

(2013) 10 MAD CK 0007

In the Madras High Court

Case No : C.M.A. No. 1389 of 2009 and M.P. No. 1 of 2009

New India Assurance Co., Ltd.

APPELLANT

Vs

M. Bhaskar, L. Venkatesan and M/s. V.S.T. Service Station
Pvt. Ltd.

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0007

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

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; S. Sivashanmugam for R1, R2-Ex parte and R3-Given up, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/third respondent has preferred the present appeal against the judgment and decree dated 08.08.2007,

made in M.C.O.P. No. 244 of 2004, on the file of the Motor Accident Claims Tribunal and Additional District and Sessions Court (Fast Track

Court No. 3), Poonamallee. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 244 of 2004, on the file of the Motor Accident Claims Tribunal and Additional District

and Sessions Court (Fast Track Court No. 3), Poonamallee, claiming compensation of a sum of Rs. 5,00,000/- from the respondents for the

injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 24.08.2003, when the claimant was traveling in the second respondent's van bearing registration No. TN01 S0492, as

a Mechanic, and at about 10.15 p.m., when the van was proceeding from V.S.T. Service Station, Poonamallee, Chennai towards Bangalore and

at about 03.00 a.m., when the van was proceeding on Ambur-Vellore National Highways at Pallandipatti Village, the driver of the van drove it in a rash and negligent manner and dashed it against a wall of a bridge and caused the accident. As a result, the claimant sustained grievous injuries and was admitted at Ambur Hospital, wherein first aid was given. Subsequently, he took treatment at Porur Ramachandra Hospital. Due to disability sustained in the accident, he is not able to do his work as before. Hence, the claimant had filed the claim petition against the respondents, who are the driver, owner and insurer of the van bearing registration No. TN01 S0492.

3. The third respondent Insurance Company, in their counter affidavit, had denied the averments made in the claim petition regarding manner of accident. It was submitted that on the date of accident, the driver of the van drove it carefully and cautiously, as it was raining and that due to mechanism failure in their van, it fell into a ditch on the road. It was submitted that the claimant had only traveled as a passenger in the van and that as no premium had been paid to ensure coverage of risk of a mechanic, the third respondent is not liable to pay any compensation and as such the claimant has to get his remedy by filing a claim under the Workmen's Compensation Act.

4. On considering the averments of both sides, the Tribunal had framed two issues for consideration namely:

- i. Due to whose negligence was the accident caused? and
- ii. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

5. On the side of the claimant, two witnesses were examined as P.Ws. 1 and 2 and nine documents were marked as Exs. P1 to P9 namely copy of FIR, wound certificate, discharge summary, scan report, X-rays, copy of M.V.I's report, medical bills, copy of final report and disability certificate. On the respondents' side, two witnesses were examined as R.Ws. 1 and 2 and two documents were marked as Exs. R1 and R2 namely insurance policies.

6. P.W. 1 had adduced evidence, which is corroborative of the statements made by him in the claim regarding manner of accident and in support of his evidence, he had marked Exs. P1 to P9. On scrutiny of Exs. P1 and P8, it is seen that the FIR and final report had been filed against the first

respondent for his rash and negligent driving of the van. Hence, the Tribunal, on scrutiny of evidence of P.W. 1 and Exs. P1 and P8, held that the accident had been caused by the rash and negligent driving by the first respondent.

7. Further, P.W. 1 had adduced evidence that due to the accident, his hip bone had been fractured and that both his legs had become insensitive and that he received first aid at Ambur Hospital and at Vellore and subsequently at Ramachandra Hospital, Porur, Chennai, wherein he received treatment as an inpatient for two months. He deposed that even after treatment, he is not able to walk properly and that he is able to walk only with the assistance of others and that he passes urine and stools without any sensation and in support of his evidence he had marked Exs. P3 to P5.

8. P.W. 2 Doctor had adduced evidence that he examined the claimant on 07.09.2006 and observed that due to the accident, the L1 bone in his spinal cord had been fractured and that the region around the nerves of his spinal cord had been affected. He deposed that a surgical operation was performed on the claimant at Ramachandra Hospital, on 27.08.2003 and that a rod with screws were implanted in the fractured area of spinal cord and that a second surgery was done on 28.01.2004 and the rod with screws fixed earlier were removed. He deposed that on taking X"rays and M.R.I. Scan, he had observed that the nerves leading to his legs and small intestine had been affected and that the strength of joints of leg and hip had lost it's potential strength by 25%. Further, he deposed that the claimant would not able to walk without the support of a crutch and that he would not be able to sit and then stand up. He deposed that the sensitivity in both his thighs had been reduced and that he is not able to control passing of urine though he is able to feel it accumulate. He deposed further that as the nerve controlling passage of stools has been affected, he is able to pass stools only once in four days. He deposed that the flexing and stretching movements of his spine had been reduced. He certified that the claimant had sustained 70% disability and in support of his evidence, he had marked Ex. P9 disability certificate.

9. R.W. 1 Murali, Senior Assistant in the third respondent's firm, had adduced evidence that the second respondent's van was registered as a

goods vehicle and in support of his evidence, he had marked Ex. R1. He deposed that as the claimant had traveled as a passenger in the goods

van, the conditions of the policy of insurance had been violated and as such the third respondent is not liable to pay compensation. He had

however admitted that three coolies other than the driver were permitted to travel in the van and that this detail had also been mentioned in the

R.C. Book.

