

(2011) 04 MAD CK 0464
In the Madras High Court
Case No : C.M.A. No. 1285 of 2007

New India Assurance Company Limited	APPELLANT
Vs	
M. Venugopal and Perkans	RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0464

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

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; M.C. Balan, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/New India Assurance Company Limited, against the judgment and decree dated 12.06.2006 made in M.C.O.P. No. 4910 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge-Fast Track Court No. II, Chennai.

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

On 22.05.2001, at about 7.30 p.m., when the Petitioner was riding his cycle from west to east in Poonamallee High Road, Chennai along the left end of the road, he halted the cycle for a while to give way to a passing auto rickshaw, a motorcycle bearing Registration No. TN-01-A-9784, coming from behind him in a rash and negligent manner dashed against the Petitioner causing grievous injuries. Hence, the Petitioner has claimed a compensation of Rs. 6,00,000/- from the Respondents. The first Respondent is the owner of the said motorcycle and the second Respondent is its insurer.

3. The second Respondent, the New India Assurance Company Limited, in his counter has resisted the claim denying the averments in the claim regarding manner of accident. It has been stated that the accident was caused due to negligence of the Petitioner. The Respondent has also denied the averments in

the claim regarding age, occupation and income of Petitioner. The claim was also excessive.

4. After hearing the averments of both parties, the Tribunal had framed three issues for consideration, namely;

(i) Whether the accident was caused due to the rash and negligent driving of the first Respondent?

(ii) Whether the accident had taken place due to the rash and negligent act of the Petitioner?

(iii) What is the quantum of compensation which the Petitioner is entitled to get?

5. On the Petitioner's side, two witnesses were examined as PW1 and PW2 and twelve documents were marked as Exs.P1 to P12 viz., Discharge summary, medical bills for Rs. 1,04,010/-, certificate issued by Bone and Joint clinic, Anna Nagar, Chennai, Medical bills for Rs. 1628.85/-, receipt bill for Rs. 270/-, OP. Chit issued by Bone and Joint Clinic, Photo and negative, receipt, carbon copy of FIR, Rough Sketch, disability Certificate issued by PW2, X-ray. No oral and documentary evidence were let in on the side of the second Respondent.

6. The Petitioner was examined as PW1. PW1 adduced evidence that was in consonance with the version of accident stated in his claim. He further adduced evidence that immediately after the accident, he was brought to the Pallava Hospital for treatment and then was shifted to the Government Hospital, Royapettah Hospital; thereafter, he was admitted to the Bone and Joint Clinic, Anna Nagar for treatment; that he was treated as inpatient from 23.05.2001 to 21.06.2001. He further adduced evidence that after the accident, he is not able to do any work. The learned Counsel for the second Respondent had cross examined PW1. Even after cross examination, the credibility and veracity of evidence of PW1 has not been shattered. The Tribunal after considering the F.I.R., and other documentary evidence held that the accident had been caused due to the rash and negligent driving of the first Respondent.

7. PW1, has adduced evidence that due to the accident, he sustained fracture in his right leg and left shoulder; that he was admitted in the Bone and Joint Clinic, Anna Nagar for treatment. Ex.P2 is the discharge summary, Ex.P3 is the certificate issued by the Bone and Joint Clinic and Ex.P6 is the O.P. Chit issued by the clinic. On scrutiny of these, it is seen that the Petitioner had sustained Grade-II Compound fracture of right tibia and fibula and fracture of glenoid of his left shoulder. PW2, the doctor who had assessed the disability of PW1, has adduced evidence that on 24.10.2005, he had examined the Petitioner. He stated that he had found both bones of his right knee were mal-united; that his right ankle movements were reduced; that his left shoulder bone is also mal-united; that the percentage of disability is 65% and in support of his evidence had marked Ex.P11, the disability certificate and ex.P12, the X-ray. The photograph and negative of right leg of Petitioner is filed as Ex.P7.

8. The Tribunal, after considering the evidence of PW1, PW2, Ex.P7, Ex.P11 and Ex.P12 and after scrutiny of the other documentary evidence awarded a compensation of Rs. 2,61,078/- together with interest at the rate of 7.5% per annum from the date of petition till the date of payment of compensation. The breakup of compensation is as follows:

For pain and suffering .. Rs. 10,000/-

For medical expenses .. Rs. 1,05,898/-

For photography .. Rs. 180/-

Transport charges .. Rs. 5,000/-

Compensation for continuing disability in his right leg .. Rs. 1,00,000/-

For loss of earning power .. Rs. 10,000/-

For grievous injuries sustained by Petitioner .. Rs. 30,000/-

9. Aggrieved by the said award, the second Respondent/New India Assurance Company Limited has filed the present appeal to scale down the compensation awarded by the Tribunal.

10. The learned Counsel for the Appellant has argued that the Tribunal had failed to note that the doctor who had assessed the disability of Petitioner was not an expert in any school of medicine and his assessment was not based on any approval of scientific formula such as Schedule I of the W.C. Act or Guideline of Central Government Gazette Notification for assessing handicapped persons. It was also pointed out that the Tribunal had erred in awarding Rs. 10,000/- towards loss of earning capacity, when the nature of the alleged occupation had no relevance to alleged permanent disability suffered by the Petitioner. It was also pointed out that the other awards granted under various heads are on the higher side. The Tribunal had also awarded Rs. 30,000/- for grievous injuries, which is not pertinent in this case.

11. The learned Counsel for the claimant argued that the claimant's age was 37 years. He was flower merchant at Koyambedu market and was earning Rs. 175/- per day. The claimant had sustained bone fracture on his right leg and the bone had been shattered into eight pieces. A surgical operation was conducted and a steel rod with screws were fixed in the operated area. Subsequently, bone grafting had been done in the hip. The claimant had spent a sum of Rs. 1,04,010/- towards medical expenses. The doctor assessed the disability as 65%. The claimant had undergone treatment at various hospitals. The compensation amount is not on the higher side considering medical bills, disability, transport, nutrition etc.,

12. 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 is of the considered opinion that the quantum of

compensation which had been awarded by the Tribunal is not on the higher side. However, this Court restructures the compensation as follows:

Rs. 1,05,898/- for medical expenses;

Rs. 1,30,000/- for loss of income due to disability;

Rs. 15,000/- for pain and suffering;

Rs. 4,000/- for transport;

Rs. 3,000/- towards nutrition;

Rs. 3,000/- towards attender charges;

Rs. 180/- towards photography.

13. Therefore, this Court confirms the learned Tribunal's award, as it is found to be fair and justifiable in the facts and circumstances of the instant case.

14. On 18.06.2007, this Court imposed a condition on the Appellant/Insurance company to deposit the entire compensation amount with interest. Now, it is open to the claimant to withdraw the entire compensation amount lying the credit of M.C.O.P. No. 4910 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge - Fast Track Court No. II, Chennai, after filing a Memo along with this order.

15. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 4910 of 2001, dated 12.06.2006 on the file of Additional District and Sessions Judge - Fast Track Court No. II, Chennai is confirmed. There is no order as to costs.