
(2010) 09 MAD CK 0421
In the Madras High Court
Case No : C.M.A. No. 2366 of 2006

National Insurance Co., Ltd.

APPELLANT

Vs

S. Mariappan and P. Vijayalakshmi

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0421

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

Bench : Single Bench

Advocate : K. Suryanarayanan, for the Appellant; N. Manoharan, for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/second Respondent against the Award and Decree, dated 23.02.2004, made in M.C.O.P. No. 740 of 1995, on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri, awarding a compensation of Rs. 1,50,000/- together with 9% interest per annum, from the date of filing the claim petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

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

On 06.10.1994, at about 05.30 p.m. the Petitioner was loading Sugarcane in the lorry bearing registration No. MDS9279, belonging to the first Respondent and insured with the second Respondent. While the Petitioner was loading sugarcane, the driver of the lorry negligently started and drove the lorry. Due to which, the Petitioner was fell down from the lorry and the front left wheel of the lorry was ran over the left leg of the Petitioner and due to that the left thigh of the Petitioner crushed and the entire flush bone were crushed and fractured. Further,

the Petitioner's right lower leg was also injured. Immediately, after the accident he was taken to Government Hospital for treatment. Subsequently, he was taken to the Saveetha Hospital, where X-ray was taken and he was treated and operated thrice. Due to the injuries he is unable to walk, unable to do his works and could not even attend the natural calls, unable to stand and sit. The said accident had happened only due to the rash and negligent driving of the driver of the first Respondent's vehicle. Therefore, the first and Respondents are liable to pay compensation to the Petitioner. As such, the Petitioner claimed a compensation of Rs. 4,00,000/- before the Tribunal.

4. The second Respondent/United India Insurance Co., Ltd., in their Counter, had resisted the claim petition, which reads as follows:

This Respondent denies that the vehicle MDS9279 lorry was insured with this Respondent on the date of accident.

Also denying that the said vehicle has got valid registration certificate and valid permit to ply on the public road. This Respondent also denying that the vehicle MDS 9279 has got valid Insurance Coverage on the date of accident and the driver of the lorry has got valid driving licence to drive the heavy motor vehicle licence on the date of accident, also denying.

This Respondent has not been reported the accident by the first Respondent and has not been submitted any claim Form and other papers for verification. Therefore, this Respondent is not liable, to for any compensation to the Petitioner.

Without prejudice of the above content, this Respondent denying the Petitioner's injuries, age, income, disability, claim amounts and etc., The Petitioner has to prove the same by documentary evidence.

Accordingly, the second Respondent prayed for the dismissal of the petition.

5. The learned Motor Accident Claims Tribunal had framed two issues for the consideration namely:

(i) Whether the accident had occurred due to the rash and negligent driving of the driver of the first Respondent's vehicle?

(ii) What is the quantum of compensation, which the Petitioner is entitled to get?

6. On the Petitioner's side, the Petitioner was examined as PW1, one Dr. Natarajan was examined as PW2 and fourteen documents were marked as Exs.P1 to P14 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Xerox copy of the Accident Register, Exs.P3 and P4-Medical Bills, Exs.P5 and P6-Doctor's Prescriptions, Exs.P7 and P8-Scan Reports, Ex.P9-X-ray, Ex.P10-Medical Bill series, Ex.P11-Doctor Certificate, Ex.P12-Disability Certificate and Exs.P13 and P14-X-ray. On the Respondents' side one Thangaraj was examined as RW1 and four documents were marked as Exs.R1 to R4 namely Ex.R1-Xerox copy of the Policy, Ex.R2-Investigation Report, Ex.R3-Notice and Ex.R4-Acknowledgement Card.

7. The PW1, the claimant, had adduced evidence stating that on 06.10.1994, at about 05.30 p.m. he was loading Sugarcane in the lorry bearing registration No. MDS9279, belonging to the first Respondent and insured with the second Respondent. While he was loading sugarcane, the driver of the lorry negligently started and drove the lorry. Due to which, he was fell down from the lorry and the front left wheel of the lorry was ran over on his left leg and due to that his left thigh crushed and the entire flush bone were crushed and fractured. Further, his right lower leg was also injured. Immediately, after the accident he was taken to Government Hospital for treatment. Subsequently, he was taken to the Saveetha Hospital, where X-ray was taken and he was treated and operated thrice and four steel plates were fixed on the operative regions. Further, he had adduced evidence stating that he was an inpatient for 74 days. Further, he spent a sum of Rs. 83,700/- towards medical bills.

8. PW2, Dr. Natarajan had adduced evidence stating that he examined the claimant and assessed the disability at 30% sustained by him.

