

(2013) 09 MAD CK 0279

In the Madras High Court

Case No : C.M.A. No's. 363 of 2003 and 2062 of 2002

New India Assurance Co. Ltd.

APPELLANT

Vs

Narayanan and Palani Chandran
Narayanan Vs New
India Assurance Co. Ltd. and Palani Chandran

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0279

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

Bench : Single Bench

Advocate : J. Chandran in C.M.A. No. 363 of 2003 and Mr. J. Mahalingam in C.M.A. No. 2062 of 2002, for the Appellant; J. Mahalingam for R1 in C.M.A. No. 363 of 2003 and Mr. J. Chandran for R2 in C.M.A. No. 2062 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The claimant and the Insurance Company in M.A.C.T.O.P. No. 593 of 1999, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, have preferred the above appeals against the judgment and decree dated 26.03.2002. The short facts of the case are as follows:

That on 04.06.1998, at about 11.00 p.m., the claimant was travelling as a pillion rider in a TVS Champ Motorcycle bearing registration No. TN07 A8827, ridden by one Pichairaj and when the vehicle was proceeding on Subbu Street and crossing L.B. Road and Subbu Street Junction, from west to east, the first respondent's van bearing registration TN02 B4595, which was coming south to north, on the left side of the road and driven by it's driver in a rash and negligent manner, had dashed against the motorcycle. As a result, the claimant had sustained grievous injuries including fracture of bone in his right leg and was admitted at Swaram Hospital, Chennai-20 and received treatment, as an inpatient from 04.06.1998 to 15.06.1998. Hence, the claimant had filed a claim petition in M.A.C.T.O.P. No. 593 of 1999, on the file of the Motor Accident Claims Tribunal, Small Causes

Court No. VI, Chennai, against the owner and insurer of the van bearing registration No. TN02 B4595, claiming a compensation of Rs. 2,00,000/-.

2. The second respondent Insurance Company had filed a counter statement and resisted the claim petition. They had stated that the first respondent's van was not covered under valid vehicular documents and was also not covered under a valid policy of insurance at the time of accident. Further, they had submitted that the driver of the vehicle did not have a valid driving licence to drive the van at the time of accident. The driver of the van drove it in a careful and cautious manner and that the accident was caused due to negligence of the motorcyclist, who had crossed the road, without following the traffic rules. They had further stated that the complaint regarding the accident had been lodged against the motorcyclist and the charge sheet had also been filed against him and no complaint had been lodged against the driver of the first respondent's van. Further, they had stated that the claim was bad for non-joinder of necessary parties namely the owner and insurer of the motorcycle bearing registration No. TN07 A8827. The averments made in the claim petition regarding age, income and occupation of the claimant, nature of injuries sustained, medical treatment expenses and disability were also not admitted and they had stated that the claim made by the claimant was excessive.

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

- i. Due to whose negligence had the accident occurred? and
- ii. What is the quantum of compensation, which the claimant is entitled to get?

4. In the same accident, another claim had been filed by the rider of the motorcycle in M.C.O.P. No. 594 of 1999 claiming compensation from the same respondents for the injuries sustained by him in the accident. On the request made by the counsels for their respective claimants, through a joint memo, a joint trial was conducted and common evidence was recorded.

5. The claimants in M.C.O.P. Nos. 593 and 594 of 1999 were examined as P.W. 1 and P.W. 2 respectively, one Dr. Saichandiran was examined as P.W. 3, one Venkatraman was examined as P.W. 4 and one V. Anand was examined as P.W. 5 and ten documents were marked as Exs. P1 to P10 namely discharge summary, medical bills, medical prescriptions, doctor's certificates, disability certificates and X-rays. On the respondents' side one witness was examined as R.W. 1 and two documents were marked as Exs. R1 and R2 namely FIR and charge sheet.

6. P.W. 1 and P.W. 2 had adduced evidence, which is corroborative of the statements made in their claim regarding manner of accident.

7. R.W. 1 had adduced evidence that FIR and charge sheet had been filed against P.W. 2 for rash and negligent driving and as such the second respondent cannot be held liable to pay compensation and in support of his evidence, he had marked Exs. R1 and R2.

8. The Tribunal had observed that the complaint regarding the accident had neither been given by P.W. 1 nor by P.W. 2. Hence, the Tribunal, on scrutiny of Exs. R1 and R2 and on scrutiny of oral and documentary evidence held that the accident had occurred by the rash and negligent riding of the motorcycle by P.W. 2 and that the van driver had not been rash and negligent in his driving of the van. The Tribunal had held that the second respondent was liable to pay compensation to the claimant.

9. P.W. 1 had further adduced evidence that due to the accident his right thigh bone had been fractured and that he had received treatment at Swaram Hospital from 05.06.1998 to 15.06.1998 and that a surgical operation was conducted and steel plates with screws were fixed in the operated area.

