

(2011) 01 MAD CK 0002
In the Madras High Court
Case No : C.M.A. No. 2329 of 2003

Natarajan

APPELLANT

Vs

Ramalingam, Ponnusamy and United Insurance Co. Ltd.

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0002

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

Bench : Single Bench

Advocate : V. Bharathidasan, for the Appellant; Srinivasan Ramalingam, for R3, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/claimant against the award and decree dated

31.07.2000 made in M.C.O.P. No. 1059 of 1996 on the file of the II Additional District Judge/Motor Accident Claims Tribunal, Erode, awarding

a compensation of Rs. 29,000/- with interest at the rate of 12% per annum, from the date of filing the claim petition till the date of payment of

compensation.

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

On 12.01.1995 at about 8.20 p.m., while the Petitioner was riding his Loona moped bearing Registration No. TDQ 4290 from Erode to

Chinnayampalayam and when the Petitioner was nearing Solar Pirivu bus stop, the first Respondent drove the bus bearing Registration No. TN47-

A-5676, in the opposite direction, in a rash and negligent manner and dashed against the Petitioner's Loona moped. Due to the said accident, the

Petitioner became unconscious. His forehead, left ear, right thumb, right & left

leg, thigh and right shoulders and left side of head were injured.

Then the Petitioner was immediately admitted in Government Head Quarters Hospital, Erode. He was in a state of coma for six months. He is still

undergoing treatment in a private Hospital. Hence, the Petitioner has filed this Claim Petition, claiming a compensation of Rs. 2,50,000/- with

interest from the Respondents. The first Respondent is the driver of the bus, the second Respondent is its owner and the third Respondent is its insurer.

3. The third Respondent, in his counter has resisted the claim and denied the allegations in the claim regarding manner of accident. It has been

stated that the accident had occurred because the Petitioner drove his moped bearing Registration No. TDQ 4290 in a negligent manner and had

suddenly tried to cross the road. The age, income and occupation of the Petitioner were also denied. The allegations in the claim regarding mode of

medical treatment were also denied. It was also stated that the claim was excessive.

4. On the averments of both the parties, the Tribunal had framed two issues for consideration, namely:

1. Did the accident happen due to rash and negligent driving of the first Respondent?

2. If so, what is the quantum of compensation which the Petitioner is entitled to get?

5. On the side of the Petitioner, the Petitioner was examined as P.W.1, the Doctor who gave disability certificate was examined as P.W.2 and

fourteen documents were marked as Exs.P-1 to P14. viz., Ex.P1-First Information Report, Ex.P2-Observation Mahazar, Ex.P3-Rough sketch,

Exs.P4 and P5-Motor Vehicle Inspector's Report, Ex.P6-Charge Sheet, Ex.P7-Judgment copy, Ex.P8-Accident Register, Ex.P9-Hospital

Admission Chit, Ex.P10-Employment Proof, Ex.P11-Medical bill series, Ex.P12-Scan report, Ex.P13-X-ray and Ex.P14-Disability Certificate.

On the side of the Respondents, no one was examined and no document was marked.

6. P.W.1 in his evidence adduced that on 12.01.1995 at about 8.30 p.m., when he was proceeding on his Loona moped bearing Registration No.

TDQ-4290 from Erode to Chinniyampalayam and when he was nearing Solar

Pirivu Bus stand, the second Respondent's bus coming in the opposite direction and driven by its driver at a high speed and in a rash and negligent manner dashed against his Loona moped and caused the accident. The Tribunal on consideration of oral and documentary evidence, held that the accident was caused due to the rash and negligent driving of the first Respondent.

