

(2009) 10 MAD CK 0239
In the Madras High Court
Case No : C.M.A. No. 619 of 2005

National Insurance Company Limited	APPELLANT
Vs	
P. Kandasamy and Bhagheeritha Engineering Limited	RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2009) 10 MAD CK 0239

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

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has filed the civil miscellaneous appeal No. 619 of 2005 against the decree and judgment dated 22.06.2004 made in MACOP No. 782 of 2002 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Judge, Salem awarding a compensation of Rs. 2,07,155/- to the respondent/petitioner, u/s 166 Rule 3 of the Motor Vehicles Act.

2. Aggrieved by the said award, the appellant/National Insurance Company Limited, Salem has preferred the above appeal.

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

The petitioner is aged about 30 years, hale and healthy doing all sorts of his routine work. He was working as a cook in Hotel New Restaurant, Salem and earning a sum of Rs. 4,000/- per month and the entire income was contributed to his family members i.e. wife and two minor children.

On 21.06.2002, the petitioner was travelling in a TVS 50 Moped bearing registration No. TAL 495 as a pillion rider, driven by rider Vijaya Baskar following

all traffic rules and regulations in a very slow manner, on the Omalur to Salem N.H. Road. When he was nearing Thannithottay, at that time a lorry bearing registration No. TN-30-Z-4641 came from the back of the TVS 50, driven by its driver in a rash and negligent manner with high speed, dashed against TVS 50 and caused the accident. Due to the accident, the petitioner sustained grievous injuries and was immediately taken to Bharathi Hospital, Salem-4 and admitted as an inpatient on the same day and is still under treatment.

In connection with the accident, the Omalur Police Station has registered a case in Cr. No. 1041 of 2002 under Sections 279 and 337 of IPC against the driver of the lorry.

4. Considering the loss of earnings, future medical expenses, shock and mental agony, medical expenses, pain and suffering and permanent disability etc., the petitioner has claimed a sum of Rs. 5,00,000/- as compensation for the injuries sustained to him in the above said accident.

5. The first respondent being the owner of the lorry and as the said vehicle involved in the accident was validly insured with the second respondent, i.e. National insurance company limited, hence both the respondents are jointly and severally liable to pay a sum of Rs. 5,00,000/- as compensation to the petitioner/claimant.

6. The second respondent in his counter statement has resisted the above claim. The age, occupation and income of the petitioner was not admitted. The alleged injuries, hospitalisation and permanent disability caused to the petitioner were also not admitted. Further, the claim of Rs. 5,00,000/- was excessive. It was also contended that the driver of the lorry alone cannot be held negligent of rash driving, but that the driver of the TVS 50 is equally responsible for the said accident.

7. On the side of the petitioner, two witnesses were examined and five documents were marked. No documents were marked or witnesses were examined on the side of the respondent.

8. The Motor Accident Claims Tribunal framed two issues namely 1) Which of the drivers of the two vehicles responsible for the accident i.e. who was negligent? 2) Is the petitioner entitled to get compensation? if so, what is the quantum?

9. The petitioner Kandasamy was examined himself as PW1 and deposed in his evidence that at the time of accident, his age was 30, and that he was employed as a cook in Salem New Restaurant and was earning a monthly salary of Rs. 4,000/-. It was submitted that on 21.06.2002, at about 04.00 p.m., while he was riding as a pillion rider in the vehicle namely TVS 50, driven by its rider Vijaya Basker, nearing Thannithottay near Bhagirath Company gate, a lorry bearing registration No. TN-30-Z-4641, driven by its driver in a fast and negligent manner, hit their vehicle from behind. Due to this accident, the petitioner suffered injuries on both his legs and his hip bone was fractured and he was

admitted as inpatient for 11 days, at Bharathi Hospital. The petitioner has further submitted that he had spent Rs. 50,000/- for treatment and the subsequent to this accident, he has not been able to do any work. He is not able to bend and stand up and so he is unable to do any work in the restaurant. The Tribunal saw that there was a grievous wound on the leg of the petitioner, which has not healed and the petitioner was also wearing a belt around his hip. Ex.P1- the first information report, Ex.P2-wound certificate and Ex.P3-medical bills were marked in support of his evidence. Further the evidence given by PW1 corroborates the averments made in his petition. Though the owner of the lorry was mentioned as first respondent, he was absent and so he was set exparte. The second respondent has also not examined the driver of the first respondent lorry as a witness. Further, the report in Ex.P1-the first information report also confirms the evidence given by PW1 and as such the Tribunal held that the driver of the first respondent by his negligence was the reason for the cause of accident.

10. For a determination of how much compensation the petitioner was entitled to, Ex.P2-wound certificate was scrutinised. It has been reported in this that two grievous fractures and one simple injury have been sustained by petitioner in the accident. Further he had been admitted in Salem Bharathi Hospital and had received treatment, as inpatient, for 11 days. Further, to consider permanent disability suffered by petitioner, PW2-doctor was examined. In PW2's evidence, it was stated that he had examined the petitioner on 07.04.2004. After taking X-rays of his legs, and on examination of the petitioner, he has submitted that the fingers on the petitioner's left leg toe have been immobilised and movements have become restricted. As a result, the petitioner has difficulty in walking, difficulty in sitting and standing and that he is unable to do the work which he was doing before the accident. The doctor estimated the permanent disability of 40%, as marked it in the disability certificate given by him as Ex.P4 and Ex.P5-the X-ray report. But, the doctor in his cross examination had submitted that he has not treated the patient. Further, he had submitted that out of the three grievous injuries, one injury was only a tear injury and had healed. Hence, the Tribunal fixed the permanent disability as only 30% instead of 40%.

