
(2004) 02 MAD CK 0007

In the Madras High Court

Case No : C.M.A. No. 522 of 1997 and Cross-objection No. 81 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

R. Loganathan and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Citation : (2005) ACJ 1393 : (2004) 2 MLJ 202

Hon'ble Judges : S.R. Singharavelu, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Padmanabhan, for C. Ramesh Babu, for the Appellant; P. Valliappan, for Sarvabhuman Associates, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam , J.—Aggrieved by the award of Motor Accidents Claims Tribunal (Sub-Court), Karur dated 23.12.1996, made in

M.C.O.P. No. 84 of 1993, New India Assurance Co. Ltd., Karur has filed the above appeal. Respondent No. 1 herein/ claimant has filed Cross-

objection No. 81 of 1997 praying for the disallowed claim of Rs. 1,00,000. Since both the appeal and cross-objection arise out of the very same

claim petition, they are being disposed of by the following common judgment.

2. In respect of grievous injuries sustained in a motor accident that took place on 5.11.1992, the claimant/respondent No. 1 herein prayed for a

compensation of Rs. 2,00,000. Before the Claims Tribunal, the claimant got himself examined as PW 1 and Dr. Angamuthu as PW 2, besides

marking Exhs. P-1 to P-19. On side of the owner and insurer, no evidence was let in and no document was produced before it. The Tribunal on

appreciation of the materials placed before it, after holding that the accident as

caused due to negligence of the driver of the vehicle in question, passed an award for Rs. 32,520. Questioning the same, the insurance company has filed the present appeal and the claimant has also filed the above cross-objection seeking higher compensation.

3. Learned counsel appearing for the appellant insurance company by pointing out that as the complaint was made to the police after a delay of 53

days from the date of the accident, the claimant has miserably failed to establish the fact that the accident was caused due to negligence of the

driver of the vehicle. He also contends that the said aspect was not properly considered by the Tribunal. With reference to the negligence, the

injured person was examined as PW 1. According to him, on 5.11.1992, after meeting his friend in his house at Chinna Dharapuram and while

proceeding to the bus stand on the left side of the road, at about 4 p.m. a motor cycle which was coming from the opposite side, knocked him

down, thereby he sustained various injuries. He further deposed that he sustained fracture on the left leg. According to him, immediately after the

accident, the motor cycle TCY 5787 sped away from the spot and he was taken to hospital. He further deposed that he had treatment at Novelty

Hospital, Karur for a period of one week as inpatient and thereafter, admitted in Senthil Nursing Home, Madurai. It is further seen that he had

taken treatment for a period of one and a half months as in-patient in the hospital. Admittedly, either immediately after the accident or during the

said period, he did not complain the incident to the police. It is true that Exh. P-1 complaint was made after a period of 53 days. By pointing out

that the said aspect and the contents of the wound certificate, Exh. P-2, with reference to the date of the accident, learned counsel for appellant

argued that the contrary conclusion arrived at by the Tribunal cannot be accepted. It is true that there was a delay of 53 days in making Exh. P-1

complaint to the police. However, it is seen from the evidence of PW 1 and other medical documents issued by the hospital authorities that initially

the claimant had treatment at Karur for a period of one week and thereafter at Madurai for a period of one and half months as an inpatient. It is

further seen that in both the places, he had taken treatment in private hospitals. It is not clear the reason for not intimating the accident to the police

concerned. Merely because the injured did not complain to the police in time, it

cannot be argued/presumed that no accident at all occurred. As

observed earlier, the complaint, Exh. P-1, discloses the details regarding the manner of the accident. Even in Exh. P-2 wound certificate, there is a

specific reference about the accident with the motor cycle and the injuries sustained due to the same. Exh. P-5 certificate issued by Judicial

Magistrate No. 1, Karur also supports the case pleaded by PW 1 that he sustained injuries in the accident that took place on 5.11.1992. Taking

note of all these aspects, we are in agreement with the conclusion arrived at by the Tribunal and reject the contra argument made by learned

counsel for the appellant. There is no dispute that at the time of the accident, there was valid insurance with appellant insurance company and the

same was not disputed even before us.

