

(2011) 03 MAD CK 0637

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1347 of 2002

National Insurance Company Ltd.

APPELLANT

Vs

Ceylon @ Rajagopal and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0637

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

Bench : Single Bench

Advocate : T.M. Venkataraman, for the Appellant; M.A.P. Thangavel, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/5th Respondent/National Insurance Company, against the award and decree passed in M.C.O.P. No. 226 of 1999, dated 26.09.2001, on the file of the Motor Accidents Claims Tribunal, Principal Additional Subordinate Judge, Gobichettipalayam, on awarding a compensation a sum of Rs. 1,51,000/- with interest at the rate of 9% per annum.

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

On 02.05.1998 while the Petitioner was travelling in the Van bearing Registration No. TN 36B 1238 on the Karukkampalayam pirivu road, a lorry bearing Registration No. TDB 9648, came in the opposite direction and dashed against the said van. In the result, he had sustained injuries. Hence, the claimant has filed the claim petition against the Respondents and has claimed a compensation a sum of Rs. 2,00,000/- with interest.

3. The Third Respondent/United India Insurance Company Limited had filed a counter statement and resisted the claim petition. The Respondent denied the age, income and occupation of the claimant. The Respondent further denied the nature of injuries and period of treatment. The Respondent stated that the

claimant was travelling in the goods vehicle and as such the claim petition is not maintainable under the policy conditions. The Respondent further stated that the claim amount is an excessive.

4. The fifth Respondent/National Insurance Company has filed a counter statement and resisted the claim stating that the first Respondent, i.e., the driver of the second Respondent had been punished by the Criminal Court. The Respondent further stated that FIR was registered against the first Respondent offending vehicle. The claim amount is an excessive one. The age, income and occupation of the claimant are denied.

5. On the pleadings of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Who was responsible for the accident?

(ii) Whether the claimant is entitled to receive compensation? If so what is the quantum of compensation?

6. On the side of the claimant, two witnesses had been examined viz., claimant and Dr. Periyasamy. Twelve documents had been marked, viz., First Information Report, Observation Mahazar, Rough Sketch, Motor Vehicle Inspector's Report, Accident Report, Charge Sheet, judgment copy of the Criminal Court, Medical Bills Series and Medical receipts, Wound Certificate and X-ray. On the side of the Respondents no witness was examined and no document was marked.

7. PW1 had adduced evidence stating that he is doing seasonal vegetable business, besides he is also working as a load-man. PW1 further stated that in the said accident, he had sustained bone fracture injuries on his hip and left shoulder and other bodily injuries. Immediately, after the accident, he was taken to the Government Hospital, Kangeiyam, wherein he had been treated as outpatient, thereafter, he was referred to Bhagavath Geetha Hospital, wherein he had undergone treatment for a period of 18 days. He further stated that at the time of accident, he was 41 years and was earning a sum of Rs. 5,000/- per month.

8. PW2 Doctor had adduced evidence stating that he had examined the claimant and verified the medical records and he assessed the disability sustained by the claimant as 28%.

9. On considering the evidence of witnesses and on perusing the documentary evidence, the Tribunal had awarded a sum of Rs. 1,51,000/- with interest at the rate of 9% per annum. The break up of compensation are as follows: Rs. 1,35,000/- towards loss of income for 28% disability;

Rs. 8,000/- towards medical expenses;

Rs. 500/- for transport expenses;

Rs. 500/- for damages to clothes;

Rs. 5,000/- towards pain and suffering;

Rs. 2,000/- against nutrition

10. Aggrieved by the said award, the Appellant/National Insurance Company has filed the above appeal.

11. The learned Counsel for the Appellant/Insurance Company emphatically argued that the Tribunal had adopted the multiplier method and awarded the compensation of a sum of Rs. 1,35,000/- under the head of "disability", and that this is not applicable in this case, since the claimant's avocation, as a vegetable businessman has not been affected. The learned Counsel further argued that the entire negligence was fastened on the first Respondent's van driver and as such, the Respondents 1 to 3 are only liable to pay compensation to the claimant. 4th and 5th Respondents are not liable to pay compensation to the claimant, as per FIR contents.

12. The learned Counsel for the claimant argued that the claimant is a load-man as well as a vendor doing seasonal vegetable business and his earning was Rs. 5,000/- per month and the claimant is the only breadwinner of the family. At the time of accident, he was 37 years. The learned Counsel further argued that after the accident, the claimant is unable to do his work as load-man and unable to do his business as vegetable vendor. The learned Counsel for the claimant further argued that the claimant had undergone treatment at private hospital for a period of 18 days, besides he had undergone treatment for one day at Government Hospital, Kangeiyam. The learned Counsel further argued that the claimant is entitled to receive compensation under the head of "loss of income" during medical treatment period as well as entitled to receive compensation under the head of "attendant charges" and that these heads were not considered by the Tribunal. The learned Counsel further argued that the third and fifth Respondents are liable to pay compensation to the claimant, as per the order of the Tribunal. The third Respondent duly complied with the said award and as such the fifth Respondent has no legal rights to challenge the impugned order by way of this appeal.

13. In view of the facts and circumstances of the case, arguments advanced by the learned Counsels on either side and on perusing the impugned decision of the learned Motor Accidents Claims Tribunal passed in M.C.O.P. No. 226 of 1999, on the file of Principal Additional Subordinate Judge, Gobichettipalayam, dated 26.09.2001, this Court is of the considered opinion that the multiplier method that had been adopted by the Tribunal is not proper, since the claimant had sustained only 28% disability. However, regarding the quantum of compensation it is reasonable, since the claimant is a load-man as well as a seasonal a vegetable vendor. Therefore, this Court, restructures the compensation as follows:

Rs. 56,000/- towards 28% disability;

Rs. 8,000/- for medical expenses;
Rs. 1,000/- for damages to clothes;
Rs. 10,000/- towards pain and suffering;
Rs. 5,000/- against nutrition;
Rs. 5,000/- for transport;
Rs. 5,000/- for attender charges;
Rs. 61,000/- loss of comfort and loss of amenities in life;

Therefore, this Court is not warranted to interfere with the impugned award of the Tribunal. Hence, it is confirmed as fair and equitable.

14. On 04.09.2002, this Court imposed condition on the Appellant-National Insurance Company to deposit 50% of the award amount with proportionate interest and costs to the credit of M.C.O.P. No. 226 of 1999, on the file of the Motor Accidents Claims Tribunal, Principal Additional Subordinate Judge, Gobichettipalayam. If the Appellant, has not deposited the said amount, the Appellant is directed to deposit the said compensation amount with interest at the rate of 9% per annum, to the credit of M.C.O.P. No. 226 of 1999, on the file of the Motor Accidents Claims Tribunal, Principal Additional Subordinate Judge, Gobichettipalayam, within a period of six weeks from the date of receipt of a copy of this order. After such a deposit has been made, it is open to the claimant to withdraw the entire compensation with accrued interest thereon lying in the credit of M.C.O.P. No. 226 of 1999, on the file of the Motor Accidents Claims Tribunal, Principal Additional Subordinate Judge, Gobichettipalayam, after filing necessary payment out of application, in accordance with law, subject to withdrawals if any made already.

15. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal, on the file of Principal Additional Subordinate Judge, Gobichettipalayam, made in M.C.O.P. No. 226 of 1999, dated 26.09.2001 is confirmed. There is no order as to costs.