10. R.W. 2 Sathyamurthi, Administrative officer of the second respondent's firm had adduced evidence that the claimant was working as a

mechanic in their firm and that he was a temporary employee and that he had traveled in the goods vehicle on the instructions of the second

respondent.

11. The Tribunal, on considering the evidence of R.W. 1 and R.W. 2, had observed that the claimant was a coolie and a temporary employee

under the second respondent and that he was a mechanic, who had gone in the second respondent's firm, on the instructions of the second

respondent. Hence, the Tribunal, on holding that the policy conditions of insurance had not been violated held the respondents are liable to pay

compensation to the claimant.

12. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 1,00,000/- for disability, Rs. 50,000/- was awarded under

the head of pain and suffering. Further, the Tribunal, on observing that the salary of the claimant was Rs. 2,500/- per month and on observing that

he had lost all his abilities to earn due to the injuries sustained by him, awarded a sum of Rs. 1,50,000/- under the head of loss of income for ten

years during medical treatment and convalescence period. The Tribunal, on observing that the employer of the claimant had already paid Rs.

60,000/- for medical expenses, awarded a sum of Rs. 3,377/- towards balance medical expenses as per medical bills marked as Ex. P7 and Rs.

2,000/- was awarded for nutrition, transport and other expenses. In total, the Tribunal had awarded a sum of Rs. 3,05,377/- as compensation to

the claimant and directed the respondents to jointly and severally pay the said compensation, together with interest at the rate of 7.5% per annum

from the date of filing the claim petition till the date of payment of compensation with costs, within a period of three months from the date of it's

order, in default, the respondents were directed to pay the said sum together with interest at the rate of 10% per annum from the date of filing the claim petition till the date of payment of compensation.

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

14. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal erred in holding that the claimant was a coolie

and doing his work as a temporary mechanic and that the appellant was liable to pay compensation. Further, it is contended that the Tribunal failed

to appreciate that apart from the workman employed on the vehicle, the other employees of the owner of the vehicle are gratuitous passengers, as

far as the vehicle is concerned as per the terms and provisions of the M.V. Act. It is contended further that the Tribunal erred in accepting the

disability at 70% and in holding that the claimant was totally disabled from carrying on and continuing his alleged avocation as cutting master. It is

also contended that the assessment of Rs. 3,00,000/- for loss of earnings for ten years and the award of Rs. 1,50,000/- for loss of earning power,

the award of Rs. 50,000/- for pain and suffering were erroneous. Hence, it is prayed to set aside the award passed by the Tribunal.

15. The highly competent counsel for the claimant has submitted that the claimant had sustained 70% disability and that two surgical operations had

been conducted on his spinal cord and steel plates with screws were fixed. Further, both the claimant's legs had become dysfunctional and his

abdominal nerves had become ruptured and as a result the claimant's kidneys had also been affected. The claimant is unable to control passing of

urine and therefore, the Tribunal had granted compensation appropriately to the claimant.

16. On considering 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, liability and quantum

of compensation. However, the award granted by the Tribunal under different heads are not appropriate. Therefore, this Court restructures the

compensation as follows:

i. Rs. 1,05,000/- is awarded towards disability,

ii. Rs. 3,377/- is awarded towards medical expenses,
iii. Rs. 15,000/- is awarded towards pain and suffering,
iv. Rs. 10,000/- is awarded towards transport expenses,
v. Rs. 10,000/- is awarded towards nutrition,
vi. Rs. 12,000/- is awarded towards attender charges,
vii. Rs. 15,000/- is awarded towards loss of earning during medical treatment period and convalescence period, and
viii. Rs. 1,35,000/- is awarded towards loss of amenities and loss of comfort since the claimant's spinal cord had been operated twice and the claimant's urinal system had been affected and both the legs of the claimant had been rendered senseless, as per the evidence of the claimant and doctor. Further, the claimant is aged only 22 years.

As such, this Court confirms the award passed by the Tribunal as the FIR had been registered against the driver of the vehicle and the said vehicle had been covered under a policy of insurance with the insurance company. The rate of interest remains unaltered.

17. This Court has already directed the appellant Insurance Company to deposit a further sum of Rs. 2,00,000/-, together with interest at the rate of 7.5% per annum, from the date of the petition, to the credit of M.C.O.P. No. 244 of 2004, on the file of the Motor Accident Claims Tribunal and Additional District and Sessions Court (Fast Track Court No. 3), Poonamallee.

18. Now, this Court directs the appellant Insurance Company to deposit the balance compensation amount, as per this Court's findings, with proportionate interest thereon, to the credit of M.C.O.P. No. 244 of 2004, on the file of the Motor Accident Claims Tribunal and Additional District and Sessions Court (Fast Track Court No. 3), Poonamallee, within a period of four weeks from the date of receipt of a copy of this Judgment.

19. After such a deposit having been made, it is open to the claimant to withdraw the entire compensation amount, as per this Court's findings, with accrued interest thereon, lying in the credit of M.C.O.P. No. 244 of 2004, on the file of the Motor Accident Claims Tribunal and Additional District and Sessions Court (Fast Track Court No. 3), Poonamallee, after filing a memo along with a copy of this Judgment. In the result, this civil

miscellaneous appeal is dismissed and the Judgment and decree dated 08.08.2007, made in M.C.O.P. No. 244 of 2004, on the file of the Motor

Accident Claims Tribunal and Additional District and Sessions Court (Fast Track Court No. 3), Poonamallee, is confirmed. Consequently,

connected miscellaneous petition is closed. No costs.