9. After considering the evidence of the both sides and the documents, which were marked as exhibits, the learned Tribunal had come to the conclusion that the accident had occurred only due to the rash and negligent driving of the rider of the first Respondent's vehicle, therefore the first and second Respondents are liable to pay compensation to the Petitioner and awarded the compensation as follows:

- i. Rs. 90,000/- under the head of medical expenses,
- ii. Rs. 30,000/- under the head of 30% disability,
- iii. Rs. 10,000/- under the head of pain and suffering,
- iv. Rs. 3,000/- under the head of transport expenses,
- v. Rs. 2,000/- under the head of nutrition,
- vi. Rs. 15,000/- under the head of loss of earning capacity,

In total, the Tribunal awarded a sum of Rs. 1,50,000/- as compensation to the Petitioner, 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. Further, the Tribunal directed the Respondents to deposit the compensation amount of Rs. 1,50,000/- 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, within a period of one month from the date of its Order and the claimant was permitted to receive a sum of Rs. 50,000/- directly. In turn, the remaining compensation amount to be deposited, under a fixed deposit scheme, in any one of a nationalised bank for a period three years. Accordingly ordered.

10. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

11. The learned Counsel appearing for the Appellant/Insurance Company argued that the Tribunal wrongly fastened the liability on the Appellant/Insurance Company, when the driver of the lorry was not holding effective driving licence on the accident date. Further, the learned Counsel argued that the Tribunal ought to have to pay the award and recover the same from the owner of the vehicle for having violated the terms and conditions of the insurance policy. As such, the learned Counsel prays before this Court to set aside the award and decree passed by the Tribunal. The learned Counsel in support of his appeal has cited the following unreported judgment passed by this Hon"ble High Court, in C.M.A. No. 2246 OF 2009, The Branch Manager, The New India Assurance Co., Ltd., Vellore v. 1. Mur alikrishnan, 2. Velayutham, which held as follows:

...Learned Counsel for the Appellant primarily raised regarding the liability of the insurance company though he had also haltingly raised the question relating to the quantum. However, when it is found that the claimant had sustained two fractures one in the mandible and another in the leg and was hospitalised for 40 days, counsel for the Appellant fairly stated that keeping in view the principle that normally the appellate Court does not interfere with the award unless the award is excessively high, there may not be any scope for interference in such matter, and therefore, he would concentrate only on the question of liability of the insurance company.

...The same principle has been subsequently applied by the Supreme Court in several other decisions such as New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., ; United India Insurance Company Ltd. Vs. Leheru and Others, ; National Insurance Co. Ltd. Vs. Kusum Rai and Others, ; National Insurance Co. Ltd. Vs. Geeta Bhat and Others, In view of the above settled position, I don't find any merit in this appeal, which is accordingly dismissed.

12. The learned Counsel appearing for the first Respondent/claimant argued that it is an admitted fact that the claimant met with an accident, the same was caused by the first Respondent, who had driven the said lorry in a rash and negligent manner and dashed against the claimant. Further, the learned Counsel argued that the claimant sustained grievous bone injuries and he had undergone treatment at private hospital as well as Government hospital, for a period of 74 days as inpatient. Subsequently, he had undergone treatment as out patient.

Further, the learned Counsel argued that four operation conducted on the injured and steel plates were fixed on the operative region. Further, the learned Counsel specifically argued that the claimant spent a sum of Rs. 83,700/- towards medical expenses. After deducting the medical expenses, the compensation amount is very lower side. Further, the learned Counsel argued that the Tribunal also awarded a sum of Rs. 2,000/- under the head of nutrition, Rs. 3,000/- under the head of transport expenses and Rs. 10,000/- under the head of pain and suffering, which are all on lower side. As such, the learned Counsel prays before this Court to dismiss the appeal filed by the Appellant.

13. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing on either side and the award and decree passed by the Tribunal, this Court is of the view that the accident had happened in the year 1994 and at that point of time, the driver was not holding valid driving licence to operate the lorry. As such, this Court hereby directed the Appellant/Insurance Company to pay the entire compensation amount to the claimant, awarded by the Tribunal and recover the same from the owner of the vehicle.

14. On 27.07.2009, the learned Counsel for the Appellant/Insurance Company submitted that the entire compensation amount has already deposited into the credit of the M.C.O.P. No. 740 of 1995, on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri and the first Respondent/claimant was permitted to withdraw 50% of the award amount, lying in the credit of the M.C.O.P. No. 740 of 1995, on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri.

15. Now, this Court hereby permitted the first Respondent/claimant to withdraw the remaining compensation amount, with accrued interest thereon, lying in the credit of the M.C.O.P. No. 740 of 1995, on the file of the Motor Accident Claims Tribunal, Sub Court, Sangagiri, by making proper payment out application, subject to deduction of earlier withdrawal, if any, in accordance with law.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 23.02.2004, made in M.C.O.P. No. 740 of 1995, passed by the Motor Accident Claims Tribunal, Sub Court, Sangagiri is confirmed. No costs.