

(2003) 04 MAD CK 0033

In the Madras High Court

Case No : C.M.A. No's. 796 and 1091 of 2002 and C.M.P. No. 7747 of 2002

S. Achuthan and Another

APPELLANT

Vs

M. Gopal and Another

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) 3 ACC 372 : (2003) ACJ 1210 : (2003) 3 CTC 106

Hon'ble Judges : S. Sardar Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : N.M. Muthurajan, in CMA No. 796 of 2002 and S. Arunkumar, in CMA No. 1091 of 2002, for the Appellant; S. Arunkumar, in CMA No. 796 of 2002 and N.M. Muthurajan, in CMA No. 1091 of 2002, for the Respondent

Final Decision : Allowed

Judgement

S. Sardar Zackria Hussain, J.—Both the appeals arose out of the award in MCOP.No. 5923 of 1999 dated 4.1.2002, on the file of the

Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Madras.

2. The claimant in MCOP.No.796 of 2002 is the appellant in CMA.No. 796 of 2002 and the second respondent, United India Insurance

Company Limited, Chennai is the appellant in CMA.No. 1091 of 2002.

3. The appellant in CMA.No. 796 of 2002 has filed a claim petition seeking compensation of Rs. 51 lakhs for the injury sustained by him in a road

accident that occurred on 8.8.1999 at 11.00 p.m. at Aminjikarai Road, near Kumananchavadi, Chennai - 56.

4. Before the Tribunal, the claimant who is an Advocate examined himself as PW.1, Dr. Saichandran as PW.2 who assessed the disability of the

claimant and issued disability certificate Ex.P.16 and S. Mahimai Raj, Senior

Advocate as PW.3 besides the claimant's father, Sadagopan as PW.4 and PW.5, Dr. S. Gopalan who also assessed the disability of the claimant with regard to the neurological injuries and issued disability certificate Ex.P.18 and Exs.P.1 to P.18 were marked.

5. The owner of the auto rickshaw which it is alleged to have caused the accident, the first respondent in the claim petition remained ex parte, and the Insurance company/second respondent resisted the MCOP by filing counter. No evidence was let in oral or documentary on the side of the Insurance Company.

6. The Tribunal after taking into consideration such evidence adduced, determined the compensation amount payable to the claimant by the United India Insurance Company Limited at Rs. 24,54,617.00 with 9% interest per annum. Not satisfied with the award amount, the claimant has preferred CMA.No. 796 of 2002 and aggrieved against such award amount, the second respondent in the claim petition, United India Insurance Company Limited has preferred CMA.No. 1091 of 2002.

7. The learned counsel for the appellant in CMA.No. 796 of 2002 who is the claimant in MCOP.No. 5923 of 1999, has argued at length and brought to the notice the various injuries sustained by the appellant who was a practicing Advocate at Madras and who was aged about 29 years at the time of accident and unmarried, the mental agony, pain and suffering undergone by the claimant and also the period of treatment as in-patient for six months and out-patient for fifteen months at Sri Ramachandra Medical College Hospital and the fact that he has undergone more than ten surgeries and also in continuous treatment, the implants fixed at the fracture site have to be removed in the later date and his marriage prospects have been diminished. According to the counsel, the compensation amount of Rs. 24,54,617.00 awarded by the Tribunal on various heads is not justifiable. The learned counsel mainly stressed that the amount awarded towards pain and suffering for partial and permanent disability, for the future medical expenses, towards transport to the hospital and extra nourishment, for loss of proper marital alliance, the amount awarded for mental agony, for the future transportation expenses and the amount awarded for the attendance and for the loss of earning power are not reasonable.

8. On the other hand, the learned counsel for the appellant in CMA.No. 1091 of 2002 contended that the amount of Rs. 24,54,617.00 on various

heads is on the higher side and the amount is to be reduced. The learned counsel also pointed out that the claimant failed to prove that the accident

was caused due to the rash and negligent driving of the auto rickshaw owned by the first respondent in the claim petition which was insured with

the appellant insurance company and by examining independent witness.

9. The Tribunal after taking into consideration, the evidence of the claimant PW.1 who was a practicing Advocate at the time of the accident and

the complaint preferred by him on the basis of which the FIR was registered, the copy of which is marked as Ex.P. 11 and the rough sketch as

Ex.P.12, the charge sheet marked as P.13 and the judgment copy Ex.P.14 as per which it appears in the criminal case the auto driver was

convicted. As rightly decided that the accident was due to the rash and negligent driving of the auto rickshaw which went on the wrong side and hit

against the motor cycle coming in the opposite direction driven by the claimant with pillion rider.

10. As regards the compensation amount claimed for the injuries sustained by the claimant, the claimant took treatment as inpatient from 9.8.1992

to 5.11.1992 in Porur Ramachandra Medical Hospital and as per Ex.P.2, he sustained the following injuries :

(i) Fracture Tibia/Fibula left leg - Grade III Compound.

(ii) Cruciate Ligament injury of left knee.

(iii) Vascular injury - Popliteal Artery Emboli left leg - Vascular Transplantation from right leg done.