7. P.W.1 has further adduced evidence that due to the accident, he had sustained fracture on the left leg thigh bone; that he had sustained injuries on his left ear, right shoulder, left eye, right thigh and head; that due to the injury he is not able to walk and speak; that he is not able to work as before; that he was aged about 23 years at the time of accident; that he was employed as a Mosaic Tiles Worker and was earning Rs. 3,000/- per month. It is seen from Ex.P.8-Accident Register that the claimant had sustained four injuries and that the third injury on his left thigh was a grievous one. The Doctor who had examined the Petitioner after the accident was examined as P.W.2. P.W.2, in his evidence adduced that the Petitioner had sustained a fracture of his femur bone in left thigh; that due to this the Petitioner would not be able to stand or walk for a long period of time; that his left leg has been shortened by 2''; that his left knee movements had been reduced; that he had assessed the disability at 30%. In support of his claim, he had marked Ex.P.13-X-ray and Ex.P.14-Disability Certificate.

8. The Tribunal on considering the oral and documentary evidence and awarded a compensation of Rs. 29,000/- with interest at the rate of 12% from the the date of claim petition till the date of payment of compensation. The break up of compensation is as follows:

Rs. 25,000/- for Loss of Income due to disability of 25%;

Rs. 2,500/- for medical expenses;

Rs. 1,000/- for Pain and Sufferings;

Rs. 250/- for Nutrition; and Rs. 250/- for Transport.

9. Not being satisfied with the above award of the Tribunal, the claimant has filed the above appeal seeking increased compensation. The learned

Counsel for the Appellant has argued that the Tribunal had erroneously fixed disability at 25% as against the doctor's assessment of 30%. The

awards granted under the heads of Pain and Sufferings, Medical Expenses,

Transport and Food are too low. It was also pointed out that the Tribunal had also not considered the claim of Rs. 5,000/- for damage to articles. It was also stated that the Tribunal had not awarded compensation for Loss of Income during medical treatment period.

10. The learned Counsel further argued that the claimant's age was 23 years and he was engaged as a Mosaic Tiles Contractor and as such he was earning Rs. 3,000/- per month. After the accident, he is unable to perform his normal work. The claimant had sustained grievous injuries including bone fractures. He had sustained bone fracture injuries on his left thigh and also sustained grievous injuries on his left ear, right shoulder, left eye and right leg. Considering the nature of injuries, the Doctor had assessed the disability at 30%. The Tribunal had not granted adequate compensation to the claimant, even though the case was well established before the Tribunal by way of oral and documentary evidence.

11. The learned Counsel for the Insurance Company argued that the claimant had sustained simple injury and he had undergone treatment at Government Hospital, Erode only for a limited period. The Doctor had assessed the disability at 30% and this is on the higher side. The Tribunal had awarded compensation under all the relevant heads and awarded adequate compensation to the claimant.

12. Considering the facts and circumstances of the case and the arguments advanced by the learned Counsel on either side and on perusing the impugned award passed by the learned Motor Accidents Claims Tribunal, this Court is of the considered opinion that the claimant had sustained grievous injuries including bone fracture and the doctor had assessed the disability at 30% and the claimant depends upon his physical strength for doing his work. After the accident he has lost his usual physical strength.

13. Hence, this Court grants enhanced compensation as follows:

30% Disability ... Rs. 30,000

Medical expenses ... Rs. 5,000

Pain and suffering ... Rs. 10,000

Transport expenses ... Rs. 3,000

Attendant charges ... Rs. 3,000

Nutrition ... Rs. 3,000

Loss of income during medical... Rs. 2,000

Treatment & convalescent

period

Rs. 56,000

In total, this Court awards Rs. 56,000/- as compensation. After deducting original compensation amount of a sum of Rs. 29,000/- this Court

grants Rs. 27,000/- 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 the date of payment of compensation which is fair and justifiable in the instant case.

14. Therefore, this Court directs the third Respondent/United India Insurance Company, to comply with this Court order within a period of six

weeks from the date of receipt of a copy of this order.

15. After compliance, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of

M.C.O.P. No. 1059 of 1996 on the file of the II Additional District Judge/Motor Accident Claims Tribunal, Erode, after filing a memo along with

a copy of this order.

16. In the result, the above Civil Miscellaneous Appeal is partly allowed and the judgment and Decree passed by the Motor Accident Claims

Tribunal, II Additional District Judge, Erode in M.C.O.P. No. 1059 of 1996 dated 31.07.2000 is modified. There shall be no order as to costs.