4. Though the learned counsel appearing for the appellant has not raised serious arguments with reference to the quantum arrived at by the Claims

Tribunal, since the respondent No. 1 claimant has filed cross-objection, we have to consider the details furnished before the Tribunal. It is relevant

to note that learned counsel for appellant insurance company raised an objection that the cross-objection filed by the respondent No. 1 claimant is

not maintainable and the same is liable to be dismissed. We are unable to appreciate and accept the contention for the following reasons. Before

considering his objection, it is relevant to refer the grounds of memorandum of appeal filed before this court. In all the grounds (1 to 7) appellant

insurance company has not only raised objection to the fact that the motor cycle was not involved in the accident, but also questioned the manner

of the accident and the quantum of compensation arrived. If the appeal filed by insurer on the ground of violation of either policy condition or

statutory provision, the objection of the learned counsel for the appellant would be sustainable. In the light of the various grounds raised and of the

fact that learned counsel for the appellant himself argued at length questioning the finding regarding the negligence, we are unable to sustain the said

objection and hold that the cross-objection filed by the respondent No. 1 is maintainable.

5. Now let us consider whether the cross-objector has made out a case for enhancement. As said earlier, in respect of the grievous injuries the

claimant initially prayed for a compensation of Rs. 2,00,000. The Tribunal has

granted a compensation of Rs. 32,520. In cross-appeal the amount has been restricted to Rs. 1,00,000. In his evidence as PW 1, the claimant has stated that he had spent about Rs. 50,000 towards medical expenses and even after treatment he is unable to do the same work as he was doing previously and it is difficult to ride two-wheelers like cycle and motor cycle. It is his case that at the time of the accident, he was getting an income of Rs. 3,000 as a partner in a textile firm. Apart from his evidence, Dr. Angamuthu was examined as PW 2. He deposed before the court that after verifying the wound certificate and other documents issued by the hospital authorities, he assessed the disability on PW 1. According to him he sustained disability to the extent of 20 per cent which is partial and permanent. He issued a disability certificate which has been marked as Exh. P-18 and X-ray as Exh. P-19. For the expenses spent during treatment the claimant has produced medical bills/ receipts Exhs. P-6 to P-8. Based on the same, the Tribunal has granted a sum of Rs. 15,520. In respect of pain and suffering, the Tribunal has granted Rs. 10,000. Apart from this, the Tribunal has granted Rs. 7,000 towards expenses for nutritious diet, loss of income and transport charges, altogether he was granted Rs. 35,520. The learned counsel for the cross-objector by pointing out the evidence of PW 1, PW 2 and disability certificate, Exh. P-18, would contend that the Tribunal ought to have granted separate amount for permanent disability. In the light of the fact that the doctor has assessed his disability to the extent of 20 per cent, we are of the view that the claimant is entitled to a sum of Rs. 20,000 towards the same.

6. Coming to the claim towards transport charges, the claimant has produced various receipts and trip sheets, etc., from the transport operator. Those receipts have been marked as Exh. P-9 series. Claims Tribunal due to non-examination of the person, namely, the transport operator or anyone who had issued those certificates/ receipts refused to accept the claim under transport charges. In the light of the said conclusion, we have perused all those receipts/trip sheets. Considering the fact that the claimant had continuous treatment for more than one month and sustained fracture in the accident, we are of the view that there is no reason to reject the documents produced in the form of Exh. P-9. Taking note of all these aspects, particularly the length of the period of treatment as an in-patient,

we grant Rs. 7,500 towards transport charges. In the absence of specific evidence regarding other aspects, particularly loss of income, etc., we are not inclined to grant any more than that granted by the Claims Tribunal. In addition to the amount awarded by the Tribunal, the claimant is entitled to a further sum of Rs. 27,500 as compensation. The enhanced amount carries interest at the rate of 9 per cent from the date of petition till date of deposit and the same shall be paid by the insurance company within a period of eight weeks from the date of receipt of a copy of this order.

7. Net result, Civil Miscellaneous Appeal No. 522 of 1997 is dismissed. Cross-objection No. 81 of 1997 is partly allowed. No costs.