
(2010) 08 MAD CK 0076

In the Madras High Court

Case No : C.M.A. (MD) No. 230 of 2008 and M.P. (MD) No. 1 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

B. Kamala and D. Manoharan

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2011) 2 TAC 71

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

Bench : Single Bench

Advocate : A.K. Baskara Pandian, for the Appellant; N.V. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant the National Insurance Company Limited, against

the award and decree made in MCOP. No. 461 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track

Court No. II, Madurai, for awarding compensation of Rs. 2,75,006/- (Rupees two lakhs seventy five thousand and six only) together with 7.5%

interest per annum from the date of filing of the claim petition till the date of compensation.

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

(a) It is submitted that on 27.01.2001 at about 19.00 hours, the petitioner was walking from south to north keeping extreme left side of the

Ponmeni main road. When she was nearing 1st street junction, the 1st respondent's driver drove the Maruthi Van TN 37-B-1668 from south to

north in a rash and negligent manner without sounding horn and dashed against the petitioner from behind and proceed further and against a parked

tricycle and dashed against one Rajendran's house on the wrong side of the road and came to a stop. Thereby the petitioner was caused solely

due to the rash and negligent driving of the 1st respondent's driver.

(b) A criminal case was registered by the F2. S.S. Colony, Police Station u/s 279, 337 and 304(A) of I.P.C. in crime No. 83 of 2001 and the

same is pending investigation.

(c) It is submitted that the petitioner sustained multiple grievous injuries that (1) Fracture of both bones in both the legs. (2) Fracture in the (Rt)

hand (3) Fracture in the hip joint. Immediately after the accident the petitioner was taken to Government Rajaji hospital, Madurai and admitted as

an inpatient on 27.01.2001 and discharged on 01.02.2001. She was admitted in Subam Clinic, K. Pudur, Madurai on 01.02.2001 and discharged

on 05.03.2001 with the direction to continue the treatment as out patient. Even she is taking treatment Medical expenses Rs. 25,000/-. The

petitioner sustained permanent disability of shortening of both the legs, impairment of power of hip joint and both the legs and (Rt) hand, cannot

walk or stand for prolong time, cannot squate, cannot India style toileting and thereby she cannot do any work.

(d) It is submitted that the petitioner was hale and healthy, woman at the time of accident. At the time of accident she was working in the M/s.

Jeyakumar publications, Madurai and was earning Rs. 2,400/- per month. Due to the disability she cannot do any work and she lost her total

earning power.

(e) It is submitted that the 1st respondent is the owner of the Maruthi Van bearing registration number TN-37-B-1668. The accident was occurred

when the 1st respondent's driver was in a regular course of employment and service. The 1st respondent duly insured his vehicle with the 2nd

respondent. Hence both the respondents are jointly and severally liable to pay compensation to the petitioners.

(f) In view of the Section 140 (Amendment Act of 54/94) of the Motor Vehicle Act the respondents liable to pay an interim compensation of Rs.

25,000/- to the petitioner immediately even without proving the negligence on the part the driver of the offending vehicle since the petitioner

sustained permanent disability of shortening of both the legs, impairment of power of hip joint and both the legs and (Rt) hand, cannot walk or stand for prolong time, cannot squate, cannot Indian style toileting and thereby she cannot do any work.

(g) Therefore it is prayed that this Court may graciously be pleased to pass a decree in favour of the petitioner.

(i) Directing the respondent to pay the interim compensation of Rs. 25,000/- to the petitioner immediately at the first instance u/s 140 of Motor

Vehicle Act 1994 under ""No Fault Liability"".

(ii) Directing the respondents to pay the remaining compensation amount of Rs. 2,25,000/- (Total claim of Rs. 2,50,000/-) to the petitioner at the end of due enquiry.

(iii) Directing the respondents to pay the cost of this action with interest at the rate of 15% per annum from the date of filing of this petition till realization of the amount.

3. The 2nd respondent/National Insurance Company Ltd has filed a counter statement and resisted the claim petition as follows:

(a) The averments in the petition regarding the manner of accident and the alleged responsibility of the driver of the van for the same are all not

admitted. This respondent understands that the van was being driven by its driver at a moderate speed on the proper side of the road and that the

driver was duly sounding the horn, observing the rules and regulations of the road and taking the necessary precautions. While so, the petitioner

and her daughter suddenly and unexpectedly crossed the road when the vehicle was near them and in spite of the best efforts of the driver the

accident could not be averted in view of the short distance at which they attempted cross the road. It is submitted that the accident was not due to

any rash or negligent driving on the part of the driver of the van, but was solely due to the negligence of the petitioner herself. Since, the driver of

the van was in no way responsible for the accident, it is submitted that neither of the respondents will in any way be liable to pay any compensation

to the petitioner.

