(2013) 10 MAD CK 0028

In the Madras High Court

Case No : C.M.A. No. 868 of 2007

National Insurance Co. Ltd. APPELLANT

Vs

Musthafa and M. Shahul Hamed RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0028

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

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; Ma. Pa. Thangavel for R1 and Mr. A.V. Arun for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 28.04.2006,

made in M.C.O.P. No. 27 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Gobichettipalayam. The short

facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 27 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court,

Gobichettipalayam, claiming compensation of a sum of Rs. 7,00,000/- from the respondents for the injuries sustained by him in a motor vehicle

accident.

2. It was submitted that on 21.10.2004, at about 04.30 a.m., the claimant and the first respondent were travelling in a Tempo Van bearing

registration No. TN33 Q9039, on Gobi Main Road and at that point of time, the first respondent had driven the vehicle in a negligent manner and dashed it against a tamarind tree. As a result, the claimant had sustained injuries. Hence, the claimant had filed the claim petition against the

respondents, who are the driver and insurer of the van bearing registration No. TN33 Q9039.

3. The second respondent had filed their counter affidavit and resisted the claim petition. They had submitted that the vehicle was not covered

under valid vehicular documents. Further, the claimant was travelling in the goods vehicle and as such he is not entitled to receive compensation

from the Insurance Company.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Due to whose negligence was the accident caused? and

ii. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

5. On the side of the claimant, four witnesses were examined as P.Ws. 1 to 4 and 30 documents were marked as Exs. P1 to P30 namely FIR,

rough sketch, accident register, M.V.I''s report, observation mahzar, Judgment copy of the criminal court, photo with negative, income certificate,

statement of bank account, hospital records of eye hospital, other hospital records, insurance policy, medical records, X-ray and disability

certificate. On the side of the respondents, two witnesses were examined as R.Ws. 1 and 2 and three documents were marked as Exs. R1 to R3

namely authorisation letter, first respondent''s driving licence particulars and policy copy.

6. P.W. 1 had adduced evidence that on 21.10.2004, at about 04.30 a.m., when he was travelling in the first respondent''s Tempo Van bearing

registration No. TN33 Q9039, on Gobi Main Road, the first respondent had driven the vehicle in a negligent manner and dashed it against a

tamarind tree. Further, he had adduced evidence that the vehicle is owned jointly by the first respondent and himself. Further, he had adduced that

he had sustained injuries on his left sole, little finger, left chest and head and sustained grievous injuries on both the upper eyebrows. Further, he

had been hospitalized for about 55 days as an inpatient at Gobi Dakshin Hospital. He had also been hospitalized at Aravind Eye Hospital, wherein

a surgical operation was conducted. After operation, he has lost his vision totally in his left eye.

7. P.W. 3 Ophthalmologist had adduced evidence that the claimant''s left eye nerve had become dysfunctional and as such the claimant had lost his

vision in his left eye. He had certified that the claimant had sustained 40% disability.

8. P.W. 4 had adduced evidence on the same lines of P.W. 4 regarding nature of injuries and mode of treatment and he had assessed the disability

at 38%.

9. R.W. 1 had adduced evidence that the vehicle had been insured with the insurance company and the driver of the vehicle had been issued only a

light motor vehicle licence.

10. On recording the evidence of both sides and on perusing the documents marked by them, the Tribunal had awarded a sum of Rs. 5,84,000/-

as compensation to the claimant and directed the Insurance Company to deposit the said amount together with interest at the rate of 7.5% per

annum from the date of filing the claim till the date of payment of compensation with costs, within a period of one month from the date of it''s order.

11. Aggrieved by the said Award, the Insurance Company has preferred the present civil miscellaneous appeal.

12. The learned counsel for the appellant has argued that claimant was travelling in the goods vehicle as an unauthorized passenger and as such the

policy conditions had been violated and therefore the appellant Insurance Company is not liable to pay compensation. But, the Tribunal had

erroneously fastened the liability on the Insurance Company. The owner of the vehicle had not remitted any additional premium to cover the risk

for passengers. The Ophthalmologist had assessed the disability at 40%, which is not appropriate, since he had not given medical treatment to the

claimants. The Ortho Doctor had assessed the disability at 38%, which is on the higher side. Further, the driver of the vehicle did not possess a

valid driving licence for operating the vehicle.

13. Further, the learned counsel has argued that the Tribunal had adopted multiplier method and assessed the compensation to the claimant, which

is not pertinent in the instant case. The claimant had sustained simple injuries in the said accident. The Tribunal had granted compensation of a sum

of Rs. 50,000/- under the head of pain and suffering, which is also on the higher side. Further, the Tribunal, without relevant records, had fixed the

income of the claimant as Rs. 30,000/- per annum. Hence, the highly competent counsel expects the Court to set aside the award passed by the

Tribunal as it is not sustainable under law.

14. The very competent counsel for the claimant has argued that FIR had been registered against the driver of the vehicle and the said vehicle had

been insured with the Insurance Company. The driver possessed valid driving licence to operate the light motor vehicles and the same was

confirmed through R.T.O. Officials evidence and the offending vehicle had been insured with the Insurance Company. The claimant had travelled in

the said vehicle as owner along with his goods.

15. Further, he has argued that the claimant had totally lost his vision on his left eye, since a nerve became completely dysfunctional due to the

accident and the same was confirmed by a competent Ophthalmologist and he had certified that the claimant had sustained 40% disability. The

authorised Ortho Doctor had assessed the disability at 38%. The claimant had been hospitalized for more than 100 days, as an inpatient, at two

different private hospitals. The driver of the offending vehicle had pleaded guilty.

16. The learned counsel has further argued that on considering the evidence of the witnesses and documentary proof the Tribunal had awarded the

compensation, which is reasonable in the instant case. As such, there is no lacuna in the impugned award. Therefore, the very competent counsel

has requested this Court to dismiss the appeal.

17. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the

impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However,

the quantum of compensation is on the higher side, as it has been awarded by adopting multiplier method. Therefore, this Court restructures the

compensation as follows:

i. Rs. 1,56,000/- is awarded towards disability,

ii. Rs. 15,000/- is awarded towards medical expenses,

iii. Rs. 25,000/- is awarded towards pain and suffering,

iv. Rs. 15,000/- is awarded towards transport expenses,

v. Rs. 15,000/- is awarded towards nutrition,

vi. Rs. 15,000/- is awarded towards attender charges,

vii. Rs. 25,000/- is awarded towards loss of earning during medical treatment period and convalescence period, and

viii. Rs. 2,00,000/- is awarded towards loss of amenities and loss of comfort due to his disfigurement since the claimant had lost his vision in his left

eye as per medical evidence. In total, this Court awards Rs. 4,66,000/- as compensation to the claimant as it is found to be appropriate in the

instant case. The rate of interest remains unaltered.

18. This Court has already directed the appellant Insurance Company to deposit the entire compensation amount with accrued interest thereon, to

the credit of M.C.O.P. No. 27 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Gobichettipalayam.

19. Now, it is open to the claimant to withdraw the modified compensation amount, as per this Court''s findings, with proportionate interest

thereon, lying in the credit of M.C.O.P. No. 27 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court,

Gobichettipalayam, after filing a memo along with a copy of this Judgment. Likewise, the appellant is at liberty withdraw the excess compensation

amount with proportionate interest thereon after filing a memo. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and

decree dated 28.04.2006, made in M.C.O.P. No. 27 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court,

Gobichettipalayam, is modified. Consequently, connected miscellaneous petition is closed. No costs.