10. P.W. 3 Doctor had adduced evidence that due to the accident, the claimant had sustained fracture of bone in his right thigh and that a surgery was conducted and a steel plate with screws were fixed in the fractured area. He had certified that the claimant had sustained 40% disability and in support of his evidence he had marked Exs. P7 and P8.

11. The Tribunal, on scrutiny of Ex. P2 medical bills amounting to Rs. 42,000/- had observed that the amount of the bills were not relevant and hence awarded a sum of Rs. 12,000/- only towards medical expenses, Rs. 500/- was awarded under each heads of nutrition and transport expenses, Rs. 1,000/- was awarded for pain and suffering, Rs. 35,000/- was awarded for disability, Rs. 1,200/- was awarded for loss of income during medical treatment period and convalescence period and Rs. 2,000/- was awarded for loss of earning capacity. In total, the Tribunal had awarded a sum of Rs. 47,200/- as compensation to the claimant and directed the second respondent, on behalf of the first respondent, to pay the said sum together with interest at the rate of 9% per annum, from the date of filing of the claim petition till the date of payment of compensation with costs, within a period of two months from the date of it's order.

12. Aggrieved by the Award passed by the Tribunal, the Insurance Company has preferred the civil miscellaneous appeal in C.M.A. No. 363 of 2003 and not being satisfied with the Award passed by the Tribunal, the claimant has preferred a civil miscellaneous appeal in C.M.A. No. 2062 of 2002 for enhanced compensation.

13. The learned counsel appearing for the Insurance Company has contended in the appeal that the Tribunal had erred in fastening the liability on the appellant, after having found that the accident had occurred only due to the negligent driving of the rider of the motorcycle namely P.W. 2 Pichairaj. It is contended further that the Tribunal had failed to implead the owner and insurer of the motorcycle bearing registration No. TN07 A3827, whose rider was found to be guilty and whose act of negligence resulted in causing the accident.

14. Further, it is contended that the Tribunal had failed to see that FIR and charge sheet were filed only against the rider of the motorcycle (P.W. 2) and in the absence of any evidence let in by the claimant to prove that the driver of the

insured van led it any way and contributed by his own act of negligence, erred in law by holding that the appellant is liable to pay the compensation awarded.

15. It is contended further that the Tribunal had erred in law in granting compensation of Rs. 47,200/- after having found that the documents produced by P.W. 1 produced by P.W. 1 appeared to have been fabricated and had been purposely produced to obtain higher compensation. Hence, the learned counsel has prayed to set aside the award passed by the Tribunal.

16. The learned counsel appearing for the claimant has submitted that the Tribunal had failed to consider the evidence of P.W. 1 who had clearly deposed that he had sustained femur fracture of right leg, deep cut injuries over the right leg knee, facial injuries and other serious multiple injuries all over the body and in proof of them, he had marked Ex. P1 discharge summary issued at Swaram Hospital, Chennai.

17. Further, the learned counsel has contended that the Tribunal had failed to appreciate the evidence of P.W. 2 Dr. Saichandiran, ortho-surgeon, who had clearly deposed that due to malunion of bones there were restriction of movements and that the claimant was unable to do his normal day-to-day activities. Further, he had certified that the disability of the claimant was 40% and as such the Tribunal should have awarded a sum of Rs. 2,16,000/- under the head of loss of earning power, after taking the income of the claimant as Rs. 2,500/- per month as per the evidence of P.W. 4, who was a co-worker of the claimant (2,500 X 12 X 18 X 40%).

18. He has further contended that the award granted under the head of pain and suffering, transport to hospital, extra-nourishment and medical expenses were meagre. Further, the Tribunal had failed to grant compensation for damage to clothes and articles and for loss of amenities and loss of comfort. Therefore, he prayed for grant of additional compensation of Rs. 1,52,800/-.

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 is of the view that in the said accident, the pillion rider as well as the rider of the motorcycle had sustained injuries and initially FIR had been registered against the driver of the van. However, he was acquitted from the criminal proceedings. In order to determine the manner of accident, rough sketch ought to have been marked. But, that was not marked before the Trial Court in the instant case. Therefore, this Court is not inclined to interfere with the findings of the Tribunal regarding liability. Therefore, these appeals filed by the Insurance Company as well as the claimant do not have enough force to allow it and they are liable to be dismissed.

20. This Court directs the Insurance Company to comply with the Order, within a period of four weeks from the date of receipt of a copy of this Order, by way of depositing the compensation amount, before the Tribunal, to the credit of M.A.C.T.O.P. No. 593 of 1999, on the file of the Motor Accident Claims Tribunal,

Small Causes Court No. VI, Chennai, subject to deduction of earlier deposits, if any made by the Insurance Company.

21. After such a deposit having been made, it is open to the claimant to withdraw the entire compensation amount, lying in the credit of M.A.C.T.O.P. No. 593 of 1999, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, after filing a memo along with a copy of this Order. In the result, these civil miscellaneous appeals are dismissed and the Judgment and decree dated 26.03.2002, made in M.A.C.T.O.P. No. 593 of 1999, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.