

(2013) 09 MAD CK 0302
In the Madras High Court
Case No : C.M.A. No. 3368 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Kannan

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 TNMAC 405

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

Bench : Single Bench

Advocate : Mr. C. Ramesh Babu, Advocate, for the Appellant; Mr. A. Murugan, Advocate, for the Respondent No. 1; Ex parte, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mr. C.S. Karnan, J.—The appellant / second respondent has preferred the present appeal against the judgment and decree dated 22.02.2008, made in M.C.O.P.No.75 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Court-cum-Fast Track Court No.III), Virudhachalam.

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

The petitioner had filed the claim petition in M.C.O.P.No.75 of 2007, on the file of the Motor Accident Claims Tribunal, (Additional District Court-cum-Fast Track Court No.III), Virudhachalam, claiming compensation of a sum of Rs.7,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident.

3. It was submitted that the petitioner was working as a lorry driver and earning a sum of Rs.6,000/- per month. On 22.09.2005, at about 05.00 a.m., when the petitioner and the cleaner of the lorry had parked their lorry bearing registration No.TN-04-7765, on Salem-Ulundurpet Road, near M.S.Dhakka and inspecting the tyres of their lorry, another of their company's lorry had come near the place, where they were inspecting, and the driver and cleaner of that lorry had also alighted from their lorry and assisted the petitioner in checking the tyres.

Whiles, the first respondent's lorry bearing registration No.TN-21-M-3967, driven by its driver at a high speed and in a rash and negligent manner had dashed behind the stationed lorry and caused the accident. As a result, the petitioner and the cleaner had sustained injuries and the lorry driver had died on the spot. The petitioner was admitted at Ulundurpet Government Hospital and subsequently took treatment at Villupuram and at Pondicherry Government Hospital. Due to the accident, he is not able to walk as before and not able to drive vehicles. Hence, the petitioner had filed the claim petition against the respondents, who are the owner and insurer of the lorry bearing registration No.TN-21-M-3967.

4. The second respondent Insurance Company, in their counter statement, had submitted that the petitioner should prove his age, income and occupation, nature of injuries sustained and damages to lorry and manner of accident through documentary evidence. It was submitted that the petitioner should prove that the driver of the first respondent's lorry had a valid licence and that the lorry was covered under a valid R.C., F.C., and insurance policy at the time of accident. It was submitted that the accident was caused only as the lorry bearing registration No.TN04 7765 was parked without observing the traffic rules and regulations and as such the second respondent is not liable to pay any compensation. It was submitted that the claim was excessive.

5. On considering the averments of both sides, the Tribunal had framed four issues namely:

- (i). Due to whose negligence had the accident occurred?
- (ii). Whether the petitioner is entitled to get compensation?
- (iii). If so, what is the quantum of compensation, which he is entitled to get? and
- (iv). Who is liable to pay compensation to the petitioner?

6. In the same accident, two other claims had been filed by the injured petitioner in M.C.O.P.No.76 of 2007 and by the legal heir of the deceased in M.C.O.P.No.77 of 2007, claiming compensation against the same respondents. On the request made by the counsels for their respective petitioners, through a joint memo, a joint trial was conducted and common evidence was recorded.

7. The petitioners in M.C.O.P.Nos.75, 76 and 77 of 2007 namely Kannan, Sivaraj and Sedhumani were examined as P.W.1, P.W.2 and P.W.3 and one Dr. Elango was examined as P.W.4 and 17 documents were marked as Exs.P1 to P17 namely copy of FIR, copies of M.V.I's reports, copy of R.C. of lorry, copy of policy, copy of driving licence, copy of wound certificate issued to Kannan, discharge summaries issued to Kannan, medical treatment records, medical bill series, car rental receipts, copy of wound certificate issued to Sivaraj, O.P.Chits issued to Sivaraj, copy of postmortem report of Senthilkumar, disability certificate issued to Kannan and X-rays. On the respondents' side one witness was examined as R.W.1 and eight documents were marked as Exs.R1 to R8 namely cheque for

Rs.30,000/- issued in favour of the second respondent, receipt for receiving the said cheque, copy of policy issued to the first respondent, letter sent by Bank to the second respondent, letter showing cancellation of policy, copy of letter sent by the second respondent to the first respondent, copy of letter sent by second respondent to R.T.O., and returned cover.