(b) The averments in the petition regarding the injuries said to have been sustained by the petitioner in the accident, the treatment taken there for

and the expenses incurred thereon are all not admitted and the petitioner will

have to prove each of these averments through proper documentary evidence. It is learnt that the injuries said to have been sustained by the petitioner in the accident have been cured and that no disablement whatsoever has been caused to the petitioner. The averments in Column 13-A and in paragraphs 3 and 6 of Column 23 of the petition are all not admitted. These averments have been made only for the purpose of claiming a very high compensation.

(c) The averments in the petition regarding the age, occupation and monthly income of the petitioner are all not admitted and the petitioner will have to prove each of these averments through proper documentary evidence. The further averments in paragraph 4 of Column 23 of the petition are all not admitted. It is learnt that the petitioner was not employed as alleged in the petition and in any event it is submitted that the petitioner is in no way prevented from pursuing her avocation, if any, as before the accident.

(d) The claim for compensation in the huge sum of Rs. 2,50,000/- is grossly exaggerated and untenable and the claims as made under the various heads in Column 21-A of the petition are all not admitted. The claim towards loss of earning is not admitted. The claims in respect of expenses incurred during treatment will have to be proved through proper bills and vouchers. While the claim towards pain and sufferings is high inflated, the claims towards loss of pleasure and amenities and loss of matrimonial status are wholly unsustainable. The claims towards permanent disability and loss of earning capacity are also not maintainable. The provisions of Section 140 of the Motor Vehicles Act, 1988 are not applicable to this case since no permanent disablement as envisaged thereunder has been caused to the petitioner.

(e) This respondent reserve the right to file an additional statement of objections, if found necessary, later on.

(f) The petition is devoid of any merit.

(g) It is therefore prayed that this Court may be pleased to dismiss to the petition with costs.

4. The learned Motor Accidents Claims Tribunal had framed 3 issues and passed common award in MCOP. Nos. 166 of 2002 and 461 of 2002.

The issues are as follow:

(1) Who was the cause for the accident?

(2) Who is liable to pay compensation?

(3) What is the quantum of compensation the claimant is entitled to?

5. On the side of the claimant 3 witnesses were examined, namely, P.W.1 Kamala(Claimant), P.W.2 Esther and P.W.3 Dr. K. Ravichandran. 14

documents were marked, namely,

Ex.P.1. First Information Report

Ex.P.2. Post-mortem certificate

Ex.P.3. Charge Sheet

Ex.P.4. Motor Inspector's Report

Ex.P.5. Judgment of the Criminal Court

Ex.P.6. Hema's School Certificate

Ex.P.7. Accident Report

Ex.P.8. Kamatchi hospital discharge

medical records

Ex.P.9. Medical bills

Ex.P.10. Medical bills

Ex.P.11. Rajaji Government hospital medical

Records

Ex.P.12. Disability Certificate

Ex.P.13. X-ray

Ex.P.14. Kamatchi hospital medical records.

6. On the side of the respondent no witness was examined, no document were marked.

7. P.W.1(Claimant) had adduced evidence stating that she and his daughter Hema were proceeding on the Ponmeni Main Road from South to

North, on the extreme left side on 27.01.2001 at about 07 p.m. At that point of time the 1st respondent's vehicle namely, Maruthi Van, bearing

Registration No. TN-37/E 1668 came behind them and dashed, with the result that her daughter Hema died. She sustained grievous injuries. She

further adduced evidence that the accident had happened due to the rash and negligent driving of the offending vehicle. the case was registered

against the driver of the offending vehicle, the driver was penalized at the

Criminal Court. Motor vehicle's Inspector's report also marked. To prove the case, the P.W.1 had marked the document as Ex.P.1 FIR, Ex.P.2 Post-mortem certificate of Hema, Ex.P.6 judgment of the criminal court, Ex.P.3 charge sheet, Ex.P.4 Motor Vehicles Inspector's report.

8. After considering the documents, evidence and oral evidence of P.W.1 the learned Motor Accidents Claims Tribunal had come to the conclusion that the accident had happened due to the rash and negligent driving of the offending vehicle. The said vehicle was insured with the 2nd respondent/National Insurance Company Ltd., as such both the respondent are jointly and severally liable to pay compensation.

9. The P.W.1 further adduced evidence stating that in the said accident, she had sustained fracture injuries on both of her legs below the Knee

joints. She also sustained injuries on her left shoulder and on her head at the rear side. Immediately she was taken to the Rajaji Government

Hospital, Madurai, wherein she was an inpatient from 27.01.2001 to 01.02.2001 for further better treatment she had been shifted to Kamatchi

hospital, Madurai, wherein she was an inpatient from 01.02.2001 to 05.03.2001, during the medical treatment period she had undergone 2 plastic

surgical treatment in her right leg, one mole surgical operation on her left leg. After the accident and treatment, she could not walk or stand as

usual. At the time of the accident, she was a labourer at one M/s. Jeyakumar publications and was earning Rs. 2,400/- per month. Supporting her

case, she had marked the documents namely Ex.P.7 Kamatch hospital discharge certificate, Ex.P.8 Medical bills, and Ex.P.9 also medical bills

were marked. She also marked Ex.P.14 Kamatch hospital medical history of the case

