

(2013) 09 MAD CK 0086
In the Madras High Court
Case No : C.M.A. No. 1087 of 2006

New India Assurance Company Limited	APPELLANT
Vs	
Palani, Muthuswamy and M/s. Sekar Cements	RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0086

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

Bench : Single Bench

Advocate : J. Michael Visuvasam, for the Appellant; R. Subramanian for R-1, R-2 and R-3 (Ex-party), 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 passed in M.C.O.P.

No. 752 of 2001, on the file of Motor Accidents Claims Tribunal cum Additional District Court, Fast Track Court-V, Coimbatore at Tirupur. The

short facts of the case are as follows:-

The petitioner has filed the claim in M.C.O.P. No. 752 of 2001, claiming compensation of a sum of Rs. 2,00,000/- from the respondents for the

injuries sustained by him in a motor vehicle accident. It was submitted that on 29.04.2001, at about 08.30 p.m., when the petitioner was travelling

in the Bajaj Tempo bearing registration No. TN-72-X-4576, as a load man and while the Bajaj tempo was proceeding on the Tirupur to

Bangalore Road, from south to north and when it was near Irangadu, the driver of the tempo drove it in a rash and negligent manner, as a result of

which, the tempo capsized. As a result, the petitioner sustained fracture injuries.

At the time of accident, the petitioner was working as a load man and earning Rs. 3,000/- per month. Due to disability sustained by him, he is not able to do his work as before. Hence, the petitioner has filed the claim against the respondents 1 to 3, who are the driver, owner and insurer of the bajaj tempo bearing registration No. TN-72-X-4576.

2. The third respondent, in his counter has submitted that the bajaj tempo bearing registration No. TN-72-X-4576 is a three wheeler auto and is a goods vehicle. Apart from the driver, the petitioner along with some other persons travelled in the tempo as fare paid passengers, which is clear violation of the policy and permit. It was submitted that the accident happened only due to overloading of the tempo and as such, the third respondent is not liable to pay any compensation. The averments in the claim regarding age, income, occupation, nature of injuries sustained, period of treatment undergone and disability was also not admitted. It was submitted that the claim was excessive.

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

(i) Due to whose negligence was the accident caused?

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

4. On the petitioner's side, three witnesses were examined and five documents were marked as Exs. P1 to P5, viz., Ex. P1-copy of F.I.R., Ex.

P2-copy of accident register, Ex. P3-medical treatment records, Ex. P4-disability certificate and Ex. P5-X-rays. On the respondent's side, one

witness was examined and one document, viz., copy of policy was marked as Ex. R1.

5. P.W.1 the petitioner had adduced evidence which is corroborative of the statements made in the claim regarding manner of accident and in

support of his evidence, he had marked Exs. P1 to P3. On scrutiny of Ex. P1, it is seen that the complaint regarding the accident had been given

by one Mariammal. It has been stated in the F.I.R. that on the date of occurrence of accident, when the said mariammal, was travelling along with

one Kaliammal, Veliammal and the petitioner in the second respondent's Bajaj tempo van, the driver of the tempo drove it in a high speed and in a

rash and negligent manner and on seeing a cyclist, coming in the opposite

direction had suddenly applied brakes, as a result of which, the van had capsized and caused the accident.

6. R.W.1, Thiru. Chinnappan, the Administrative Officer of the third respondent's firm had adduced evidence that the petitioner and some others had travelled as passengers in the second respondent's goods vehicle and as such, the conditions of policy of insurance had been violated and hence, the third respondent is not liable to pay any compensation. In support of his evidence, he had marked Ex. R1, copy of insurance policy.

7. The Tribunal, on scrutiny of evidence of P.W.1 and Ex. p1 and on observing that no oral documentary evidence had been let in on the side of the respondents to prove that the first respondent had not been rash and negligent in his driving, held that the accident had been caused by the rash and negligent driving of the vehicle by the first respondent.

