

(2011) 01 MAD CK 0353

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2380 of 2005

S. Thangaraj

APPELLANT

Vs

D. Soundararajan and The National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0353

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

Bench : Single Bench

Advocate : P. Jagadeesan, for the Appellant; K.L. Surekha, for the Respondent

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / claimant, against the award and decree dated 06.12.2004 made in M.C.O.P. No. 952 of 2001, on the file of Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for E.C. Act Cases, Salem, on awarding a compensation of a sum of Rs. 91,300/- with interest.

2. Having not been satisfied with the award passed by the Motor Accidents Claims Tribunal, the claimant has filed the above appeal for additional compensation.

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

On 27.02.2001, at about 7.30 p.m., the Petitioner had been travelling as a pillion rider along with rider Kannan on a motorcycle from Vazhappadi towards Salem, when at that time, a Tempo bearing Registration No. TN27 Z 6094 came from the opposite direction at high speed and in a rash and negligent manner and dashed against the motorcyclist. The rider of the motorcycle had expired on the spot. The Petitioner had sustained multiple injuries, hence he has filed the petition for compensation a sum of Rs. 2,50,000/- with interest, against the Respondents.

4. The second Respondent/National Insurance Company had filed a counter statement and resisted the claim petition. The Respondent denied that the driver

of the Tempo had driven the vehicle in a rash and negligent manner and caused the accident. Actually, the accident had been committed by the rider of the motorcycle, who was not possessing a valid driving licence. The tempo was not insured with the Respondent company, besides the compensation amount is an excessive one. Age, income and occupation of the claimant are denied by the Respondent.

5. On the pleadings of both the parties, the Motor Accidents Claims Tribunal had framed three issues, namely;

(i) Whether the accident was occurred due to the rash and negligent driving of the driver of tempo belongs to the first Respondent?

(ii) Whether the Petitioner in M.C.O.P. No. 952 of 2001 is entitled to compensation as claimed?

(iii) Whether the Petitioner in M.C.O.P. No. 843 of 2001 is entitled to compensation as claimed?

6. In the said accident, two claim petitions had been filed, common evidence had been recorded. For disposing this appeal, the claimant was examined as PW1 and PWs" 3 and 4 are doctors. On the side of the claimant the below mentioned documents had been considered by the Tribunal for assessing the compensation, viz.,

First Information Report, Wound Certificate, Accident Register, X-ray Report, Motor Vehicle Inspector's Report, Charge Sheet, Discharge Medical Summary, Medical Bills, Disability Certificate, X-ray.

On the side of the Respondent no one was examined and no document was marked.

7. PW1 had adduced evidence stating that he had sustained injuries in the said accident on his lip, ear, neck and on his thigh. Immediately, after the accident he was taken to the Government Hospital for preliminary treatment. Thereafter, he was referred to a private hospital, wherein he had undergone a surgical operation. At the time of the accident, his age was 25 years and he was working at a Milk Dairy. He further stated that he lost an eye. PW3-Doctor had adduced evidence that the claimant's right side bone had fractured and the bone un-united, a surgical operation had been conducted and a steel plate with screws had been fixed, as such the claimant is unable to fold his leg and unable to walk long distance. PW3-Doctor further stated that one more operation is required to remove the steel plate, for which the medical expenses would be Rs. 15,000/-. The Doctor assessed the disability as 35%. PW4, who is an Ophthalmologist examined the claimant and assessed the disability as 25%, he had stated that the claimant's eye vision has been considerably reduced, the vision power is only 6/18. The power vision cannot be increased.

