

(2013) 10 MAD CK 0203
In the Madras High Court
Case No : C.M.A. No. 1168 of 2009

R. Gopal

APPELLANT

Vs

E. Thirunavukkarasu and The New India Assurance Company
Ltd.

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0203

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

Bench : Single Bench

Advocate : Um. Ravichandran, for the Appellant; C. Ramesh Babu for R2 and
Served-R1, for the Respondent

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 05.09.2008, made in M.C.O.P. No. 3689 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 3689 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, claiming a sum of Rs. 8,00,000/- as compensation from the respondents for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 30.06.2005, at about 11.30 a.m., when the claimant was travelling on a Motorcycle bearing registration No. TN22 S5844, on Medavakkam Main Road, a lorry bearing registration No. TN22 M3789, coming in the same direction and driven in a high speed and in a negligent manner, dashed behind the motorcyclist. As a result, the claimant had sustained injuries. Hence, the claimant had filed the claim petition against the respondents, who are the owner and insurer of the lorry bearing registration No. TN22 M3789.

3. The second respondent Insurance Company had filed a counter affidavit and resisted the claim petition. They had submitted that the lorry had not been

covered under a valid policy and the driver of the lorry did not possess valid driving licence. Besides this, they had denied the averments made in the claim petition regarding age, income, occupation, nature of injuries, mode of treatment and disability sustained by the claimant in the accident.

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

i. Whether the accident occurred due to the rash and negligent driving by the driver of the lorry bearing registration No. TN22 M3789?

ii. Whether the first respondent's lorry insured with the second respondent and the respondents are liable to pay compensation?

iii. Whether the claimant is entitled for compensation? If so, what is the quantum? and

iv. To what other reliefs if any?

5. On the side of the claimant, three witnesses were examined as P.Ws.1 to 3 and eleven documents were marked as Exs.P1 to P11 namely discharge summaries, X-ray report, outpatient book, medical bills, copy of FIR, copy of sketch, X-ray and disability certificate. On the respondents' side no witness was let in and no document was marked.

6. P.W.1 claimant had adduced evidence that on 30.06.2005, at about 11.30 a.m., when he was travelling as a pillion rider on the motorcycle bearing registration No. TN22 S5844, on Velachery Main Road, the lorry bearing registration No. TN22 M3789, coming in the same direction and driven in a negligent manner, dashed against the motorcycle. As a result, he had sustained injuries. Further, he had adduced that he had sustained injuries on his urinal bladder and shaft of pelvis and scrotum.

7. Further, he had adduced that he had been hospitalized, as an inpatient at Kanchi Kamakoti Sankara Hospital and Karthik Hospital and Government General Hospital. Two Doctors had certified that the claimant had sustained 35% and 30% disability respectively.

8. On considering the evidences of the witnesses and on perusing the exhibits marked by the claimant, the Tribunal had awarded a sum of Rs. 2,41,490/- as compensation to the claimant and directed the second respondent to pay the said award amount, on behalf of the first respondent, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, with costs.

9. Not being satisfied by the award passed by the Tribunal, the claimant has preferred the present civil miscellaneous appeal.

10. The learned counsel appearing for the appellant has contended in the appeal that the claimant had sustained 65% disability as per the evidence of the

competent Doctors. The claimant's abdomen had been totally ruptured and his urinal system had been affected. The claimant had undergone treatment at various hospitals. The nature of injuries and loss of amenities are permanent in nature. The Tribunal had not granted adequate compensation under the relevant heads. Hence, the very competent counsel prays the Court to grant adequate compensation to the claimant.

11. The very competent counsel for the Insurance Company has vehemently argued that the Tribunal had granted a sum of Rs. 60,000/- under the head of disability and had again granted a sum of Rs. 75,000/- under the head of loss of earning power, which is redundant in the instant case. Besides this, the Doctors had assessed the disability at 65%, which is on the higher side. However, the Tribunal had granted adequate compensation to the claimant. In the said accident, the claimant's two wheeler's owner and insurer are necessary parties and as they have not been added as necessary parties, there is lacuna in the impugned award and as such the appeal is not maintainable. Further, the claimant had not produced the driving licence of the driver of the lorry and the insurance policy of the lorry before the Tribunal and as such the claim has not been proved beyond doubt.

12. On verifying 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 lower side as the claimant's abdomen had been ruptured and his urinal system had been affected as per Doctor's evidence. Further, the Doctors had certified that the claimant had sustained 65% disability. Therefore, this Court reassesses the compensation as follows:

- i. Rs. 97,500/- is awarded for disability,
- ii. Rs. 15,000/- is awarded towards pain and suffering,
- iii. Rs. 10,000/- is awarded towards transport expenses,
- iv. Rs. 10,000/- is awarded towards attender charges,
- v. Rs. 10,000/- is awarded towards nutrition,
- vi. Rs. 15,000/- is awarded towards loss of earning during medical treatment period,
- viii. Rs. 75,990/- is awarded towards medical expenses, and
- vii. Rs. 60,000/- is awarded towards loss of amenities and loss of comfort since the claimant's urinal system had been affected as per Doctor's evidence.

In total, this Court awards a sum of Rs. 2,93,490/- as compensation to the claimant. After subtracting the initial compensation amount of Rs. 2,41,490/-, this Court awards Rs. 52,000/- as additional compensation to the 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 payment of compensation.

13. This Court directs the second respondent Insurance Company to execute this Court's Judgment, by way of depositing the additional compensation amount, with accrued interest thereon, to the credit of M.C.O.P. No. 3689 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment.

14. After such a deposit having been made, 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. 3689 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, after filing a memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 05.09.2008, made in M.C.O.P. No. 3689 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, is modified. No costs.