

(2011) 01 MAD CK 0422
In the Madras High Court
Case No : C.M.A. No. 597 of 2008

Ramasamy

APPELLANT

Vs

G.P. Mahendran, Navaratis India Ltd. and The Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2011) 01 MAD CK 0422

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : K. Govi Ganesan, for the Appellant; N. Vijayaraghavan, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against the award dated 29.03.2007, made in M.C.O.P. No. 171 of 2002, by the Motor Accident Claims Tribunal, Sub-Court, Bhavani.

2. Background facts in a nutshell are as follows:

One Ramasamy met with motor vehicle accident that took place on 12.04.2002, at about 02.30 p.m. While he was riding his motorcycle bearing registration No. TDC 1530, on the left side of the north-south Velli Tiruppur to Chennampatti road. While he was nearing Santhai Panchayat Office, at that time a Maruthi Jeep bearing registration No. TN39 P6493, belonging to the second Respondent and insured with the third Respondent-Insurance Company, came in a rash and negligent manner and also at high speed and hit the two wheeler. Due to the same, the claimant sustained fracture injuries and immediately he was admitted in L.K.M. Hospital, Erode. He claimed a sum of Rs. 2,50,000/-as compensation. The third Respondent Insurance Company resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had happened due to the rash and negligent driving of

the first Respondent?

2. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the Maruthi Jeep and awarded a compensation of Rs. 99,585/-with interest at 6% per annum from the date of petition and the details of the same are as under:

Loss of income during the Rs. 36,000/- treatment period Pain and suffering Rs. 30,000/- Medical expenses Rs. 26,585/- Nutrition Rs. 5,000/- Transportation Rs. 2,000/- ----- Total... Rs. 99,585/- ----- Aggrieved by that award, the Appellant-claimant has filed the present appeal for enhancement.

3. The learned Counsel appearing for the claimant-Appellant submitted that the Tribunal ought to have awarded compensation as claimed by the claimant and the amount awarded under various heads is very low and the Tribunal has not followed the principles of assessment before passing the award. He further submitted that the amount awarded by the Tribunal is very low and meagre and seeks to enhance the compensation.

4. The Learned Counsel appearing for the Respondents submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel. On the side of the claimant, the claimant himself was examined as PW1 and Dr. Krishnaswami was examined as PW2 and documents Exs.P1 to P18 were marked. On the side of the Respondents, no one was examined and no documents were marked to substantiate their claim. Ex.P1 is the Xerox copy of the certified copy of the First Information Report. Ex.P2 is the Xerox copy of the certified copy of the Rough Sketch. Ex.P3 is the Xerox copy of the certified copy of the Observation Mahazar. Ex.P4 is the Xerox copy of the certified copy of the Motor Vehicle Inspector's Report (TDL 1530). Ex.P5 is the Xerox copy of the certified copy of the Motor Vehicle Inspector's Report (TN39 P6483). Ex.P6 is the Wound Certificate. Ex.P7 is the certified copy of the Charge Sheet. Ex.P8 is the certified copy of the judgment copy of the Judicial Magistrate. Ex.P9 is the Payment Receipt. Ex.P10 is the Receipt issued by the Hospital for payment. Ex.P11 is the Medicine Bills. Ex.P12 is the X-ray bill. Ex.P13 is the Prescription. Ex.P14 is the Partnership Deed. Ex.P15 is the X-rays. Ex.P16 is the Disability Certificate. Ex.P17 is the X-ray and Ex.P18 is the X-ray receipt. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the Maruthi Jeep and hence the third Respondent-Insurance Company is liable to pay compensation to the claimant. It is the question of fact and the findings is based on valid materials and evidence

and hence the same is confirmed.

