
(2009) 04 MAD CK 0524

In the Madras High Court

Case No : R.P. (PD) No. 3685 of 2007 and M.P. (MD) No. 1 of 2007

National Insurance Co. Ltd., Motor Third Party Claims Office, APPELLANT
No. 751, Mount Road, III Floor, Chennai - 600002

Vs

A.P. Prasanna Venkatesh and R.M. Ramasamy RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 168, 169, 170

Citation : (2009) 04 MAD CK 0524

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : Srinivasan Ramalingam, for the Appellant;

Judgement

K.K. Sasidharan, J.—This civil revision petition is directed against the order dated 13.11.2007 in M.P.S.R. No. 38270 of 2007 in M.C.O.P. No. 5111 of 2004 on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Madras, whereby and where under the application submitted by the petitioner to direct the first respondent/claimant to appear before the medical board for assessing the disability was rejected as not maintainable. The claim petition in M.C.O.P. No. 5111 of 2004 was preferred by the first respondent claiming a sum of Rs. 30,00,000/- on account of the injury sustained by him in an accident on 27.07.2004 involving the vehicle owned by the second respondent and insured with the petitioner.

2. In the claim petition filed before the Tribunal, it was the case of the first respondent herein that when he was proceeding in his motor vehicle bearing Registration No. TN-10-A-5500 along the Tharamani 100 feet road near Bharathi Nagar bus stop from east-west direction on 27.07.2004 at about 12.30 hours, the lorry bearing registration No. TN-07-C-7995 came from behind in a rash and negligent manner and dashed against his motorcycle and as a result of which, he sustained grievous injuries. The first respondent also produced a certificate of

disability issued by Dr. Mathiyazhagan assessing the disability at 80%. Accordingly, the first respondent claimed compensation from the second respondent, being the owner of the lorry and the petitioner herein, being its insurer.

3. The claim petition was resisted by the petitioner and in the counter statement filed before the Tribunal, they have disputed the accident as well as the injuries sustained by the first respondent. They have also sought leave to contest the claim on all grounds that may be available to the insurer u/s 170 of the Motor Vehicles Act, 1988.

4. Subsequently, the claim petition was taken up for trial and during trial, Dr. Mathiyazhagan was examined as P.W. 3. During the course of his evidence, he has deposed that the first respondent sustained a permanent disability and it was assessed at 80%. It was his further evidence that the claimant was not treated by him at any point of time for the injuries sustained by him in the accident on 27.07.2004. P.W. 3 has seen the injured for the first time on 12.09.2007, the date on which he has issued the disability certificate marked as Ex. P.30.

5. While so, the petitioner filed an application before the Claims Tribunal in M.P.S.R. No. 38270 of 2007 to direct the claimant to subject himself for being examined by a medical board for an independent evaluation of continuing permanent disabilities sustained by him directly, and as a result of the injuries suffered in the accident.

6. In the affidavit filed in support of the application, the petitioner contended that P.W. 3, who is the author of the document in Ex. P.30, has no specialization either in Urology or Gastroenterology. However, most of the disabilities spoken to him essentially relate to such faculties. During the course of evidence, P.W. 3 has also conceded that he has not evaluated the disabilities with the use of any of the medical equipments and has assessed the disability merely on a physical examination of the claimant. According to the petitioner, P.W. 3 is not a specialist in the respective faculty and as such, he has issued the disability certificate at an excessive rate without any evaluation of the disability. Therefore, the petitioner was of the opinion that the claimant should be directed to appear before the medical board for evaluation of his disability for the purpose of arriving at the just compensation.

7. The application was returned by the Court as not maintainable as per order dated 13.11.2007. Aggrieved by the said proceeding, the petitioner has come up with the present revision invoking the jurisdiction under Article 227 of the Constitution of India.

8. The Learned Counsel for the petitioner contended that P.W. 3, who issued the certificate in Ex. P.30, was not an expert and he has issued the disability certificate only for the purpose of sustaining an illegal claim and to get the amount as prayed for by the claimant. It was his further contention that when P.W. 3 was admittedly not an expert in the field of Urology or Gastroenterology,

he was not entitled to issue such a certificate assessing the disability and as such, his evidence was not trustworthy. It was further contended that the learned trial Judge grievously erred in rejecting the application at the threshold on the ground that such an application was not maintainable. According to the Learned Counsel, the Insurance Company would be able to prove the falsity of the contentions only in the event of directing the claimant to appear before the medical board for the purpose of assessing his actual disability.

9. The Learned Counsel appearing on behalf of the first respondent/claimant would contend that the burden of proof is on the petitioner to prove the averments as mentioned in the claim petition and admittedly, P.W. 3. was cross-examined by the counsel for the Insurance Company and it was for the Trial Court to consider the evidence and to come to a correct conclusion with respect to the injuries sustained by the claimant. It was the further contention of the Learned Counsel that the application of the nature filed by the petitioner has no legal basis and as such, the Trial Judge was perfectly correct in returning the application as not maintainable.