10. P.W.3 Doctor had adduced evidence stating that the claimant had sustained fracture injury on her left leg tibia bone, and 2 bones were

fractured on her right leg tibula bone two legs were implanted with steel rods including screws. Her right leg bone because deformed. Left leg

movement has also been reduced. The P.W.2 Doctor after verifying the medical records of the claimant besides completely examining her, he had

issued disability certificate stating that she had sustained 48% disability. Supporting his evidence he had marked Ex.P.12 disability certificate,

Ex.P.13 X-ray and Ex.14 Kamatchi hospital medical sheets.

11. After considering the evidence of P.W.1(the claimant) and P.W.2 Doctor's evidence and medical records, the learned Motor Accidents

Claims Tribunal had granted compensation to the claimant as follows: (1) Medical expenses as per Ex.P.10 as sum of Rs. 22,750/- was granted,

(2) Tribunal awarded Rs. 25,000/- under the head of pain and suffering, (3) Tribunal awarded Rs. 1,76,256/- under the head of loss of income,

after adopting the multiplier method ($1800 \times \frac{1}{2} \times 12 \times \frac{1}{2} \times 17 \times \frac{1}{2} \times \frac{48}{100} = \text{Rs. } 1,76,256/-$)(4) Tribunal awarded Rs. 48,000/- under the head of

disability, and (5) Tribunal award Rs. 3,000/- under the head of nutrition, in total the Tribunal awarded a compensation sum of Rs. 2,74,006/- with

interest at the rate of 7.5% per annum.

12. The learned Counsel for the appellant argued that the learned Tribunal had adopted the multiplier method which is not applicable in the instant

case. Without income proof the Tribunal had come to the conclusion that the claimant was earning Rs. 1,800/- per month which is erroneous. The

learned Counsel vehemently argued that the Tribunal had awarded Rs. 25,000/- under the head of pain and sufferings, this is also improper.

13. The learned Counsel for the respondent added that the claimant's age was 36 years and she was a labourer in a private concern. After the

accident and treatment she is unable to future the labour kind of work. As such she has lost the means of income. Therefore the learned Tribunal

adopted the multiplier method. which is an appropriation. The learned Counsel for the respondent further argued that she was an inpatient in 2

different hospital, and during the medical treatment period she had undergone 3 surgical operations on both her legs. 3 plastical surgical operations

were conducted on the fractured portion of her legs. Steel rods with screws were fixed on the operated portion Hence, this learned Counsel prays

to dismiss the appeal.

14. After considering the facts and circumstances of the case, the arguments of the learned Counsels and findings of the learned Tribunal, this

Court is of the view that there is a discrepancy in the said award passed in Motor Accidents Claims Tribunal, Additional District Court, Fast Track

Court No. II, Madurai in MCOP. No. 461 of 2002 dated 15.02.2006. Hence the Court modified the award as follows: (1) Medical expenses as

per Ex.P.10 as sum of Rs. 22,750/- was granted, this Court confirms the same,

(2) Tribunal awarded Rs. 25,000/- under the head of pain and suffering, this Court reduces it to Rs. 15,000/- (3) Tribunal awarded Rs. 1,76,256/- under the head of loss of income, after adopting the multiplier method ($1800 \times \frac{1}{2} \times 12 \times \frac{1}{2} \times 17 \times \frac{1}{2} \times \frac{48}{100} = \text{Rs. } 1,76,256/-$) (4) Tribunal awarded Rs. 48,000/- under the head of disability, this Court set aside the same since, it is not pertinent as such it is already covered by the award granted under the head of loss of income and (5) Tribunal award Rs.

3,000/- under the head of nutrition, this Court confirms the same.

15. Therefore this Court scale down the award from Rs. 2,74,006/- to Rs. 2,17,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation, which is fair and equitable.

16. This Court imposed a condition on 15.02.2008 on the appellant to deposit the entire award amount to the credit of MCOP. No. 461 of 2002

on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No. II, Madurai, within a period of four weeks. As

the accident had happened in the year 2001, as such it is open to the claimant to withdraw the compensation amount a sum of Rs. 2,17,000/-

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, lying in the

credit of MCOP. No. 461 of 2002 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No. II, Madurai, after filing necessary

application in accordance with law, subject to withdrawals in any made by the claimant. Likewise the appellant/National Insurance Company Ltd.,

is at liberty to withdraw the excess compensation amount lying in the credit of MCOP. No. 461 of 2002 after observing necessary formalities of

the Court below.

17. In the result the above civil miscellaneous appeal is partly allowed. Consequently the award and decree passed by the Motor Accident Claims

Tribunal/Fast Track Court No. II, Madurai, in MCOP. No. 461 of 2002, dated 15.02.2006 is modified. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.