8. On considering the evidences of the witnesses, the Tribunal had awarded a

sum of Rs. 91,300/-. The learned Motor Accidents Claims Tribunal had stated in his conclusion that after adopting the multiplier method, a sum of Rs. 1,53,600/- had been awarded. After deducting 1/3, a sum of Rs. 1,22,400/- had been awarded besides pain and suffering Rs. 15,000/- and Rs. 5,000/- towards loss of income during the hospitalization period of three months. In total the Tribunal had awarded Rs. 1,22,400/-. The claimant had not produced driving licence, therefore, the compensation amount has been restricted by the Tribunal to Rs. 75,000/- besides the Tribunal had awarded Rs. 5,500/- for hospital bills, another Rs. 5,000/- for another hospital bill, another Rs. 1,500/- for X-ray and Rs. 4,300/- towards another medical bills series. In total, the Tribunal had awarded Rs. 91,300/- with interest at the rate of 9% per annum.

9. Not being satisfied with the said award, the claimant has filed the above appeal for additional compensation a sum of Rs. 1,58,700/- with interest.

10. Learned Counsel for the Appellant argued that in the said accident, the claimant had sustained multiple bone fracture injuries on his thigh, eye, lip, ear and neck. A surgical operation was conducted on his thigh, in the operated area, a steel plate with screws were fixed and this has to be removed by way of re-operation, the same was affirmed by the evidence of the doctor, the doctor also suggested that for the re-operation charges would be Rs. 15,000/-, this was not considered by the Tribunal. Driving licence was not produced by the rider of the motorcycle, for which, the Tribunal had reduced a sum of Rs. 47,400/-, which is not appropriate, since the claimant is a pillion rider. Learned Counsel further argued that attender charges had not been considered and also transport charges. The claimant lost his vision on one eye, to prove the same the Ophthalmologist had adduced evidence.

11. Learned Counsel for the Respondent argued that at the time of the accident, the rider of the motorcycle was not possessing a valid driving licence. Further, the Tribunal had adopted a multiplier method and awarded the compensation, which is not appropriate in this instant case, since the claimant's avocation was not totally affected. Medical bills and loss of earning had been properly assessed. The Tribunal also awarded a sum of Rs. 15,000/- towards pain and suffering besides Rs. 75,000/- for disability. Therefore, there is no discrepancy in the said award.

12. Considering the facts and circumstances of the case, arguments advanced by the learned Counsels on either side and on perusing the impugned award of the learned Motor Accidents Claims Tribunal, this Court is of the considered opinion that the (i) claimant had undergone surgical operation and a steel plate with screws were fixed in the operated area, for which a re-operation medical expenses had not been awarded. (ii) Regarding the driving licence of the rider, the road transport officials were not examined, since the rider of the motorcycle had expired on the spot. Therefore, for non-production of the driving licence, the learned Tribunal had reduced a sum of Rs. 47,400/- which is also not proper. (iii) The claimant had sustained 35% and 25% disability, respectively, which had

been assessed by the Orthopedist and Ophthalmologist. (iv) The claimant was hospitalized for about three months as inpatient and his age was 24 years (a young). Therefore, this Court is inclined to restructure the Rs. 1,20,000/- towards disability for 60%;

Rs. 15,000/- for pain and suffering; Rs. 15,000/- for future medical expenses; Rs. 6,000/- towards loss of income during medical treatment period; Rs. 3,000/- towards attender charges; Rs. 2,000/- against transport; Rs. 2,000/- for nutrition; Rs. 16,300/- towards medical expenses

In total a sum of Rs. 1,79,300/- with interest. After deducting the original compensation a sum of Rs. 91,300/-, this Court awards a sum of Rs. 88,000/- and 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. Therefore, this Court directs the second Respondent / National Insurance Company to deposit the additional compensation amount with interest thereon to the credit of M.C.O.P. No. 952 of 2001, on the file of the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for E.C. Act Cases, Salem, within a period of six weeks from the date of receipt of a copy of this order. After such a deposit being made, it is open to the claimant to withdraw the additional compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 952 of 2001, on the file of the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for E.C. Act Cases, Salem, after filing necessary payment out of application in accordance with law.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for E.C. Act Cases, Salem, made in M.C.O.P. No. 952 of 2001, dated 06.12.2004 is modified. There is no order as to costs.