8. P.W.1 had adduced evidence that on 22.09.2005, when he was driving the lorry bearing registration No.TN04 7765 along with P.W.2, who was cleaner towards Chidambaram and when the lorry was proceeding on Salem-Ulundurpet Road and near M. S. Dhakka, he had heard a noise of a punctured tyre and hence he had stopped the lorry on the extreme left on the mud portion of the road. When he along with the cleaner were checking the tyres of the lorry, another of his company's lorry bearing registration No.TDX 9833, which was also proceeding on the same road, had stopped near the stationed lorry and the driver of that lorry namely Senthilkumar and his cleaner also joined them in the inspection of the tyres. While so, the first respondent's lorry bearing registration No.TN21 M3167, coming behind them and driven at a high speed and in a rash and negligent manner, had dashed behind the parked lorry bearing registration No.TN04 7765. As a result, the said Senthilkumar had sustained fatal injuries and died on the spot. Further, he had deposed that he had sustained fracture of bone in his leg and that P.W.2 had sustained injuries in his hands and legs.

9. P.W.2 had also adduced evidence on similar lines to the evidence of P.W.1 regarding manner of accident. On scrutiny of Ex.P1, it is seen that FIR had been registered against the driver of the first respondent's lorry. On scrutiny of Ex.P2, it is seen that the accident had not been caused due to mechanism failure of the lorry. The Tribunal, on scrutiny of evidence of P.W.1 and P.W.2 and on scrutiny of Ex.P1 and on observing that no oral and documentary evidence had been let in on the part of the respondents to rebut the claim of P.W.1 and P.W.2 regarding manner of accident, held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's lorry.

10. R.W.1 Ashokan had adduced evidence that the first respondent had given a cheque (Ex.R1) in favour of the second respondent towards premium for insurance of the lorry and that the second respondent had given the receipt (Ex.R2) for collection of cheque to the first respondent and that the copy of policy issued to the first respondent was marked as Ex.R3. Further, he had deposed that on presentation of the cheque at the Bank, it was returned dishonoured due to "Insufficiency of Funds" as per return memo marked as Ex.R4 and that a letter (Ex.R5) was sent by the second respondent to the first respondent regarding cancellation of policy and that the copy of the letter had been marked as Ex.R6. Further, he had deposed that a letter was sent to RTO regarding cancellation of policy and that the copy of the letter had been marked as Ex.R7 and that the letter sent by the second respondent to the first respondent had been returned and the returned cover had been marked as Ex.P8. Further, he had deposed that as the policy of insurance was cancelled due

to non-payment of premium, the second respondent is not liable to pay compensation.

11. The Tribunal had observed that the cheque for premium amount had been dated 21.09.2005 and that it was returned dishonoured on 24.09.2005 as per the letter marked as Ex.R4 and that letter dated 27.09.2005 had been sent by the second respondent regarding cancellation of policy. The Tribunal, on observing that the accident had taken place on 22.09.2005, which is prior to the date of cancellation of policy and relying on the Judgment reported in 2000 ACJ 630, held that the second respondent is liable to pay compensation. Hence, the Tribunal held both the first respondent and the second respondent being liable to pay compensation to the petitioner.

12. On scrutiny of Ex.P7 wound certificate issued to P.W.1 by Ulundurpet Government Hospital, it is seen that the petitioner had sustained fracture of bone in three regions of his right leg and that all are grievous in nature. P.W.1 had adduced evidence that he was working as a lorry driver and earning a sum of Rs.6,000/- per month. The Tribunal, however, had observed that he had not marked any documentary evidence to prove the same. Hence, the Tribunal had held that the notional income of the petitioner could be taken as Rs.4,500/- per month.

13. P.W.4 Dr.Elango had adduced evidence that he had examined the petitioner and also taken X"rays (Ex.P17) and found that due to the fractures sustained by him in his leg, he is able to walk only with a support of a walker and that he is not able to sit cross legged or squat. He deposed that the movements of his right knee had been reduced from 135 Degrees to 90 Degrees and that the upward movements of his heel had been reduced from 20 Degrees to 10 Degrees and that the downward movements of his heel had been reduced from 50 Degrees to 25 Degrees and that the muscles of his right thigh had shrunk in size. He deposed that the petitioner had sustained 60% disability and in support of his evidence, he had marked Ex.P16 disability certificate.