10. The Motor Vehicles Act provides for establishment of Motor Accidents Claims Tribunal and the procedures to be adopted for the purpose of determining compensation in accident cases by the Tribunal. Chapter-XII of the Motor Vehicles Act deals with the Constitution of Claims Tribunals and its jurisdiction to award compensation in motor accidents cases. Section 168 of the Act mandates that the endeavour of the Tribunal should be to pay the just compensation to an accident victim. The Tribunal has to consider so many factors for the purpose of arriving at the just compensation. Each case depends upon the peculiar facts of the said case. It would be possible for the Tribunals to rely on the formula as prescribed in the second schedule as a guiding factor to come to a finding with regard to the payment of compensation.

11. The idea behind the award of compensation was to give a helping hand to the injured or the legal heirs of the victim of a road accident. The injured has to receive compensation, commensurate with the injuries sustained by him. Similarly, the dependents of the deceased should be able to survive and withstand the situation caused on account of the death of the breadwinner of the family. While assessing compensation, factors, such as age of the deceased, his employment, salary structure, possibility of getting better prospects, his contribution to the family, age of the dependents, etc. plays a vital role. Similarly, while calculating the amount of compensation payable to a surviving injured, the injuries sustained by him, the percentage of disability and other features which would stand in the way of leading a normal life would be taken into consideration.

12. The attempt of the injured should be to obtain just and reasonable compensation. They are not expected to make use of the accident as a boon or to treat it as a lottery.

13. The purpose of production of a disability certificate was only for assessment of the percentage of disability. The Tribunal was not bound to accept the disability certificate as a gospel truth. The disability certificate has to be proved like any other document in the manner known to law. The burden of proof is always on the claimant to prove the disability. The extent of proof required for proving a disability certificate depends upon the facts of a given case. In case the disability certificate was issued by the medical officer, who had the benefit of treating the injured, such medical officer would be in a better position to tender evidence with reference to the injury sustained by the claimant, treatment given, extent of permanent disability as well as the loss of earning capacity. However, in cases, wherein certificates were issued by the Medical Officers other than the Doctor, who treated the injured, the evidence of such medical officers require strict scrutiny. However, it cannot be said that such certificates are inadmissible in evidence. The evidence so tendered by the Doctors, who had no opportunity to treat the injured, should be convincing and it should be based on accepted norms. It is only the standard of proof which would differ.

14. When the burden was on the claimant to prove the percentage of disability, the apprehension raised by the petitioner has no basis. The counsel for the insurance company was entitled to cross-examine the expert witness with reference to the certificate issued by him to bring out the truth. There are certain guidelines issued for the purpose of evaluation of permanent physical impairment. In accordance with the decision of the Expert Group Meeting on Disability Evaluation held in New Delhi during September, 1981 and the National Seminar on Disability Evaluation and Dissemination held in December 1981, a manual for doctors to evaluate the permanent physical impairment has been prepared and the said manual contains the guideline for evaluation of permanent physical impairment. While cross-examining the medical officer on the basis of the disability certificate issued by him, it would be possible for the counsel for the insurance company to put questions on the basis of such guidelines as well as the published data regarding estimation of disabilities.

15. The Workmen's Compensation also contains a guideline as to the computation of percentage of disability. Each disability has been shown with the estimated percentage of disability corresponding to such injury. All these materials could be made use of by the insurance company to confront the medical officer who issued the disability certificate. The purpose of putting such questions was only to enable the Court to come to a conclusion about the actual percentage of disability sustained by the claimant.

16. The counsel for the insurance company should be vigilant and he should help the Court to award just compensation to the claimants. Even though the medical evidence is considered to be the best piece of evidence, there is no presumption attached to such evidence in motor accident claims cases. The Tribunal should also be very vigilant, while dealing with compensation cases. The claimant, who suffered injury in a motor accident, must receive just compensation. At the same

time, fraudulent claims on the basis of cooked up evidence should be discouraged.

17. The Learned Counsel for the petitioner placed reliance on a judgment of the Supreme Court in *Rajesh Kumar @ Raju Vs. Yudhvir Singh and Another*,] in support of his contention that it was the evidence of the doctor, who had treated the injured, alone would satisfy the evidence required for proving a claim. In the said decision, the medical certificate in question was obtained after two years of the injury and there was nothing to show as to whether the civil surgeon of the hospital, who treated the injured was examined. In such circumstances, the Supreme Court was not inclined to interfere in the judgment of the High Court, even though the disability assessed at 60% by the medical officer was reduced to 30% by the High Court. The decision in *Rajesh Kumar's* case cited supra was on the basis of the facts of the said case and having found that there was no acceptable evidence to show that the disability was at 60%, the Supreme Court confirmed the award of the High Court on the basis of the assessment of disability at 30%. However, in the present case, appreciation of evidence is yet to be made. It was only during the time of consideration of the evidence for the purpose of arriving at just compensation, the trial Judge would be in a position to consider the disability certificate, in the light of the evidence tendered by the medical officer, P.W. 3.

