

(2013) 04 MAD CK 0311

In the Madras High Court

Case No : C.M.A. No. 2012 of 2007 & M.P. No. 1 of 2007

New India Assurance Company Limited

APPELLANT

Vs

B. Govindaraj

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2014) 1 TNMAC 734

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

Bench : Single Bench

Advocate : K. Padmanabhan, Advocate, for the Appellant; Mr. V. Nicholas, Advocate, for the Respondent No. 1; Ex parte, for the Respondent No. 2 and 3

Final Decision : Disposed Off

Judgement

Mr. C.S. Karnan, J.—The appellant / third respondent has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.1 of 2006, on the file of Motor Accidents claims Tribunal, Principal Subordinate Judge, Coimbatore.

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

The petitioner has filed the claim in M.C.O.P.No.1 of 2006, claiming compensation of a sum of Rs.3,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident. It was submitted that on 09.11.2004, at about 12.30 p.m., when the petitioner was riding the motorcycle bearing registration No.TN-38-V-4740, along with his co-brother Venugopal as pillion rider, from Ganapathi to Saravanampatti, and when the vehicle was proceeding on the Coimbatore Sakthi Road, near Amman Nagar temple, the maruthi car bearing registration No.TN-09-E-0436, driven in a rash and negligent manner dashed against the motorcycle. As a result, the petitioner and his brother were thrown out of the vehicle and sustained injuries. The petitioner sustained fracture of his 4th and 5th metacarpal bones in his right hand and also sustained fracture of his 2nd, 3rd, 4th and 5th metacarpal bones in his right leg and also sustained other

injuries. He was admitted at K.G.Hospital and received treatment as an inpatient till 15.04.2004. At the time of accident, the petitioner was aged 38 years and was working at Ramanarayanan Mill and earning Rs.5,500/- per month. Due to disability sustained in the accident, he is not able to do his work as before. Hence, the petitioner has filed the claim against the respondents 1 to 5. The respondents 1 to 3 are the driver, owner and insurer of the car and the respondents 4 and 5 are the owner and insurer of the motorcycle.

3. The third respondent, in his counter has denied the averments in the claim that the accident was caused by the rash and negligent driving of the car by the first respondent. It was admitted that the second respondent's car was insured with this respondent at the time of accident. The averments in the claim regarding age, income, occupation, nature of injuries sustained, medical treatment taken, medical expenses, disability and loss of earning capacity was not admitted. It was submitted that the claim was excessive.

4. The fifth respondent, in his counter has submitted that the accident had been caused only due to the negligence of the first respondent. It was submitted that in the criminal case filed against the first respondent, the first respondent had admitted his guilt and paid the fine, and as such, only the respondents 1 to 3 are liable to pay compensation. The averments in the claim regarding age, income and occupation of petitioner was not admitted.

5. In the same accident, another claim has been filed by the pillion rider of the motorcycle, viz., Venugopal, in M.C.O.P.No.1260 of 2005, claiming compensation from the same respondents for the injuries sustained by him. Hence, a joint trial was conducted and common evidence was recorded. The petitioner in M.C.O.P.No.1 of 2006 was examined as P.W.1, the petitioner in M.C.O.P.No.1260 of 2005 was examined as P.W.2, one Dr. Sekar was examined as P.W.3 and one Ravishankar was examined as P.W.4 and 33 documents were marked as Exs.P1 to P33, viz., Ex.P1-copy of F.I.R., Exs.P2 and P3-Motor Vehicle Inspector's Reports, Ex.P4-copy of charge sheet, Ex.P5-copy of criminal Court judgment, Ex.P6-copy of wound certificate, Ex.P7-discharge summary, Ex.P8-X-rays, Ex.P9-discharge note, Ex.P10-medical receipts, Ex.P11-copy of driving licence, Ex.P12-copy of family card, Ex.P13-salary slip, Ex.P14-wound certificate, Exs.P15 and P16-discharge summary, Ex.P17-O.P.chit, Ex.P8-medical treatment records, Exs.P19-ECG report, Ex.P20-X-ray photo, Ex.P21-medical receipts, Ex.P22-copy of partition deed, Ex.P23-copy of family card, Ex.P24-X-rays, Ex.P25-X-ray report, Ex.P26-medical certificate, Ex.P27-disability certificate, Ex.P28-X-rays, Ex.P29-X-ray report, Ex.P30-medical evaluation, Ex.P31-disability certificate, Ex.P32-salary slip, Ex.P33-occupational details of petitioner. On the respondent's side, no witness, no documents.

6. The Motor Accidents Claims Tribunal had framed two issues for consideration in the case, viz.,

"(i) Was the accident caused by the rash and negligent driving of the vehicle by

the first respondent?

(ii) Is the petitioner entitled to get compensation? If so, what is the quantum?"

7. P.W.1 had adduced evidence that on 09.11.2004, when he was proceeding on his motorcycle bearing registration No.TN-38-V-4740, along with one Venugopal as pillion rider, on the Sakthi Road, the maruthi car bearing registration No.TN-09-E-0436, coming in the opposite direction and driven in a rash and negligent manner, dashed against his motorcycle. He deposed that he had sustained fracture of bone in his right arm and that three of his fingers in his right hand was severed. He deposed that he had also sustained fracture of bone in three of his right toes and that he was admitted at K.G.Hospital, wherein he received treatment till 15.11.2004. He deposed that a surgical operation was conducted on his right hand and plate was implanted in the fractured area and in support of his evidence, he had marked Exs.P1 to P13. P.W.2 had also adduced evidence which is corroborative of the evidence of P.W.1 regarding manner of accident.