8. On scrutiny of Ex. P2, copy of accident register, it is seen that the petitioner had sustained grievous injury. On scrutiny of Ex. P3, it is seen that the petitioner had received treatment at Coimbatore Medical College Hospital from 29.04.2001 to 06.06.2001 and that a surgery was conducted on 06.06.2001. P.W.2, Dr. Senthilkumar had adduced evidence that he had examined the petitioner and found that due to the accident, the petitioner had sustained fracture of bone in his left hand middle finger, ring finger and small finger and that the crushed flesh had been removed through surgery. He deposed that the F3, F4 and F5 fingers of his left hand had been severed and as a result, he would not be able to use his left hand to grasp or lift materials and that he would not be able to work as a load man. He deposed that the disability sustained by petitioner due to loss of his fingers was 10% and that the disability sustained due to loss of strength and reduced movements of his +2 finger in left hand was 14% and that the disability sustained due to his fingers being bent was 6%. He certified that the petitioner had sustained 30% disability and in support of his evidence, he had marked Exs. P4 and P5.

9. P.W.3, Thirumal had adduced evidence that the petitioner was working as a load man and earning Rs. 5,000/- per month. However, the

Tribunal, on observing that the petitioner had stated that he was earning Rs. 3,000/- per month, opined that P.W.3 had intimated the salary earned

by petitioner since he was interested in his welfare. The Tribunal on scrutiny of

Ex. p2, observed that the petitioner was aged 45 years. The Tribunal, on adopting a multiplier of "11" and on taking the notional income of the petitioner as Rs. 2,500/- per month, and on holding that the disability sustained by petitioner was 25%, awarded a sum of Rs. 82,500/- as compensation under the head of "loss of income" (Rs. 2,500/- x 12 x 11 x 25/100); Rs. 10,000/- was awarded for pain and suffering and Rs. 5,000/- was awarded for nutrition; Rs. 5,000/- was awarded for loss of income during medical treatment period. In total, the Tribunal awarded a sum of Rs. 1,02,500/- as compensation to the petitioner and directed the third respondent, on behalf of the first and second respondents, to pay the said sum together with interest at the rate of 9% per annum from the date of filing the petition till date of payment of compensation, with costs, within one month from the date of its order.

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

11. The learned counsel for the appellant has contended in his appeal that the Tribunal failed to note that Ex. P1, F.I.R. lodged by one of the victims is contrary to the pleading found in the claim petition that the victim was working as a load man. It was contended that the Tribunal ought to have come to a conclusion that the victim had travelled as a gratuitous passenger in the goods vehicle and ought to have dismissed the claim petition. It was contended that the Tribunal failed to consider the evidence of R.W.1, who had deposed that by allowing the claimant to travel as a gratuitous passenger in the goods vehicle, the insured had violated the conditions of the policy and as such, the insurance company is not liable to pay compensation. It was submitted that the award passed by the Tribunal was excessive and hence, it was prayed to set-aside the award passed by the Tribunal.

12. The learned counsel for the claimant argued that the F.I.R. has been registered against the offending vehicle driver and the insurance policy was in force at the time of accident. The claimant had sustained 30% disability and he had sustained multiple bone fracture injuries. Further, he had undergone a surgical operation. The claimant's left hand fingers were cut off and therefore, multiplier method had been adopted.

13. 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 does not find any shortcomings in the conclusions arrived at regarding negligence, liability and quantum

of compensation. This Court is of the further view that the Tribunal had adopted a multiplier method and awarded compensation, which is not

appear. Therefore, this Court restructures the compensation as follows:-

Rs. 50,000/- is awarded towards disability; Rs. 15,000/- is awarded towards pain and suffering; Rs. 5,000/- is awarded for transport; Rs. 5,000/-

is awarded for nutrition; Rs. 10,000/- is awarded for attender charges; Rs. 10,000/- is awarded towards loss of earning during medical treatment

period and Rs. 7,500/- is awarded towards loss of amenities and loss of comfort. As such, the quantum of compensation is confirmed.

14. As per Court records, it is seen that this Court directed 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 with accrued interest thereon, lying in the credit of M.C.O.P.

No. 752 of 2001, on the file Motor Accidents Claims Tribunal cum Additional District Court, Fast Track Court-V, Coimbatore at Tirupur, after

filing a Memo, along with a copy of this order, subject to deduction of withdrawals, as per this Court's order. In the result, the above appeal is

dismissed. Consequently, the order passed in M.C.O.P. No. 752 of 2001 by the Motor Accidents Claims Tribunal cum Additional District Court,

Fast Track Court-V, Coimbatore at Tirupur, dated 05.09.2005 is confirmed. There is no order as to costs.