
(2016) 02 MAD CK 0143

In the Madras High Court

Case No : C.M.A. No. 453 of 2015 and M.P. No. 1 of 2015 in MCOP No. 189 of 2007.

New India Assurance Co. Ltd. 482, 483, SNV Chambers, 3rd
Floor Coimbatore

APPELLANT

Vs

K. Muthusingam

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2016) 3 MLJ 773

Hon'ble Judges : R. Sudhakar;S. Vaidyanathan. JJ.

Bench : Division Bench

Advocate : J. Chandran, Advocate, for the Appellant; S.S. Swaminathan, Advocate and T. Ravichandran, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R. Sudhakar, J. - Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 and 4.

2. The appellant/insurer of the van has filed the appeal challenging the award dated 30.07.2012, passed by the Motor Accident Claims Tribunal (I Addl. District Judge), Tirupur, made in MCOP No. 189 of 2007.

3. The facts, in brief, is as under :-

On 05.12.2006 at about 05.30 hours, the first respondent/claimant was travelling in the van, bearing Regn. No. TN-31-D-0939, belonging to the second respondent herein, as additional driver. At that time, the van, driven by its driver in a rash and negligent manner dashed against the stationary lorry bearing Regn. No. TN-28-A-5560, which was standing on the left side of the road and due to the said accident, the claimant suffered grievous injuries. The claimant was admitted to the Rex Hospital, Coimbatore and received treatment between 5.12.2006 and 3.1.07. With regard to the said occurrence, a case was registered

on the file of the Moolanur Police Station in Crime No. 360/2006.

4. The injured, on the date of accident, was working as a driver with Sathyapriya Road Links and earning a monthly salary of Rs. 7,500/- and due to the injuries suffered by the claimant in the accident, he was not able to continue his avocation. Therefore, the claimant filed the claim petition claiming a sum of Rs. 15,00,000/- as compensation.

5. In support of the claim, the claimant examined himself as P.W.1 besides examining P.Ws. 2 to 4 and Exs.P-1 to P-23 were marked, the details of which are as follows:-

Ex.P-1 - Xerox Copy of First Information Report

Ex.P-2 - Xerox Copy of Accident Certificate dated 4.1.07

Ex.P-3 - Discharge summary dated 5.12.2006

Ex.P-4 - Medical Bills

Ex.P-5 - Medical Records

Ex.P-6 - Trip Sheet

Ex.P-7 - Blood Bank receipt dated 7.12.2006

Ex.P-8 - Photograph of the claimant

Ex.P-9 - Pay Certificate of the claimant

Ex.P-10 - Driving licence of the claimant

Ex.P-11 - Scan Report dated 5.12.06

Ex.P-12 - Medical Bills dated 2.2.07

Ex.P-13 - Discharge Summary

Ex.P-14 - Driving Licence of P.W.2

Ex.P-15 - Authorisation Letter

Ex.P-16 - Account Book of Sathya Road Links

Ex.P-17 - Final Register of Sathya Road Links

Ex.P-18 - Pay Receipts

Ex.P-19 - Disability Certificate dated 7.11.08 policy

Ex.P-20 - X-ray

Ex.P-21 - Xerox copy of Policy document

Ex.P-22 - Permit copy

Ex.P-23 - Driving Licence of P.W.4

6. On the side of the second respondent before the Tribunal, one Suresh Kumar was examined as R.W. 1. However, no documentary evidence was marked.

7. The Tribunal based on the oral evidence of P.W.1, the F.I.R. and also taking note of the evidence of P.Ws.2 to 4, which was adduced to prove the salary received and the disability suffered by the claimant, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van and, therefore, the liability was fixed on the appellant/insurer of the van to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Income - Rs. 8,67,000/-

Towards Pain and Suffering - Rs. 30,000/-

Loss of amenities - Rs. 25,000/-

Transportation and Extra Nourishment - Rs. 2,000/-

Medical Expenses - Rs. 2,05,975/-

Total Compensation - Rs. 11,29,975/-

8. In all the Tribunal awarded a compensation of Rs. 11,29,975/- with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit along with costs. Aggrieved by the said award, the appellant/insurer of the van is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the income of Rs. 5,000/- per month fixed by the Tribunal is on the higher side. Per contra, it is submitted by the learned counsel for the claimant that the amounts awarded on all the other heads is on the lower side and the income fixed by the Tribunal would offset the meagre amounts that have been awarded on the other heads.

10. This Court has given its careful consideration to the above contentions advanced by the learned counsel on either side. Admittedly, the respondents/claimants have not filed any appeal claiming enhancement.

Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, it is seen that even P.W.2, co-worker has stated that the claimant was earning a sum of Rs. 5,000/- per month towards wages. The Tribunal, based on the said evidence and the salary receipts has taken the income of the claimant at Rs. 5,000/-. Considering the date of accident, this Court feels that it would be just and proper to fix the salary of the injured claimant at Rs. 4,000/- per month and adopting the multiplier of 17, as rightly fixed by the Tribunal, the claimant would be entitled to a compensation of Rs. 6,93,600/- for the 85% disability suffered by him.

11. As contended by the learned counsel for the claimant, on a perusal of the injuries suffered by the claimant, the amount of Rs. 30,000/- awarded by the

Tribunal towards pain and suffering is on the lower side. So also the amount of Rs. 2,000/- awarded under the head "Transportation and Nourishment". Considering the entire gamut of facts and keeping in mind the injuries suffered by the claimant and the nature of treatment taken by the claimant, this Court is of the considered view that it would be just and proper to enhance the amounts under the heads "Pain and Suffering" and "Transportation and Nourishment" to Rs. 70,000/- and Rs. 4,000/- respectively. Accordingly, the award of the Tribunal is modified as hereunder :-

Loss of Income - Rs. 6,93,600/-

Towards Pain and Suffering - Rs. 70,000/-

Loss of amenities - Rs. 25,000/-

Transportation and Extra Nourishment - Rs. 4,000/-

Medical Expenses - Rs. 2,05,975/-

Total Compensation - Rs. 9,98,575/-

12. Accordingly, this Civil Miscellaneous Appeal is disposed of modifying the award passed by the Tribunal from Rs. 11,29,975/- to Rs. 9,98,575/- with interest @ 7.5%. It is stated that a sum of Rs. 25,000/- has been deposited to the credit of MCOP No. 189/2007, at the time of filing this appeal. The appellant was also directed to deposit the entire award amount, along with interest, as directed by the Tribunal, to the credit of MCOP No. 189/2007, while granting stay. In such circumstances, the claimants are permitted to withdraw the amount in deposit, as per the above modification and the balance portion in deposit shall be withdrawn by the appellant. Consequently, connected miscellaneous petition is closed.

13. However, in the circumstances of the case, there shall be no order as to costs.