rs. 5,000- towards medical expenses. Ex.P2 to P4 are the series of medical bills. There is no dispute that the injured was admitted in Sugam Hospital and taken treatment as inpatient as well as outpatient. It is an actual expenditure. Therefore, the Tribunal correctly awarded a sum of Rs. 5,000/- towards medical expenses which is reasonable and the same is confirmed. However, the Tribunal awarded a sum of Rs. 5,000/- towards pain and suffering. After taking into consideration of the nature of injury stated above, and the period of treatment and the disability certificate, it is reasonable to award a sum of Rs. 15,000/- as against Rs. 5,000/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 25,000/- towards loss due to 30% disability. After awarding the said sum, the Tribunal awarded a sum of Rs. 5,000/- towards loss of earning power which is unwarranted and the same is deleted. After taking into consideration of the finding of the Tribunal that the disability assessed by the P.W.2 doctor is excessive, it is reasonable to fix the disability at 25%. Normally, Courts award a sum of Rs. 1,000/- to Rs. 2,000/- per percentage of disability. After taking into consideration of the nature of injury available on record and also relying on Ex.P1-discharge summary and Ex.P8-disability certificate, it is reasonable to award a sum of Rs. 2,000/- per percentage of disability. If Rs. 2,000/- is awarded, the loss due to 25% works out to Rs. 50,000/- (Rs. 2000 x 25). Therefore the claimant is entitled to a sum of Rs. 50,000/- towards loss due to 25% disability as against Rs. 25,000/- awarded by the Tribunal. The Tribunal awarded interest of 9% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that period, the interest of 9% awarded by the Tribunal is reasonable and the same is confirmed. The modified amount of the compensation are as under:

Loss of income during treatment period = Rs. 10,000/- Conveyance expenses = Rs. 2,500/- Extra nourishment = Rs. 2,500/- Damage to clothe = Rs. 500/- Medical expenses = Rs. 5,000/- Pain and suffering = Rs. 15,000/- Loss due to 25% disability = Rs. 50,000/- -------------------- Total = Rs. 85,500/-

(Less) Amount awarded by the Tribunal = Rs. 50,500/- -------------------- Enhanced compensation = Rs. 35,000/- --------------------

7. In the result, the claimant is entitled to enhanced compensation of Rs. 35,000/- with interest @ 9% per annum from the date of claim petition. The 2nd respondent insurance company is directed to deposit the enhanced compensation of Rs. 35,000/- with interest @ 9% per annum within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same, on making proper application.

8. With the above modifications, the appeal is partly allowed. No costs.