(iv) Closed fracture shaft of femur left lower 1/3rd.

(v) Sub Dural Hematoma of brain - Calcified Granuloma -Depression of left temporal done.

(vi) Grade III Compound fracture of the 3rd Proximal Phalanx of left middle finger.

(vii) Fracture 7.8th ribs left side.

(viii) Renal failure dialysis done 6 sittings.

Operation was performed to set right the blood vessel in the left side and plate was fixed in the left thigh for the fractures and that outer ring was

fixed for the knee fractures; that since extra transmission in the left leg was not

successful, another operation was performed for fixing the blood vessel in the left leg, performed bypass surgery and the blood vessel was taken from the right side and further operation was performed for the tissues in the left knee for six times. Further at the time of discharge on 15.11.1999, his left foot completely lost friction and due to non-functioning of tissues in the left knee, he suffered equines because of which he can walk only by using his five fingers and front portion of the foot.

11. The medical records further revealed that again he was admitted in Ramachandra Medical College Hospital on 10.1.2000 and took treatment as in-patient till 14.3.2000, as can be seen from Ex.P.3. He was given treatment for the formation of pus where the outer ring was fixed and there was no further improvement in the movement of left knee and the movements of the fingers of left leg were also restricted and he was advised to take continuous treatment for the wound on the left thigh and he cannot walk without crutches or without the help of others. PW.2 Doctor after perusing the medical records in respect of the treatment given to the claimant PW.1 assessed the disability at 70% and issued the disability certificate Ex.P.16 and stated in his evidence skin grafting and muscle grafting was done to the claimant and since the left knee stiffened in the place where skin grafting was done it has become deformed. The Doctor further stated that the appellant cannot squat due to loss of sensation and skin grafting and accordingly the Doctor certified the total disability at 70% inclusive of skin grafting. PW.2, Dr. Saichandran has further stated that the appellant has fracture left temporal region and little fingers and that he cannot freely move around and he can walk slowly when walking alone. He had renal defects and it was rectified and that there was head injury (brain) and depressed fracture and the appellant must have assistance to do all work including walking, climbing stairs and other things. The Doctor further stated that the appellant had ugly scar back of the knee and medical aspect of left leg.

12. After PW.5 has stated in his evidence that he had examined PW.1 on 3.11.2000 and because of the head injury sustained PW.1 lost his memory power and accordingly assessed the disability at 25% and issued disability certificate Ex.P.18.

13. The appellant is a young Advocate of four years experience in the Bar at the

time of the accident. He joined as junior Advocate to Senior Advocate Mahimai Raj, PW.3 and was with him from 29.1.1996 to 30.4.1998 and thereafter set up independent practice and as such he could have earned about Rs. 10,000 per month as an Advocate. Hence, taking all the aspects into consideration, we are of the view it would be just and proper, a sum of Rs. 2,00,000 as claimed in the claim petition instead of Rs. 50,000 awarded by Tribunal for future medical expenses. Similarly, we also award a sum of Rs. 3,00,000 as claimed in the claim petition instead of Rs. 50,000 awarded by the Tribunal towards loss of proper martial alliance. We also increase the compensation amount towards pain and suffering to Rs. 3,00,000 instead of Rs. 50,000 awarded by the Tribunal. We also feel it would be appropriate if a sum of Rs. 5,00,000 is awarded towards permanent disability. Further a sum of Rs. 17,00,000 is awarded as per the claim made in the claim petition towards the loss of earning power, considering that he is totally immobilized and unable to carry on his Advocate practice. In other respects, the amount awarded by the Tribunal is confirmed.

14. As stated above, the appellant would be entitled to further compensation amount of Rs. 1,50,000 in addition to Rs. 50,000 awarded by the Tribunal for future medical expenses. The appellant is also entitled to Rs. 2,50,000 in addition to Rs. 50,000 awarded by the Tribunal towards loss of proper martial alliance. The appellant is also entitled to Rs. 2,50,000 towards pain and suffering in addition to Rs. 50,000 awarded by the Tribunal. The appellant is further entitled to a sum of Rs. 3,00,000 in addition to Rs. 2,00,000 awarded by the Tribunal towards disability. The appellant is also entitled to Rs. 1,70,000 in addition to Rs. 15,30,000 awarded by the Tribunal towards loss of earning power.

15. Therefore, the following are the amounts granted to the claimant over and above granted by the Tribunal.

- (i) Towards future medical expenses Rs. 1,50,000
- (ii) Towards loss of proper martial alliance Rs. 2,50,000
- (iii) Towards pain and suffering Rs. 2,50,000
- (iv) Towards permanent disability Rs. 3,00,000
- (v) Towards loss of earning power Rs. 1,70,000

Total Rs.11,20,000

16. In the result, the CMA.No. 796 of 2002 is allowed as indicated above. The appellant is entitled to a further sum of Rs. 11,20,000 with interest

at 9% per annum from the date of claim petition. CMA.Nos. 1091 of 2002 filed by the second respondent/United India Insurance Company in the

claim petition is dismissed. Consequently, connected CMA is closed. No costs.