

(2013) 09 MAD CK 0093
In the Madras High Court
Case No : C.M.A. No. 2554 of 2009

P.S. Ramasamy

APPELLANT

Vs

N. Perumal, P.N. Ravikumar and The Branch Manager, The
National Insurance Company Ltd.

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0093

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

Bench : Single Bench

Advocate : N. Manoharan, for the Appellant; B. Surekha for R3, R1 and R2 - Ex parte, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 15.06.2009, made in

M.C.O.P. No. 90 of 2006, on the file of the Chief Judicial Magistrate Court, Motor Accident Claims Tribunal, Erode. The short facts of the case

are as follows:-

On 08.01.2005, at about 08.30 p.m., when the claimant was proceeding on his motorcycle bearing registration No. TNI 4408, on Coimbatore-

Perunthurai National Highways Road, a lorry bearing registration No. KA01 D5257, was proceeding in front of his bike and driven by it's driver

at a high speed and in a rash and negligent manner and all of a sudden, the driver of the lorry had suddenly stopped the lorry by applying of the

brake. As a result, the claimant's motorcycle dashed behind the lorry and he had sustained injuries. Hence, he had filed a claim petition, in

M.C.O.P. No. 90 of 2006, on the file of the Chief Judicial Magistrate Court, Motor

Accident Claims Tribunal, Erode, claiming a sum of Rs.

5,00,000/- against the driver, owner and insurer of the lorry.

2. The third respondent Insurance Company had filed a counter statement and resisted the claim petition. The third respondent had stated that the

first respondent/driver of the lorry had driven the vehicle in a cautious manner and at normal speed. Actually, the rider of the motorcycle, coming

behind the lorry, had ridden the motorcycle in a negligent manner and dashed against the lorry. The averments made in the claim petition regarding

age, income, nature of injuries and mode of treatment were also not admitted. Actually, the accident had occurred only due to the negligence of the

motorcyclist. The rider of the motorcycle did not possess a valid driving licence and the driver of the lorry also did not have a valid driving licence.

3. On considering the averments of both sides, the Tribunal had framed three issues namely:

i. Whether the accident had occurred due to the rash and negligence on the part of the driver of the lorry or on part of the rider of the motorcycle?

ii. Whether the respondents are liable to pay compensation? and

iii. What is the quantum of compensation, which the petitioner is entitled to get?

4. On the petitioner's side two witnesses were examined as P.Ws. 1 and 2 and nine documents were marked as Exs. P1 to P9 namely FIR,

Rough Sketch, Observation Mahazar, M.V.I's report, Wound Certificate, X"ray, Disability Certificate and Judgment of the Criminal Court. On

the respondents' side one witness was examined as R.W. 1 and three documents were marked as Exs. R1 to R3 namely Charge Sheet, Judgment

of the Criminal Court and copy of Policy.

5. P.W. 1 had adduced evidence that on 08.01.2005, at about 08.30 p.m., when he was proceeding on his motorcycle bearing registration No.

TNI 4408, on Coimbatore Main Road, a lorry bearing registration No. KA01 D5257, was proceeding in front of his bike and driven by it's driver

at a high speed and in a rash and negligent manner and all of a sudden, the driver of the lorry had stopped suddenly by applying of the brake,

without any indication or signal. As a result, he had dashed the motorcycle against the lorry and sustained injuries. Further, he had adduced

evidence that he had sustained grievous injuries on his right hand, fore head and joint of his leg.

6. P.W. 2 Doctor had adduced evidence that the claimant had sustained 14% disability and he had spoken on the same lines of P.W. 1 regarding nature of injuries and mode of treatment.

7. R.W. 1 had adduced evidence that when he was proceeding on the same road, in front of the motorcycle, at a moderate speed and he had put on red indicator lamp while stopping the lorry and at that time the rider of the motorcycle, who was coming behind the lorry had dashed his vehicle against the lorry.

8. On considering the evidences of the witnesses and on perusing the documents marked by them, the Tribunal had fastened the liability on the rider of the motorcycle at 60% and fixed 40% liability on the part of the driver of the lorry and granted a compensation of a sum of Rs. 15,400/- with interest at the rate of 7.5% per annum.

9. Not being satisfied with the quantum of compensation, the claimant has preferred the present civil miscellaneous appeal.

10. The highly competent counsel for the claimant/appellant has argued that a criminal case had been levelled against the driver of the lorry and a final report had also been filed against him. The driver of the lorry had suddenly applied brakes without showing any indication, while the lorry was proceeding ahead at a high speed. As a result, the claimant's motorcycle hit behind the lorry. Therefore, the entire negligence should have been fixed on the driver of the lorry instead of attributing contributory negligence amongst the two drivers. The Tribunal had not granted adequate compensation under the relevant heads.

11. The very competent counsel for the third respondent Insurance Company has argued that initially the criminal case had been lodged against the driver of the lorry and subsequently he was acquitted from the criminal case as he was not found guilty of rash and negligent driving. Actually, the rider of the motorcycle had committed the accident by his rash and negligent riding and the same has been proved through the rough sketch. As such, the entire negligence only lies on the side of the claimant. However, the Tribunal had granted adequate compensation to the claimant as he had sustained only simple injuries.

12. 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 contributory negligence and

liability. However, the quantum of compensation is on the lower side, since the claimant had sustained fracture injuries on his nose, right hand,

finger, right fore arm and it is also seen that a surgical operation had been conducted. It is also seen, as per the evidence of the claimant, that he

had sustained injuries on his fore head and shoulder. Therefore, this Court is inclined to grant the following additional compensation to the

appellant/claimant:

- i. Rs. 18,000/- towards disability,
- ii. Rs. 15,000/- towards pain and sufferings,
- iii. Rs. 5,000/- towards transport expenses,
- iv. Rs. 5,000/- towards nutrition,
- v. Rs. 5,000/- towards attender charges,
- vi. Rs. 5,000/- towards loss of earning during medical treatment period,
- vii. Rs. 5,000/- towards medical expenses, and
- viii. Rs. 10,000/- towards loss of amenities and comfort.

In total, this Court awards a sum of Rs. 68,000/- as additional compensation to the appellant/claimant. Taking into consideration of contributory

negligence of 40% on the part of the claimant, this Court awards Rs. 27,200/- as additional compensation. After deducting initial compensation of

a sum of Rs. 15,400/- awarded by the Tribunal, this Court awards a sum of Rs. 11,800/- as additional compensation to the appellant/claimant as it

is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition

till the date of deposit.

13. This Court directs the third respondent Insurance Company to deposit the additional compensation amount of Rs. 11,800/- with interest as per

this Court's findings, within a period of four weeks from the date of receipt of a copy of this Order. After such a deposit having been made, it is

open to the appellant/claimant to withdraw the same with interest, lying in the credit of M.C.O.P. No. 90 of 2006, on the file of the Chief Judicial

Magistrate Court, Motor Accident Claims Tribunal, Erode. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and

decree dated 15.06.2009, made in M.C.O.P. No. 90 of 2006, on the file of the Chief Judicial Magistrate Court, Motor Accident Claims Tribunal,

Erode, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.