8. On scrutiny of Exs.P1 and P4, it is seen that the F.I.R. has been registered against the driver of the car and the police after investigation has filed the charge sheet against him. On scrutiny of Ex.P5, it is seen that the driver of the car had been found guilty and punished by the criminal Court. Hence, the Tribunal, on scrutiny of oral and documentary evidence held that the accident had been caused by the rash and negligent driving of the car by the first respondent.

9. P.W.1 had further adduced evidence that due to the accident, he had sustained fracture of bone in his right arm and that three of his fingers in his right hand had been severed and three of his right leg toes had been fractured and that he received treatment from 09.11.2004 to 15.11.2004, as an inpatient and that a surgery was conducted and steel plate was implanted in the operated area. He deposed that he had spent a sum of Rs.75,000/- towards medical expenses. He deposed that he was aged 38 years at the time of accident and that he was working as a permanent employee at Sri Ramanarayanan Mills, Perinaickenpalayam and earning Rs.5,500/- per month. He deposed that he is not able to use his right hand to do any work.

10. P.W.3, Dr. Sekar had adduced evidence that he had examined the petitioner on 17.06.2006, and scrutinized his medical records. He deposed that due to the accident, the petitioner had sustained fracture of ulnar bone in his right arm and that his right hand joint had been displaced. He deposed that the second, third, fourth and fifth metacarpal bones in his right foot had been fractured and that a surgical operation was conducted on his right arm, to set right the fractured ulnar bone and steel plate was fixed in the operated rejoin. He deposed that the movements of the petitioner's wrist joint, fingers of right hand and right ankle and toes had been reduced and that the petitioner would experience difficulty in climbing stairs and in lifting heavy weights and certified that the petitioner had

sustained 20% disability and in support of his evidence, he had marked Exs.P26 and P27.

11. P.W.4, Ravishankar, the employer of the petitioner had adduced evidence that the petitioner was made a permanent employee on 01.04.2001 and that he was paid a monthly salary of Rs.5,000/- and in support of his evidence, he had marked Exs.P13 and P32. He deposed that the petitioner did not attend the work for 196 days after the accident and that as he was not able to do his work due to the disability sustained by him, he had tendered his resignation on 24.10.2005 and in support of his evidence, he had marked Ex.P33.

12. The Tribunal, on scrutiny of oral and documentary evidence awarded a sum of Rs.20,000/- for disability; Rs.1,20,000/- was awarded for pain and suffering; Rs.5,000/- for mental stress and agony; Rs.41,000/- was awarded for loss of income during medical treatment and convalescence period; Rs.26,980/- for medical expenses; Rs.500/- for nutrition; Rs.500/- for transport. In total, the Tribunal awarded a sum of Rs.2,13,980/- as compensation to the petitioner and directed the respondents 1 to 3 to jointly and severally pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation with costs, within two months from the date of its order.

13. Aggrieved by the award passed by the Tribunal, the third respondent / The New India Assurance Company Limited, Annur has preferred the present appeal.

14. The learned counsel for the appellant has contended in his appeal that the Tribunal erred in awarding a sum of Rs.1,20,000/- for three grievous injuries and one simple injury when it has already awarded a sum of Rs.5,000/- under the head of mental agony, which includes pain and suffering and a sum of Rs.20,000/- for disability. It was contended that the first respondent herein was an inpatient for 7 days as per wound certificate issued by K.G.Hospital, (Ex.P6) and as such, the Tribunal ought not to have awarded a sum of Rs.41,000/- for loss of income. It was also contended that the award of Rs.26,980/- for medical expenses was also erroneous as the claimant had not produced necessary prescriptions issued by the medical practitioners. Hence, it was prayed to scale down the compensation awarded.

15. The very competent counsel, Mr.V.Nicholas for the claimant submits that the claimant had sustained multiple bone fracture injuries on his right hand and three of his fingers were fractured. Besides, he had sustained fracture of bone in his right shoulder. A surgical operation was conducted. After the accident, he had resigned his job. Further, he had spent a sum of Rs.26,980/- towards medical expenses and the doctor had assessed the disability at 20%. The F.I.R. has been registered against the driver of the maruthi car and the said car had been insured with the insurance company. Therefore, the impugned award is found suitable for execution.

16. On considering the factual position 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 and liability. However, the quantum of compensation is on the higher side. Therefore, this Court reassesses the compensation as follows:-

Rs.27,000/- towards medical expense; Rs.40,000/- for disability; Rs.15,000/- towards pain and suffering; Rs.10,000/- towards transport; Rs.10,000/- towards nutrition; Rs.15,000/- towards attender charges; Rs.25,000/- towards loss of earning during medical treatment period and Rs.50,000/- towards loss of amenities and loss of comfort. In total, this court awards Rs.1,92,000/- as compensation with interest the rate of 7.5% per annum. As such, this Court scales down the compensation from Rs.2,13,980/- to Rs.1,92,000/-.

17. This Court had already directed the appellant to deposit a sum of Rs.1,50,000/-. Now, this Court directs the appellant to deposit the balance compensation amount, with added interest thereon, as per this Court's modified order, within a period of four weeks from the date of receipt of a copy of this order. After such deposit having been made, it is open to the claimant to withdraw the entire modified compensation amount, with interest thereon, lying in the credit of M.C.O.P.No.1 of 2006, on the file of Motor Accidents claims Tribunal, Principal Subordinate Judge, Coimbatore, after filing a Memo, along with a copy of this order.

18. In the result, the above appeal is partly allowed. Consequently, the order and decree passed in M.C.O.P.No.1 of 2006, on the file of Motor Accidents claims Tribunal, Principal Subordinate Judge, Coimbatore, dated 20.07.2006 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.