(2014) 07 MAD CK 0012

In the Madras High Court

Case No : C.M.A.No.1924 of 2010 and M.P.No.1 of 2010

National Insurance Co. Ltd.	APPELLANT
Vs	
A.Sureshnathan	RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 593

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr.N.Vijayaraghavan, Advocate, for the Applicant; Mr.G.Rajasekaran, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Mr. R.Subbiah, J.—Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Fast Track Court - I, Chennai, by award and decree dated 31.10.2007 made in M.C.O.P.No.1634 of 2001, the present appeal has been filed by the Insurance Company.

2. Since the present appeal has been filed only questioning the quantum of compensation awarded by the tribunal, I am not dealing with other aspects of the award of the tribunal.

3. The first respondent is the claimant before the Tribunal. It is the case of the claimant that on 01.11.2000 at about 10.30 a.m., while he was returning to Chennai from Sriperumbudur in his Motor cycle bearing registration No.TN 05 3834, a Tata Sumno car bearing registration No.TN 09F 9797 belonging to the second respondent and insured with the appellant insurance company came in a rash and negligent manner and dashed against the motor cycle, due to which, the claimant sustained the following injuries viz., Acetabular fracture with posterior dislocation of hip . with sciatic nerve injury - Grade I fracture Tibia/ Fibula right - Right hip joint with posterior dislocation of femoral head. According to him, on account of the injuries sustained by him, he is not in a position to do

his normal work. Thus, he made a claim as against the insurance company and the owner of the vehicle insured with the insurance company, claiming a sum of Rs.8,00,000/- as compensation.

Resisting the claim petition, the appellant insurance company has filed a counter affidavit stating that the accident had occurred only due to the negligent act of the claimant. That apart, the insurance company has also taken a defence that the amount of Rs.6,00,000/- claimed by the claimant is extremely on the higher side.

4. In order to prove the claim, the claimant examined himself as P.W.1, besides examining Dr.Amarnath Chowly, as P.W.2 and marked 22 documents as Exs.P.1 to P.22. On the side of the insurance company, no one was examined as witness and no document was marked as exhibits.

5. The Tribunal, after analysing the entire evidence, both oral and documentary, has come to the conclusion that the accident has occurred due to the rash and negligent driving of the driver of the TATA Sumo Car belonging to the second respondent and insured with the appellant insurance company and thus, fixed the liability on the part of the appellant insurance company to pay the compensation amount. By coming to such a conclusion, the Tribunal has calculated the compensation amount under different heads and awarded a sum of Rs.6,31,537/- as compensation. Aggrieved over the same, the Insurance Company has preferred the present appeal.

6. Since the present appeal has been filed only questioning the quantum of compensation, I am not dealing with the other aspects of the award.

7. It is the submission of the learned counsel appearing for the appellant insurance company that considering the nature of injuries and percentage of disability suffered by the victim, the amount of compensation awarded by the tribunal under different heads is highly exorbitant and therefore proper reduction has to be made in the award passed by the tribunal.

8. Per contra, learned counsel appearing for the claimant submitted that considering the nature of the injuries sustained by the claimant, the amount awarded by the Tribunal cannot be said to be on the higher side and hence, he prays for confirmation of the award.

9. Keeping the submissions made by the learned counsel on either side, I have carefully gone through the entire materials available on record.

10. On a perusal of the materials available on record, it is seen that on account of the accident, the victim had sustained fracture of bones below the knee on right leg, suffered a dislocation of hip bone and was admitted in Ramachandra Hospital on 01.11.2000 and was taking treatment as inpatient for a period of 1? months (01.11.2000 to 13.12.2000). During the course of treatment, the claimant had undergone two surgeries. After discharge from the hospital, he was taking treatment as outpatient for a period of five months. Again, on

18.08.2001, he was admitted in the hospital as inpatient and on 21.08.2001, another surgery was done for the fracture of his right leg and he was discharged on 31.08.2001. Thereafter, he was taking treatment as outpatient for a period of four months. Once again he was admitted in the hospital as inpatient from 24.02.2003 to 27.02.2003 and he was also taking treatment as outpatient for a period of one month. He was again admitted in the hospital on 28.11.2003 and discharged on 01.12.2003.

11. Further, it is seen that the Doctor who was examined as P.W.2 had assessed the disability of the claimant as 70%. At the time of accident, the claimant had paid fees for a sum of Rs.20,000/- to join the course of Diploma in Software Technology and on account of the injury sustained by him in the accident, he did not continue his studies. He was also not in a position to attend the interview though he received the call letter. It is the further evidence of the claimant that he was called for the interview for the post of Sales Engineer in L&T on 09.01.2001 and another interview at Airforce, Avadi but he was not in a position to participate in the said interview on account of the injuries sustained by him in the accident. Exs.P16 & 17 interview cards were marked as exhibits. It is the further evidence of the claimant that on account of the accident, his right leg was shortened by 1.5 inches and plates have been fixed and for removal of plates, he needs further amount and hence claimed for higher compensation.

12. The Tribunal, after considering the evidence and also the documents marked on the side of the first respondent/claimant has awarded a sum of Rs.2,00,000/- for 70% disability, Rs.1,00,000/- under the head pain & sufferings, Rs.30,000/- towards mental agony, Rs.10,000/- towards transportation charges, Rs.30,000/- towards extra nourishment, Rs.24,000/- towards loss of income, Rs.1,22,537/- towards medical expenses supported by bills, Rs.1,00,000/- under the head of loss of future earning capacity and Rs.15,000/- for future medical expenses. Thus, the tribunal has passed an award for a sum of Rs.6,31,537/- along with interest @ 9% per annum from the date of petition till the date of deposit.

13. Considering the nature of the fracture injuries and the surgeries undergone by the 1st respondent/claimant, I do not find any infirmity in the award passed by the tribunal awarding a sum of Rs.6,31,537/- as total compensation. Therefore, I am not inclined to interfere with the said amount awarded by the Tribunal. However, the interest awarded by the tribunal alone is hereby reduced to 7.5%. Except this aspect, the award of the tribunal is confirmed in all other aspects.

14. In the result, the civil miscellaneous appeal is partly allowed. No costs. Connected miscellaneous petition is closed.

15. The appellant insurance company is directed to deposit the entire compensation amount of Rs.6,31,537/-, after deducting the amount that has already been deposited by them, if any, with proportionate interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy

of this judgment. On such deposit, the injured victim/claimant is permitted to withdraw the entire amount with proportionate interest, after deducting the amount that has already been withdrawn by him, if any.

