
(2014) 01 MAD CK 0022
In the Madras High Court
Case No : C.M.A. No. 118 of 2014

S. Narayanan

APPELLANT

Vs

R. Kumar and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2015) ACJ 1839

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : R. Neelakandan, Advocate for the Appellant; J. Chandran, Advocate for the Respondent;

Final Decision : Partly Allowed

Judgement

R. Mahadevan, J.

1. The appeal is filed by the claimant seeking enhancement of compensation awarded by the Tribunal in M.C.O.P. No. 138 of 2007. The claim petition came to be filed, seeking a compensation of Rs. 4,00,000, for the injuries and fracture sustained by claimant in a road accident he met with on 1.4.2006. The case of the claimant before the Claims Tribunal was that while he was travelling as pillion rider on a motor cycle bearing registration No. TN 20-M 2338, belonging to the respondent No. 1 herein and insured with the respondent No. 2 herein, the motorcyclist lost control over the motor cycle on noticing the vehicles coming from the opposite direction and caused the accident by falling into a pit and thereby caused injuries and fracture to the claimant.

2. The respondent No. 1, owner of the motor cycle, filed counter contending that his vehicle was covered by valid insurance policy with the respondent No. 2 and the rider of the motor cycle was also having a valid licence at the time of accident and hence, respondent No. 2, insurance company, alone is liable to pay compensation and prayed for dismissal of claim petition as against him.

3. The insurance company filed counter contesting the claim on the ground of

delay in filing F.I.R. with regard to the accident and contended that the claim is an exaggerated one.

4. The claimant examined himself as PW 1 and marked seven documents while neither oral nor documentary evidence was adduced on the side of the respondents.

5. On the basis of the oral and documentary evidence, the Tribunal found that the accident occurred only due to rashness and negligence of the motorcyclist and awarded a sum of Rs. 1,42,300 with interest at 7.5 percent per annum payable by respondent Nos. 1 and 2 jointly and severally.

6. Heard the learned counsel appearing for either side and perused the entire materials available on record.

7. Having gone through the award passed by Claims Tribunal it is found that the claim of 60 percent permanent disability projected by the claimant for the amputation of his right leg was rejected by the Tribunal on technicalities and by holding that the delay on the part of the claimant in taking proper treatment ended in amputation and only a sum of Rs. 50,000 was awarded. First of all, the claimant is only a contractor by profession and not a medical professional to decide the course of action in taking the treatment that too when he was facing pain and suffering due to the accident he met with. The probable wrong advice from a medical professional cannot be attributed to the claimant.

8. The accident occurred on 1.4.2006. The claimant was given first aid in Kalpana Hospital. Later, the claimant got admitted in Porur Ramachandra Hospital and took treatment from 9.4.2006 to 27.4.2006 as inpatient. In the interregnum period, according to the claimant, he took some treatment at Mangalapluram village which is disbelieved by the Claims Tribunal on the ground of lack of evidence for the same. The occurrence of the accident and the amputation are undisputed. But for the accident, he would not have sustained such an amputation. No one would invite an amputation with the intention of getting higher compensation. Therefore, the longing on the part of the claimant to avoid amputation as far as possible cannot be coloured as ignorance or negligence and treated as a ground to reject his claim. This court cannot endorse the finding of the Tribunal that the amputation was the result of ignorance and negligence on the part of the claimant.

9. Considering the nature of amputation and the profession of the claimant, this court feels that a sum of Rs. 2,00,000 can be awarded over and above the amount awarded by the Tribunal towards permanent disability. Similarly, the compensation awarded by the Tribunal for transport charges is enhanced from Rs. 3,000 to Rs. 5,000. Further, this court is of the view that a sum of Rs. 5,000 needs to be awarded for nourishment. Accordingly, the award is enhanced by a sum of Rs. 2,07,000 and thereby the total compensation is arrived at Rs. 3,49,300, which is rounded off to Rs. 3,50,000. It is made clear that the enhanced amount awarded by this court also carries interest at 7.5 percent per

annum. The respondents are directed jointly and severally to deposit the entire award amount with interest and costs as awarded by Claims Tribunal deducting the amount already deposited by them within a period of six weeks from the date of receipt of copy of this judgment and on such deposit, the claimant is entitled to withdraw the same by filing appropriate application.

In the result, the civil miscellaneous appeal is allowed in part to the extent indicated above. No costs.