

(2011) 02 MAD CK 0300
In the Madras High Court
Case No : C.M.A. No. 2529 of 2003

S. Baskar

APPELLANT

Vs

S. Michel and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0300

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

Bench : Single Bench

Advocate : Chinnaraj, for the Appellant; No Appearance, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/claimant against the Award and Decree passed in M.A.C.T.O.P. No. 2752 of 1999, dated 04.03.2002, on the file of the Motor Accidents Claims Tribunal, IIIrd Judge, Fast Track Court, Chennai, awarding a compensation of Rs. 9,500/-with interest at the rate of 9% per annum.

2. Not being satisfied with the award the claimant has filed this above appeal for additional compensation of a sum of Rs. 40,500/- with interest.

3. The short facts of the case are as follows:

On 21.03.1999 at about 13.00 hours, while the Petitioner was waiting for a bus at Ambal Nagar Bus stop to go to Chrompet and at that point of time, the first Respondent's lorry bearing Registration No. T.S.A.4857 had been driven by its driver in a rash and negligent manner and dashed against the Petitioner. In the result, the claimant had sustained grievous injuries, including bone fractures. Hence, the claimant has filed the claim petition against the Respondents and claiming a compensation of Rs. 50,000/- with interest.

4. The second Respondent / United India Insurance Company Limited had filed a counter statement and resisted the claim petition. The Respondent denied the age, income and occupation of the claimant. The Respondent further denied the

liability, stating that the vehicle was not involved in the said accident. The Respondent stated that at the time of accident, the first Respondent was not possessing valid, current and effective driving license. The claim amount is an excessive one. Hence they pray to dismiss the claim petition.

5. On considering the plea of both parties, the Tribunal had framed two issues for consideration, namely;

1. Whether the claimant is entitled to receive compensation? If so what is the quantum of compensation?

2. Was the accident committed by the first Respondent in a rash and negligent manner on 21.03.1999

6. On the side of the claimant two witnesses were examined namely; PW1-Claimant and PW2-Doctor Thiyagarajan, and 10 documents were marked namely; Ex.P1-Accident Report, Ex.P2-Discharge Summary, Ex.P3-Discharge Medical Report, Ex.P4-Medical Bills Series, Ex.P5-Doctor's prescription, Ex.P6-First Information Report, Ex.P7-Rough Sketch, Ex.P8-Transfer Certificate, Ex.P9-Diploma Certificate and Ex.P10-Disability Certificate. On the side of the Insurance Company, no one was examined and no document was marked.

7. PW1-claimant had stated in his evidence that on 21.03.2009 at about 1.00 p.m., he had been waiting at Ambal Nagar Bus stop in order to go to Choolaimedu and at that point of time the first Respondent's lorry bearing Registration No. T.S.A.4857 came behind him and dashed against the claimant, in the result he had sustained injuries on his head, lower jaw, right side shoulder and bodily injured. He further stated that he had undergone further treatment at Billoth Hospital, thereafter he had undergone treatment at Surya Hospital. The claimant further stated that at the time of accident, his age was 23 years and was earning a sum of Rs. 2,000/- per month at Lab Electronics Company as apprentice.

8. PW2-Doctor Thiyagarajan had adduced evidence stating that he had examined the claimant on 10.01.2002 and he had assessed the disability as 25% sustained by the claimant. PW2 further stated that the claimant's head and brain was swollen and blood was oozing from the brain. PW2 further stated that the claimant's neck movement is restricted.

9. On considering the evidence of witnesses and on perusing the documentary evidence the Tribunal had awarded a sum of Rs. 9,500/- with interest at the rate of 9% per annum. The break up of compensation are as follows:

Rs. 500/- against damage to clothes; Rs. 1,000/- towards nutrition; Rs. 3,000/- towards medical expenses; Rs. 5,000/- for pain and suffering

10. Not being satisfied with the award the claimant has filed this above appeal for additional compensation of a sum of Rs. 40,500/- with interest.

11. The learned Counsel for the claimant argued that the claimant sustained

bone fracture injuries as such he is entitled to receive adequate compensation, but the learned Motor Accident Claims Tribunal awarded a sum of Rs. 9,500/- which is on the lower side and inadequate. Before the accident, the claimant is an Electronic Engineer by qualification, in order to prove the same, he had marked Exs.P8 and P9, which are academic qualification certificates. The learned Counsel further argued that the claimant had sustained grievous injuries on his head. The medical expenses alone a sum of Rs. 8,134/- but the Tribunal had awarded a sum of Rs. 3,000/- under the said head. In order to prove the medical claims, the claimant marked 14 medical bill series.

12. In view of the facts and circumstances of the case, arguments advanced by the learned Counsel for the Appellant and on perusing the impugned decision of the learned Motor Accidents Claims Tribunal, this Court is of the considered opinion that the claimant is entitled to receive adequate compensation. Hence, this Court awards the compensation as follows:

Rs. 7,200/- towards medical expenses; Rs. 25,000/- for disability; Rs. 1,000/- towards transport; Rs. 1,000/- against nutrition; Rs. 1,000/- for attender charges; Rs. 2,000/- for loss of income during medical treatment period; Rs. 5,000/- for pain and suffering

In total this Court awards Rs. 42,200/- with interest. After deducting the initial compensation amount of a sum of Rs. 9,500/-, this Court awards additional compensation amount a sum of Rs. 32,700/-. This amount will carry interest of the rate 7.5% per annum from the date of filing the claim petition till date of payment, which is fair and equitable.

13. Hence, this Court hereby directs the second Respondent/United India Insurance Company Limited to deposit the compensation amount with accrued interest thereon within a period of six weeks from the date of receipt of a copy of this order into the credit of M.C.O.P. No. 2752 of 1999 on the file of the Motor Accidents Claims Tribunal, III Judge, Fast Track Court, Chennai. After such a deposit being made, it is open to the claimant to withdraw the compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 2752 of 1999 on the file of the Motor Accidents Claims Tribunal, III Judge, Fast Track Court, Chennai, after filing necessary payment out application in accordance with law.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed in M.C.O.P. No. 2752 of 1999, on the file of the Motor Accident Claims Tribunal, III Judge, Fast Track Court, Chennai, dated 04.03.2002 is modified. Accordingly ordered. No costs.