
(2013) 10 MAD CK 0064

In the Madras High Court

Case No : C.M.A. No. 508 of 2007 and M.P. No. 4 of 2007

Oriental Insurance Co. Ltd.

APPELLANT

Vs

A.P. Settu and A. Elangovan

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0064

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

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; C. Prakasam for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 30.04.2003,

made in M.C.O.P. No. 301 of 1998, on the file of the Motor Accident Claims Tribunal (Additional District Court and Chief Judicial Magistrate

Court), Vellore District, Vellore. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 301 of 1998, on the file of the Motor Accident Claims Tribunal (Additional District Court

and Chief Judicial Magistrate Court), Vellore District, Vellore, claiming a sum of Rs. 1,00,000/- as compensation, from the respondents, for the

injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 21.04.1998, at about 09.50 a.m., when the claimant was proceeding on his motorcycle bearing registration No. TN23

C3924, as a pillion rider, along with his friend Elangovan, who was the rider of the motorcycle, on Vellore Main Road, a lorry had suddenly

crossed the road. Hence, the rider of the motorcycle had applied sudden brake. As a result, the claimant had fallen down and sustained injuries.

Therefore, the claimant had filed the claim petition against the respondents, who are the rider and insurer of the motorcycle bearing registration No.

TN23 C3924.

3. The second respondent Insurance Company had filed their counter affidavit and resisted the claim petition. They had submitted that the rider of

the motorcycle did not possess valid driving licence and that the claimant had not sustained grievous injuries in the said accident.

4. On considering the averments of both sides, the Tribunal had framed four issues namely:

i. Whether the rider of the motorcycle had committed the said accident due to his negligent riding and has the claimant sustained injuries due to his

fall?

ii. Whether the claimant is entitled to get compensation, since he is the owner of the said vehicle?

iii. If the claimant is entitled to get compensation, what is the quantum of compensation? and

iv. To what other relief is the claimant entitled to get?

5. On the claimant's side, the claimant was examined as P.W. 1 and one Dr. Shanmugasundaram was examined as P.W. 2 and eight documents

were marked as Exs. P1 to P8 namely copy of FIR, wound certificate, copy of M.V.I's report, copy of discharge summary, copy of I.D. Card,

income certificate, copy of policy and disability certificate. On the respondents' side no witness was examined and no document was marked.

6. P.W. 1 had adduced evidence that on 21.04.1998, at about 09.50 a.m., when he was proceeding on his motorcycle bearing registration No.

TN23 C3924, as a pillion rider, along with his friend Elangovan, who was the rider of the motorcycle, on Vellore Main Road, a lorry had suddenly

crossed the road. Further, he deposed that the rider of the motorcycle had applied sudden brake and as a result, he had fallen down and sustained

injuries. He deposed further that his motorcycle had been insured with the Insurance Company.

7. P.W. 1 had adduced evidence further that his right hand joint bone was fractured and he had been hospitalized at C.M.C. Hospital, Vellore, for

a period of five days, as an inpatient. During medical treatment period, a surgical operation was conducted on his hand and thirteen sutures were stitched in.

8. P.W. 2 Dr. Shanmugasundaram had assessed the disability as 30% and he had spoken on the same lines of P.W. 1 regarding nature of injuries and mode of treatment.

9. On considering the evidence of the witnesses and on perusing the documents marked by the claimant, the Tribunal had awarded a sum of Rs.

72,000/- as compensation to the claimant and directed the respondents to jointly and severally pay the said sum together with interest at the rate of

9% per annum from the date of filing 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.

10. Aggrieved by the award passed by the Tribunal, the second respondent Insurance Company has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant has contended in the appeal that the claimant was travelling as a pillion rider on his motorcycle, which had been ridden by his friend. Therefore, the claimant cannot claim compensation for an accident caused by the rider of his own vehicle. As per the policy conditions, only third parties can be granted compensation. Therefore, the claimant has no locus standi to initiate claim petition against his driver and insurance company.

12. Further, it is submitted that the claimant had sustained simple injuries, but the Doctor had assessed the disability at 30%, which is on the higher side. The Tribunal had granted compensation under the heads of shock and loss of amenities, future loss of income, loss of earning capacity, shortened life expectancy, disfigurement, loss of prospects of marriage etc., which are not maintainable in the instant case.

13. The very competent counsel for the claimant has vehemently argued that the claimant had sustained bone fracture injuries on his right hand and a surgical operation had been conducted and a steel plate was fixed with screws. Further, a re-operation has to be conducted to remove the steel

plates. The learned counsel has further submitted that 13 sutures were carried out on the injured portion. Therefore, the Doctor had assessed the

disability at 30%. The Tribunal had not granted adequate compensation under the relevant heads namely disability, pain and suffering, transport,

attended charges, nutrition, loss of earning during medical treatment period, loss of amenities and loss of comfort.

14. 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 discrepancy in the conclusions arrived at regarding negligence, liability and quantum

of compensation. This Court is of the further view that as per evidence, the claimant had undergone a surgical operation and the Doctor had

assessed the disability at 30%. Therefore, the quantum of compensation is not on the higher side. This Court is of the view that FIR had been

registered against the rider of the motorcycle and the said offending vehicle had been insured with the appellant herein. Therefore, the Tribunal had

decided the negligence and liability in an appropriate manner.

15. As per the Court records, it is seen that the entire award amount together with accrued interest thereon has been deposited by the appellant

Insurance Company, to the credit of M.C.O.P. No. 301 of 1998, on the file of the Motor Accident Claims Tribunal (Additional District Court and

Chief Judicial Magistrate Court), Vellore District, Vellore.

16. 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.

301 of 1998, on the file of the Motor Accident Claims Tribunal (Additional District Court and Chief Judicial Magistrate Court), Vellore District,

Vellore, after filing a memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is dismissed and the Judgment and

decree dated 30.04.2003, made in M.C.O.P. No. 301 of 1998, on the file of the Motor Accident Claims Tribunal (Additional District Court and

Chief Judicial Magistrate Court), Vellore District, Vellore, is confirmed. Consequently, connected miscellaneous petition is closed. No costs.