
(2011) 01 MAD CK 0389

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3240 of 2003

National Insurance Co. Ltd.

APPELLANT

Vs

Bheema Rao and Another

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2012) 1 TAC 819

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

Bench : Single Bench

Advocate : K. Suryanarayanan, for the Appellant;

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/National Insurance Company Limited against the Judgment and Decree dated 23rd January, 2003 made in M.C.O.P. No. 360 of 2002 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Krishnagiri. The short facts of the case are as follows:-

The petitioner and his friend Rama were proceeding on a TVS vehicle bearing Registration No. TN29-R-1122 from Kaveripattinam to Krishnagiri, when at that time, a car bearing Registration No. KA05-Z-6212 driven by its driver in a rash and negligent manner hit behind the TVS 50, as a result both were thrown down on the road, as such both had sustained grievous injuries. The claimant had filed a case for compensation a sum of Rs. 1,00,000/- with interest against the respondents.

2. The Insurance Company had filed a counter statement and resisted the claim petition. The respondent denied the accident that it had been committed by the driver of the car. Actually, the driver had driven the car with due caution but the rider of the motorcycle had suddenly crossed the road, as such the accident had occurred. The age, income and occupation of the claimant are denied besides the compensation amount is excessive.

3. On the plea of both parties, the Tribunal had framed three issues for consideration, namely;

(i) Was the accident committed by the driver of the first respondent in a rash and negligent manner?

(ii) Whether the claimant is entitled to receive compensation?

(iii) What is the other relief to the claimant

4. On the side of the claimant two witnesses had been examined and seven documents were marked. On the side of the respondents no witness was examined and no document was marked.

5. PW1 had adduced evidence stating that on 22nd February, 2000, he was proceeding on the TVS motorcycle alongwith another person from Kaveripattinam to Krishnagiri, at that time, the first respondent's car came at high speed in a rash and negligent manner and hit behind the motorcyclist, as a result, he had sustained grievous injuries on his head, shoulder, right leg, right hip and various bodily injuries. Immediately, he was taken to the Government Hospital at Krishnagiri for preliminary treatment and thereafter he was referred to Nimhans Hospital and Manipal Hospital, Bangalore, wherein he had undergone treatment for a period of five days as an in-patient. PW2 doctor had examined the claimant and assessed the disability as 20%. He also spoke on the same line of the claimant's injuries.

6. On considering the evidence of the witnesses, the Tribunal had awarded a sum of Rs. 78,000/- with interest at the rate of 9% per annum.

7. Aggrieved by the said award, the appellant has filed the above appeal.

8. The Learned Counsel for the appellant argued that the Tribunal awarded a sum of Rs. 40,000/- under the head of "disability" which is on the higher side, the doctor had assessed the disability as 20% which is also on the higher side, since the claimant sustained simple injuries.

9. On considering the argument of the Learned Counsel for the appellant and on perusing the facts and circumstances of the case and on the impugned award, this Court is of the considered opinion that the claimant had sustained simple injuries, therefore, this Court modifies the compensation as follows:-

Rs. 30,000/- , Rs. 7,638/- , Rs. 10,000/- , Rs. 5,000/- , Rs. 5,000/- and Rs. 8,000/- granted towards disability, medical expenses, pain and suffering, transport, nutrition and loss of income during the medical treatment period and attender charges respectively. In total, this Court awards a sum of Rs. 65,638/- as compensation together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, which is fair and equitable. Therefore, this Court scales down the compensation from Rs. 78,000/- to Rs. 65,638/- .

10. Therefore, this Court directs the appellant/Insurance Company to deposit the modified compensation amount as observed above with accrued interest and costs to the credit of M.C.O.P. No. 360 of 2002 on the file of the Motor Accident Claims Tribunal, Sub-Court, Krishnagiri, within a period of six weeks from the date of receipt of this order, subject to deductions, if any already deposited. After such deposit being made, it is open to the claimant to withdraw the modified compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 360 of 2002 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Krishnagiri, after filing a memo alongwith this order. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree passed by the Motor Accident Claims Tribunal on the file of Sub-Court, Krishnagiri made in M.C.O.P. No. 360 of 2002, dated 23rd January, 2003 is modified. There is no order as to costs.