18. In *Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another*, the Supreme Court held that power of determining just compensation is wide, but it is not arbitrary and observed thus:-

Section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation which appears to be just". However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation.

14. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In a nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

15. In *Kerala SRTC v. Susamma Thomas, M.N. Venkatachaliah, J.* (as His Lordship then was) had observed that: (SCC p. 181, para 5)

5.....The determination of the quantum must answer what contemporary

society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales".

At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

19. In *R. James Vs. Assistant Manager, National Insurance Co. Ltd.*, the issue before this Court was as to whether the application filed by the insurance company to direct the injured to subject himself before the medical board with regard to his injury and disability was maintainable. The Claims Tribunal was of the opinion that the disability certificate issued by the doctor was on the higher side and as such, the claimant was directed to undergo medical examination before the medical board. When the matter was challenged before this Court, His Lordship Mr. Justice P. Sathasivam (as His Lordship then was), was pleased to set aside the order and in the said factual context, the learned Judge observed thus:-

4..... The learned Subordinate Judge, by the impugned order, after holding that the disability certificate Exh.P.13 issued by the doctor P.W. 3 is on the higher side, allowed the application of the insurance company and directed claimant to undergo medical examination before the Medical Board. The approach of the learned Subordinate Judge cannot be appreciated. It is seen that in support of the claim of injured-claimant, the doctor who assessed the disability of the injured was examined as P.W. 3 and he assessed disability of the claimant to the extent of 70 percent. He also issued disability certificate which has been marked as Exh.P.13. There is no dispute that the respondent herein insurance company was afforded an opportunity of cross-examining the doctor with reference to the disability suffered by claimant and assessed by him (Exh.P.13). In such a circumstance, I am unable to understand how the insurance company is justified in filing a petition seeking direction for examination by the Medical Board.

5. As stated earlier, if there is any flaw either in the assessment or in the certificate issued by the doctor, the same can be highlighted at the time of argument. When such recourse is available, I am unable to accept the view expressed by the learned Subordinate Judge. In a matter like this, particularly, claiming compensation in a motor vehicle accident, if the victims are subjected to such recourse as ordered by the Tribunal, it would be difficult for them to substantiate their claim. It is settled law that the procedures to be followed in motor accident cases are summary in nature.

20. The Claims Tribunal is presided over by a Senior Judge of the Subordinate Judiciary. As per Section 169 of the Motor Vehicles Act, the Claims Tribunal shall have all the powers of a civil Court for the purpose of taking evidence on oath

and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects. The Claims Tribunal is also deemed to be a civil Court for all the purposes of Section 195 and Chapter XXVI of the Criminal Procedure Code, 1973. The Claims Tribunal was also given the discretion to take the assistance of one or more persons possessing special knowledge of any matter relevant to the inquiry so as to enable the Tribunal to come to a correct conclusion for the purpose of awarding just compensation. Therefore, there is an inbuilt procedure prescribed under the Motor Vehicles Act for the purpose of coming to a correct conclusion.

21. The correctness of the disability certificate is a matter to be gone into by the learned Claims Tribunal. While arriving at a conclusion as to whether the claimant has sustained the disability as found mentioned in the disability certificate, the Claims Tribunal was expected to consider the injuries as per the wound certificate as well as the case sheets produced on the side of the claimant, the details furnished in the disability certificate as well as the evidence of the doctor, who had issued the disability certificate. The Tribunal was entitled to have a critical analysis of the evidence tendered by the medical officer. The details which were brought out on cross-examination of the medical officer by the insurance company with reference to the certificate could also be taken into consideration by the Tribunal. It was not the grievance of the petitioner that the insurance company was not permitted to cross-examine the medical officer on the basis of the guidelines prescribed for issuance of disability certificates. There was nothing in the affidavit filed in support of the application before the lower Court to suggest that the petitioner was denied the opportunity to cross-examine the medical officer. Therefore, I am of the view that the learned trial Judge was perfectly correct in his finding that the application was clearly not maintainable.

22. Therefore, I do not find any merit in the contention of the petitioner. However, the rejection of the application for subjecting the claimant before the Medical Board would in no way prevent the petitioner from filing an application to recall the medical officer for the purpose of further cross-examination on the basis of the prescribed guidelines issued for assessing the disability and in the event of making any such application to recall the witness, the same should be considered by the Claims Tribunal on merits and as per law. The Civil Revision Petition is dismissed with the above observation. Consequently, the connected miscellaneous petition is also dismissed. No costs.