6. At the time of the accident, the claimant was aged about 49 years. In his evidence, it is stated that he is an agriculturist and doing real estate business and earned a sum of Rs. 10,000/-per month. Further in his evidence, it is stated that it is only the driver of the vehicle caused the accident and he is also charge sheeted by Thiruppur Police Station in FIR No. 113 of 2002, under Sections 279 and 338 I.P.C. Further, in his evidence, it is stated that he sustained grievous injury and also fracture in both tibia and fibula bone. Immediately, he was admitted in L.K.M. Hospital, Erode. Further, he stated that due to this injury, he is unable to move, walk and to work as before. PW2 is the Doctor, who examined the claimant. He determined the disability at 34%. In his evidence, he stated that the claimant sustained fracture in his right leg below the knee. Due to the same, he is unable to move, walk and to work as before. Ex.P16 is the disability certificate and Ex.P17 is the X-ray. But, the Tribunal has not awarded any amount towards loss of income due to 34% disability. Normally, the Courts award Rs. 1,000/-to Rs. 2,000/-per percentage of disability. In the present case, considering the facts and circumstances, if Rs. 2,000/-is awarded per percentage, for 34% disability, the amount works out to Rs. 68,000/-under this head. Further, the Tribunal awarded a sum of Rs. 36,000/-towards loss of income during the treatment period. It was stated that the injured was admitted as inpatient for 11 days and took treatment as outpatient for more than one year. After considering the same, the Tribunal fixed the monthly income at Rs. 3,000/-and awarded a sum of Rs. 36,000/-(Rs. 3,000/-X 12) under the head of loss of income during the treatment period. The learned Counsel appearing for the Respondents vehemently contended that there is no document to prove that the claimant took treatment for one year. Therefore, it is reasonable to award a sum of Rs. 15,000/-as against Rs. 36,000/-awarded by the Tribunal. The Tribunal also awarded a sum of Rs. 30,000/-towards pain and suffering. The learned Counsel appearing for the Respondents vehemently contended that the award amount under the head of pain and suffering is excessive and exorbitant. Therefore, it is reasonable to award Rs. 15,000/-under this head as against Rs. 30,000/-awarded by the Tribunal. The Tribunal awarded a sum of Rs. 26,585/-towards medical expenses. Exs.P9 to P11 are the series of medical bills. It is an actual expenditure incurred by the claimant. After taking into consideration of the same, the amount awarded by the Tribunal is very reasonable and the same is confirmed. The Tribunal awarded a sum of Rs. 5,000/-towards extra-nourishment. The claimant took treatment as inpatient from 12.04.2002 to 23.04.2002 and later as out-patient. Hence, it is reasonable to award a sum of Rs. 10,000/-as against Rs. 5,000/-awarded by the Tribunal. The Tribunal awarded a sum of Rs. 2,000/-towards transport expenses, which is very low. The claimant deposed that he was admitted in hospital as inpatient for 11 days. Taking into consideration of the same, it is reasonable to award a sum of Rs. 5,000/-as against Rs. 2,000/-awarded by the Tribunal. The Tribunal has not awarded any amount towards loss of amenities. The injured took treatment for a

period of one year and took rest thereafter. Therefore, it is reasonable to award a sum of Rs. 15,000/-towards loss of amenities. The Tribunal has fixed the rate of interest at 6% p.a. from the date of petition. The accident occurred on 12.04.2002. Keeping in view the prevailing rate of interest during that period, the rate of interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income due to 34% disability Rs. 68,000/- Loss of income during the treatment period Rs. 15,000/- Pain and suffering Rs. 15,000/- Medical expenses Rs. 26,585/- Nutrition Rs. 10,000/- Transportation Rs. 5,000/- Loss of amenities Rs.15,000/- ----- Total... Rs. 1,54,585/- Less: Already awarded amount Rs. 99,585/- ----- Enhanced amount Rs. 55,000/

Therefore, the claimant is entitled to the enhanced compensation of Rs. 55,000/- with interest at 6% per annum from the date of petition.

7. The third Respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 55,000/-with interest at 6% from the date of petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Appellant-claimant is permitted to withdraw the same on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.