11. Further, the Tribunal on consideration of medical reports submitted by petitioner took his age as 38 instead of 30 as was alleged by the petitioner. Further, as the employer of the petitioner was not examined to establish his income, and as there are no other supporting evidence, the Tribunal did not accept that the salary of the petitioner was Rs. 4,000/- per month. But, from the cross examination of PW2 by the second respondent, it was established that the petitioner was working as a cook in the restaurant and taking into consideration a daily wage of Rs. 150/- and that the petitioner should have worked for at least 20 days a month, the salary of the petitioner was fixed at Rs. 3,000/-.

12. The Tribunal then taking a multiplier of 16 as applicable for the age of 38 as per Motor Vehicles Act, 1938(A), Schedule 2, arrived at a compensation of $3000 \times 12 \times 16 = \text{Rs. } 5,76,000$ for 100% disability. As the petitioner had sustained 30%

disability, the compensation arrived at for loss of income due to disability = $5,76,000 \times 30/100 = \text{Rs. } 1,72,800/-$.

13. Further on examination of Ex.P3 series, it was found that in Ex.P1, the petitioner had undergone treatment at Bharathi Hospital, Salem from 21.06.2002 to 02.07.2002 as inpatient and that he had a surgical operation during this period. Further, on examination of other medical bills, the Tribunal granted Rs. 21,155/-. For pain and suffering and mental agony Rs. 6,000/- was awarded; for nutrition Rs. 6,000/- was awarded and Rs. 1,000/- was awarded for transport expenses and Rs. 200/- was awarded for damages to clothes.

14. Further, the Tribunal directed the first and second respondents to jointly and severally deposit the award of Rs. 2,07,155/- granted under various heads with interest at the rate of 9% per annum from the date of filing of petition to the date of deposit of compensation into a nationalised bank for three years and permitted the petitioner to withdraw interest once in three months directly from the bank.

15. The learned Counsel for the appellant argued, in his appeal, that the Tribunal had erred on fixing the disability based on exaggerated assessment of 40% disability by PW2. Further, the Tribunal has erred in coming to a conclusion that the income of petitioner was Rs. 3,000/- per month and applying multiplier of 16 without any proof of his age or occupation. Further, the multiplier applicable u/s 163A should not have been taken for a petition filed u/s 166 of Motor Vehicle Act and submitted that only a multiplier of 12 should have been considered.

16. The learned Counsel for the respondent argued that the actual age of the claimant was only 30 at the time of accident, but the Tribunal has taken the age of the claimant as 38 on the strength of medical records. The Tribunal has considered only the higher age in assessment for compensation. The learned Counsel further submitted that the Doctor PW2 issued disability certificate stating 40% disability has been sustained, but the Tribunal without assigning any valid reasons had reduced the disability percentage from 40% to 30%. But the Tribunal ought to have taken the age of the claimant as 30 and disability as 40% and then should have awarded compensation to the claimant.

17. For the foregoing reasons and on consideration of the facts and circumstances of the case, this Court is of the opinion that the learned Tribunal has calculated the compensation only on the basis of age as in medical records. After scrutinising the disability certificate of the doctor and on personally seeing the physical condition of the claimant, the Tribunal had come to a conclusion that the disability was only 30% instead of 40% as claimed and on this count, the Court cannot find any error. So, the Tribunal had awarded Rs. 1,72,800/- under the head of loss of income by applying a multiplier of 16 as per Section 163A of the Motor Vehicles Act.

18. The learned Counsel for the appellant had argued that the multiplier of 16 u/s 163A should not be applied in a petition u/s 166 and that only a multiplier of

12 should have been applied. In an application u/s 163A, age of the victim is relevant to arrive at the number of multiplier, while in Section 166 application, there are a number of factors which the Tribunal has to take into consideration, for example, who are the dependants and their ages. So, the above multiplier arrived at by the Tribunal is in synchronisation with the multiplier as per Section 166.

19. The Tribunal has also granted award under the following heads i.e.

- 1) For pain and suffering and mental agony Rs. 6,000/-
- 2) For nutrition - Rs. 6,000/-
- 3) For Transport - Rs. 1,000/-
- 4) For damage to clothes - Rs. 200/-

These are all reasonable and fair and Rs. 21,155/- awarded for medical expenses, on the basis of Ex.P3-medical bills is also fair. This Court cannot find any error in the said award.

20. Therefore, the Court is of the view that the award passed by the Motor Accident Claims Tribunal/Principal Subordinate Court, Salem in MCOP No. 782 of 2002, dated 22.06.2004 awarding a sum of Rs. 2,07,155/- together with interest at the rate of 9% from the date of filing the petition till date of payment, is equitable and fair. Hence, this Court confirms the above said compensation awarded by the Motor Accident Claims Tribunal/Principal Subordinate Court, Salem in MCOP No. 782 of 2002, dated 22.06.2004.

21. The above said civil miscellaneous appeal came before the Court on 20.04.2005, when the Court permitted the claimant to withdraw half of the claim amount and further directed the Tribunal to deposit the balance amount for three years in any one of the nationalised bank in reinvestment scheme. As the accident happened in the year 2002, it is open to the respondent/claimant to receive the balance amount with interest lying to the credit of MCOP No. 782 of 2002 on the file of Motor Accident Claims Tribunal/Principal Subordinate Court, Salem, by filing necessary payment out application in accordance with law.

22. In the result, the civil miscellaneous appeal is dismissed and the award passed by the Motor Accident Claims Tribunal/Principal Subordinate Court, Salem in MCOP No. 782 of 2002 dated 22.06.2004 is confirmed. Parties are directed to bear their own cost in the appeal.