

(2013) 11 MAD CK 0293

In the Madras High Court

Case No : C.M.A. No. 2664 of 2008 and M.P. No's. 1 of 2008 and 1 of 2009

National Insurance Company Ltd.

APPELLANT

Vs

M. Ravikumar, M. Prakash, S. Harees Kumar and United India
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0293

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : K. Suryanarayanan, for the Appellant; N. Manokaran for R-1 and Mr. S. Arunkumar for R-4, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Vimala, J.—The Civil Miscellaneous Appeal is filed by the Insurance Company, challenging the finding on negligence as well as the quantum of compensation. The claimant/M. Ravikumar, a Doctor, aged 39 years, earning a sum of Rs. 28,000/- per month, met with an accident on 27.02.2005, due to the collision between Toyota Car in which he was traveling and the lorry. He suffered the following injuries:-

1. Bilateral injury over the left ear extending mastoid region 6 c.m. x 1 c.m. x 1 c.m.
2. A lacerated injury over the right temporal region 2 c.m. x 1 c.m. x 1 c.m.
3. A lacerated injury over the chin 3 c.m. x 1 c.m. x = c.m.
4. A lacerated injury over the back of the right elbow over 6 c.m. x 4 c.m. x 4 c.m.
5. Right upper arm swollen with deformity.
6. Complaint of pain all over the body.

7. 5 c.m. x 5 c.m. Abrasion cum contusion over the mid forehead.
8. 7 c.m. length sutured wound over Left Post Auricular Region of Scalp.
9. Contusion 4 c.m. x 3 c.m. left shoulder.
10. Contusion with Abrasion 6 c.m. x 6 c.m. Right shoulder.
11. 2 c.m. long sutured wound over Right Eye, Roof of nose, Tip of nose and Philtrum of upper lip.
12. Multiple abrasion Right cheek and anterior chest wall Right.
13. Swelling and deformity of right little finger.
14. Tenderness present over 5, 6, 7, 8, 9, 10 ribs on right side.
15. Abrasion 4 c.m. x 3 c.m. right knee.
16. Sutured wound, both submandibular 3 c.m. long region of neck.
17. Fracture upper central incisors.

1.1. The Doctor certified the disability at 55%. In respect of the injuries sustained and the consequent permanent disablement, the Doctor claimed a sum of Rs. 10,00,000/- as compensation. The Tribunal, on a consideration of the materials placed before it, awarded a sum of Rs. 7,61,275/- with 7.5% interest.

1.2. Challenging the quantum as exorbitant and challenging the liability to pay the compensation on the ground that it is only the owner and the insurer of the Quails Car that should have been made responsible to pay the compensation, the Insurance Company has preferred this Appeal.

2. It is the contention of the learned counsel for the appellant that the accident had occurred only due to the negligence of the driver of the Toyota Quails Car bearing Registration No. TN-30-B-9339, in which the claimant (first respondent herein) traveled as a passenger and not due to the negligence of the lorry. It is the contention of the appellant that the Tribunal did not properly appreciate the evidence of the driver, who was examined as R.W. 1.

2.1. The Tribunal has given reasons as to how the negligence was fixed on the part of the driver of the lorry. The Police, after investigation, has filed the final report against the lorry driver only. The claimant, who has deposed before the Tribunal, has attributed negligence only on the part of the lorry driver. Neither the sketch nor the observation mahazar has been filed before the Tribunal. The driver, who was driving the Quails Car, died on the spot itself. Therefore, considering the totality of the circumstances available before the Tribunal, the Tribunal has come to the conclusion that the accident had occurred only on account of rash and negligent driving on the part of the lorry driver. The Tribunal has disbelieved the evidence of the driver and has given a finding that, if really the driver has stopped the vehicle on the left side of the road, this accident could

have been averted. There is no other evidence available on the side of the Insurance Company to come to a different conclusion. Therefore, the finding of the Tribunal that the accident took place only on account of the rash and negligent driving, on the part of the lorry driver, cannot be dismantled.

3. The next challenge is with respect to the quantum of compensation awarded to the claimant. The quantum of compensation awarded are under the following breakup details:-

Income for loss of future earning

-

Rs.3,84,000/-

Pain and suffering

-

Rs. 30,000/-

Continuous Pain

-

Rs. 20,000/-

Extra Nourishment

Rs. 25,000/-

Loss of income during the period of treatment

-

Rs. 79,800/-

Medical expenses:-

Expenses for medical treatment as per

Bill (marked as Ex.A-12)

-

Rs. 84,475/-

Expenses incurred for purchasing equipment

(inhaler) (marked as Ex.A-20)

-

Rs. 78,000/-

Compensation for hardship

-

Rs. 25,000/-

Travelling expenses

-

Rs. 5,000/-

Expenses for removing steel rod

-

Rs. 30,000/-

Rs. 7,61,275/-

4. The first contention of the learned counsel for the appellant is that the compensation for hardship at Rs. 25,000/- is excessive and there is no justification for the Tribunal to award the same, without detailing what is the hardship suffered.

4.1. May be the Tribunal has not put it in the proper language, with regard to the award of compensation under the head of hardship. During surgery, implant has been used in the right hand. Being a Doctor, the Doctor will have certainly the difficulty in performing operations, while the rod is there as an implant. Moreover, because of the fracture over the rib bone, he would have difficulty in breathing, especially while performing operations for a longer duration, under closed doors. The Tribunal has also awarded compensation for purchase of inhaler also. In such circumstances, the Tribunal ought to have considered the grant of compensation for loss of enjoyment of amenities. Therefore, the compensation awarded for hardship would be transformed to the head of loss of enjoyment of amenities.

4.2. The next contention of the learned counsel for the appellant is that there is duplication of award under the head of pain and sufferings and when Rs. 30,000/- is awarded for pain and sufferings, the award of Rs. 20,000/- for continuous pain is unjustified.

4.3. This contention is well founded and when the pain and sufferings have been adequately awarded at Rs. 30,000/-, the award of Rs. 20,000/- under the head of continuous pain is unwarranted. Therefore, the amount of compensation awarded has to be reduced by Rs. 20,000/-.

5. Learned counsel for the claimant contended that when the disability was 55%, the loss of earning capacity has been considered only at 15% and therefore, it is the case where the award could be enhanced even in the absence of cross-

appeal.

5.1. The Tribunal has correctly arrived at the quantum on account of loss of earning capacity with reference to the evidence available on record and therefore, there is no justification to enhance the compensation awarded.

6. Yet another contention is that the Insurance Company is not entitled to challenge the quantum, as per the decision reported in Josphine James Vs. United India Insurance Company Ltd. and Another, wherein it has been held that the Insurance Company is not entitled to file appeal questioning the quantum of compensation without obtaining permission from the Tribunal.

6.1. But, in this case, the appellant had obtained permission from the Tribunal u/s 170 of the Motor Vehicles Act to defend the case on all the grounds that are available to the owner of the vehicle. Therefore, this contention also cannot be accepted.

In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the quantum of compensation by Rs. 20,000/-. The amount of Rs. 7,61,275/- is reduced by Rs. 20,000/- and the final award would be Rs. 7,41,275/-, along with interest at 7.5% per annum. No costs. Consequently, the connected MPs are closed.

6.2. The Insurance Company shall deposit the entire amount of compensation, as ordered now, with interest at 7.5% per annum, from the date of petition to till the date of deposit, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, claimant will be entitled to withdraw the same.