14. On scrutiny of Ex.P7, it is seen that the petitioner was aged 29 years at the time of accident. The Tribunal, on adopting a multiplier of 18, had awarded a sum of Rs.5,83,200/- to the petitioner under the head of loss of income due to disability of 60% ($4500 \times 12 \times 18 \times 60/100$), Rs.6,000/- was awarded for pain and suffering, Rs.6,750/- was awarded for transport expenses, Rs.16,500/- was awarded for medical expenses. In total, the Tribunal had awarded a sum of Rs.6,12,450/- as compensation to the petitioner and directed the respondents to deposit the said sum, jointly or severally, together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, with costs, within a period of one month from the date of it's Order.

15. Aggrieved by the said Award, the Insurance Company has preferred the present civil miscellaneous appeal.

16. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal ought to have relied upon the recent view taken by the Apex Court that non-payment of consideration on the part of the owner of the vehicle was a valid ground for the insurer to repudiate their liability. Further, it is contended that the Tribunal ought to have seen that in a contract of insurance, when the insured gives a cheque towards payment of premium, such a contract consists of reciprocal promise and when the insured fails to pay the premium promised or when the cheque issued by him is returned dishonoured by the Bank, the insurer need not perform his part of the promise and as such the Tribunal should have exonerated the appellant herein from paying any compensation to the victim and made the second respondent herein alone liable to pay the same to the first respondent or else the Tribunal should have directed the appellant herein to pay the amount of compensation awarded and receive the same from the owner of the vehicle particularly in view of the fact that the second respondent to set aside the award passed by the Tribunal.

17. The highly competent counsel for the claimant has argued that the driver of the offending lorry had committed the said accident while the claimant and his cleaner were checking the tyres of their lorry bearing registration No.TN04 7765 and hence FIR had been registered against him. In the said accident, the claimant had sustained multiple bone fracture injuries and he had been admitted at Ulundurpet Government Hospital for preliminary treatment and thereafter he had been referred to Government Hospital, Villupuram, wherein he underwent medical treatment. Thereafter, he had been referred to Pondicherry Hospital. As such, the claimant underwent treatment at various hospitals.

18. The learned counsel has further submitted that the claimant's right leg had been fractured at three places. The Doctor had assessed the disability at 60%. The claimant's right leg had been shrunk in size. After the accident, he is unable to do his avocation as a driver. Therefore, the Tribunal has adopted multiplier method and awarded the compensation. Hence, the learned counsel prays the Court to dismiss the above appeal as there is no lacuna in the said award.

19. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence. However, it is seen that the insurance policy was not in force at the time of accident as the cheque for premium issued was dishonoured. Therefore, this Court directs the appellant to pay the compensation amount as per this Court's findings and recover the same from the owner of the vehicle. The Tribunal had adopted multiplier method and granted the compensation under the head of disability, which is not proper in the instant case. Therefore, this Court reassesses the compensation as follows:

(i). Rs.1,20,000/- is awarded under the head of disability,

(ii). Rs.16,500/- is awarded under the head of medical expenses,

- (iii). Rs.15,000/- is awarded under the head of pain and suffering
- (iv). Rs.10,000/- is awarded under the head of attender charges,
- (v). Rs.10,000/- is awarded under the head of nutrition,
- (vi). Rs.50,000/- is awarded under the head of loss of earning during medical treatment period
- (vii). Rs.10,000/- is awarded under the head of transport expenses, and
- (viii). Rs.2,00,000/- is awarded under the head of loss of amenities, loss of comfort, since the claimant's right leg had been fractured at three places, as per Doctor's evidence and also considering that this might have affected his avocation.

In total, this Court awards Rs.4,31,500/- as compensation as it is found to be appropriate in the instant case. The rate of interest fixed by the Tribunal remains unaltered.

20. This Court had already directed the appellant Insurance Company to deposit the entire compensation amount with accrued interest thereon. Now, the claimant is at liberty to withdraw the modified compensation, with proportionate interest thereon, lying in the credit of M.C.O.P.No.75 of 2007, on the file of the Motor Accident Claims Tribunal, (Additional District Court-cum-Fast Track Court No.III), Virudhachalam, after filing a memo along with a copy of this Judgment. Likewise, the appellant Insurance Company is at liberty to withdraw the excess compensation amount, with proportionate interest thereon, after filing a memo, before the Tribunal.

21. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 22.02.2008, made in M.C.O.P.No.75 of 2007, on the file of the Motor Accident Claims Tribunal, (Additional District Court-cum-Fast Track Court No.III), Virudhachalam, is modified. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.