

(2005) 04 MAD CK 0054

In the Madras High Court

Case No : C.M.A. (NPD) No. 1241 of 2005 and C.M.P. No. 6908 of 2005

National Insurance Company Ltd.

APPELLANT

Vs

Kalidas, P. Shanmugham and G. Priya

RESPONDENT

Date of Decision : 18-04-2005

Acts Referred:

Citation : (2005) 4 ACC 263 : (2005) 3 MLJ 19

Hon'ble Judges : S. Sardar Zackria Hussain, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : R.Yashod Vardhan, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The appeal arises out of an order dated 23.03.2004 made in M.C.O.P. No. 146 of 2002, whereby the Motor

Accidents Claims Tribunal (II Additional Sub Court), Gobichettipalayam, has allowed the claim petition and awarded a compensation of Rs.

3,22,400/- (Rupees Three Lakhs Twenty Two Thousand and four only) with interest at 9% p.a., for the injuries sustained by the first

respondent/claimant, in a motor accident said to have taken place on 2.1.2002 at about 3.30 a.m., at Nanjai Puliampatti Main Road near

Dasaprakash Garden at Nanjai Puliampatti Village in Gobichettipalayam Taluk.

2. According to the first respondent/claimant, on 2.1.2002 at about 2.00 a.m., when he and his paid Servant Samraj were travelling along with the

onion load in the Mini Auto bearing Registration No. TN-36-E-3170, belonging to the third respondent, which was insured with the appellant, due

to the rash and negligent driving of the driver/second respondent, the auto was capsized on the left side of the road into an agricultural field, as a

result of which the first respondent/claimant sustained injuries.

3. A claim petition in M.C.O.P. No. 146 of 2002 was filed by the first respondent/claimant, claiming a compensation of Rs. 4,16,000/-(Rupees

Four Lakhs and Sixteen Thousand only), for the injuries sustained by him. The first respondent in the claim petition/second respondent herein did

not file any counter. The second respondent in the claim petition/third respondent herein viz., the owner of the vehicle filed a counter affidavit

stating that the injured claimant himself has contributed to the accident, as he was travelling on the onion load, which was carried in the auto and

hence no compensation is liable to be paid to him. The third respondent in the claim petition/appellant herein viz., the insurance company filed a

counter affidavit stating that the injured claimant was an gratuitous passenger and hence no compensation is liable to be paid. That apart, the

appellant also disputed the age, occupation and monthly income of the injured claimant.

4. The tribunal, after framing the issues, decided the claim petition in favour of the first respondent/injured claimant in terms of the impugned

judgment. The tribunal held that the accident in question had occurred only due to the rash and negligent driving of the auto by its driver and as a

result of the same, the first respondent/claimant sustained grievous injuries. The tribunal, based on the wound certificate and X-Rays, after noting

the injuries (i) fracture at right hand middle finger, (ii) fracture at the left shoulder, (iii) cut injury in the left ear, and (iv) abrasion and contusion all

over the body, determined the disability at 45%. The tribunal also held that the claimant is entitled to the compensation for the injuries sustained by

him and determined a sum of Rs. 3,22,400/- as the amount due to the first respondent/injured claimant under the following heads.

Loss of income :: Rs.2,75,400/-

Loss of goods :: Rs. 2,000/-

Medical expenses :: Rs. 35,000/-

Pain and suffering :: Rs. 5,000/-

Extra nourishment :: Rs. 5,000/-

Rs.3,22,400/-

5. Learned counsel appearing for the appellant insurance Company, places reliance on the decision reported in 2004 (2) TN MAC (FB) (MP),

"KALURAM RATHORE -vs- NEELAM CHAND KIRAR AND ANOTHER", wherein it was held that mere fracture of bones and its re-union

will not amount to permanent total disablement or permanent partial disablement, unless the doctor has examined the claimant and assessed the

percentage of disability after performing scientific tests. Without performing scientific tests, bald statement of the doctor and his certificate are

inadmissible in evidence and visual opinion of doctor has no evidentiary value, to determine the percentage of disability. Learned counsel further

submits that in the instant case P.W.4, who has issued the wound certificate, has, in his cross-examination deposed that he did not give any

treatment to the injured claimant and that he had issued the wound certificate only basing upon the medical reports of the injured claimant.

6. On a perusal of the award passed by the tribunal, we find that the injured claimant had suffered fracture of the middle finger and left shoulder,

due to which the movement of both his hands is restricted. In our considered opinion, the tribunal, has awarded the compensation only after taking

into consideration the above aspects, as culled out from the evidence of the doctor, P.W.4. Hence, we see no ground to interfere with the findings

of the tribunal in this regard.

7. Since no other ground is argued by the learned counsel for the appellant Corporation resisting the award of the tribunal, we do not see any

reason to interfere with the award dated 23.03.2004 in M.C.O.P. No. 146 of 2002. The appeal is, therefore, dismissed. No costs. Consequently,

connected C.M.P. No. is also dismissed.