

(2013) 10 MAD CK 0048
In the Madras High Court
Case No : C.M.A. No. 3979 of 2008

T. Suresh Kumar

APPELLANT

Vs

D. Emilraj and The Branch Manager, New India Assurance Co.
Ltd.

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0048

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

Bench : Single Bench

Advocate : S. Udhyakumar, for the Appellant; S. Jayasankar for R2, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 01.11.2006, made in

M.C.O.P. No. 621 of 2002, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpet. The short facts of the case are

as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 621 of 2002, on the file of the Motor Accident Claims Tribunal, Principal Sub Court,

Chengelpet, claiming a sum of Rs. 5,00,000/- as compensation from the respondents for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 22.09.2001, at about 09.15 p.m., when the claimant was proceeding on a motorcycle bearing registration No. TN22

B6571, on G.S.T. Road and when he was near Airway Hotel, the first respondent's motorcycle bearing registration No. TN22 R0425,

proceeding in the same direction and driven at a high speed and in a rash and

negligent manner, dashed against the motorcycle bearing registration

TN22 B6571. Due to the impact, the claimant fell down and sustained grievous injuries. He was admitted at Lakshmi Nursing Home, Pallavaram

and then referred to Devaki Hospital, Chennai-4, for further treatment. Hence, the claimant had filed the claim petition against the respondents,

who are the owner and insurer of the motorcycle bearing registration No. TN22 R0425.

3. The second respondent Insurance Company, in their counter affidavit, had denied the averments made in the claim petition regarding income,

nature of injuries sustained, medical expenses incurred and manner of accident. It was submitted that the accident had occurred on 22.09.2001 but

FIR was registered only on 10.10.2001. It was submitted that the accident had occurred only due to negligence of the claimant, who on seeing a

buffalo suddenly crossing the road, had suddenly applied brakes, without observing the traffic on his rear side, due to which the rider of the first

respondent's motorcycle had dashed his vehicle against the claimant's motorcycle. It was further submitted that the accident had occurred on

22.09.2001. But, in the hospital records of Devaki Hospital, Chennai, it had been mentioned that the claimant was admitted on 20.09.2001.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Whether the accident occurred by the rash and negligent driving by the rider of the first respondent's motorcycle bearing registration No. TN22

R0425? and

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

5. On the claimant's side two witnesses were examined as P.Ws. 1 and 2 and ten documents were marked as Exs. P1 to P10 namely copy of

FIR, discharge summary, medical bills, Balaji EEG Diagnostic Centre receipt, Devaki Hospital bills, Devaki Hospital Drug bills, registration notice,

income tax return and disability certificate. On the respondents' side one witness was examined as R.W. 1 and two documents were marked as

Exs. R1 and R2 namely accident register and discharge summary.

6. P.W. 1 had adduced evidence which is corroborative of the statements made in the claim petition regarding manner of accident and in support

of his evidence, he had marked Exs. P1 to P6. On scrutiny of Ex. P1, it is seen that FIR had been registered on the rider of the first respondent's

motorcycle based on the complaint given by one Thiru. Ramachandran. The averments in the FIR are on similar lines to the evidence of P.W. 1

regarding manner of accident.

7. R.W. 1 Kathirvelu, Assistant in the second respondent's firm, had adduced evidence that as per the investigation carried out by their

investigation officer, it was observed that the accident had occurred on 20.09.2001, as per the hospital records and that no accident had occurred

on 22.09.2001 and in support of his evidence, he had marked Exs. R1 and R2.

8. The Tribunal, on scrutiny of Exs. R1 and R2, had observed that the accident had occurred on 20.09.2001. The Tribunal further observed that

the second respondent had denied the involvement of the vehicle bearing registration No. TN22 R0425 belonging to the first respondent. The

Tribunal observed that Thiru. Ramachandran, relative of the claimant, had wrongly stated the date of accident as 22.09.2001 in the complaint

instead of 20.09.2001. The Tribunal, on observing that the second respondent had not furnished the investigation report of their investigating officer

and on scrutiny of oral and documentary evidence, held that the accident had been caused by the rash and negligent driving by the rider of the first

respondent's motorcycle and hence held that the first and second respondents liable to pay compensation.

9. On scrutiny of Ex. P2 discharge summary issued at Devaki Hospital, it is seen that the claimant had taken treatment from 20.09.2001 to

15.10.2001 and that he had sustained sub dual hemorrhage at left front temporal region. P.W. 1 had further stated that he was running a jewellery

shop at Pallavaram and earning Rs. 20,000/- per month. He deposed that due to the accident, he is suffering from headache and giddiness and that

his speech had become incoherent due to head injuries sustained by him and in support of his evidence, he had marked Exs. P8 and P9.

10. P.W. 2 Dr. Gopalan, retired civil surgeon, had adduced evidence that he had examined the claimant on 02.04.2006 and observed that the

disability sustained by the claimant was 50%. The Tribunal, on observing that as the claimant was running a jewellery business, he should have

maintained the jewellery business by engaging employees and relatives and as

such observed that he had not sustained any loss of earning power due to his injuries.

11. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 15,000/- for injuries, Rs. 10,000/- for pain and suffering,

Rs. 2,06,400/- for medical expenses. In total, the Tribunal awarded a sum of Rs. 2,31,400/- as compensation to the claimant and directed the

second respondent on behalf of the first respondent to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing

the claim petition till the date of payment of compensation, with costs, within a period of two months from the date of its order.

12. Not being satisfied with the quantum of compensation, the claimant has preferred the present civil miscellaneous appeal.

13. The learned counsel for the appellant has contended in the appeal that the Tribunal failed to consider that the accident had caused permanent

disablement to the appellant, who could not do his normal work as before. It is contended that the Tribunal failed to consider the medical bills

produced by the appellant and failed to grant award for future medical expenses. It is also contended that the Tribunal failed to note that the

claimant had sustained subdural hemorrhage at left brain temporal region and as such the disablement cannot be cured. It is contended that the

Tribunal failed to consider that the appellant was suffering from periodical headache and giddiness and hence he could not look after his jewellery

shop as before. Hence, it is prayed for grant of additional compensation of Rs. 2,00,000/-.

14. The learned counsel for the Insurance Company has submitted that the Doctor had assessed the disability at 50%, which is on the higher side,

since the claimant had sustained simple injuries. However, the Tribunal had granted adequate compensation to the claimant.

15. Per contra, the learned counsel for the appellant has submitted that the claimant had undergone medical treatment at two different hospitals

namely Lakshmi Nursing Home at Pallavaram and Devaki Hospital at Chennai. He had spent a sum of Rs. 2,05,721/- towards medical expenses.

In order to prove the medical expenses, the claimant had marked Exs. P3 to P7. Further, the claimant had sustained grievous injuries on front

temporal region.

16. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned

award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the

quantum of compensation is on the lower side, since, it is evident that the claimant had spent a sum of Rs. 2,05,721/- towards medical expenses

alone. Therefore, this Court is inclined to grant a sum of Rs. 2,00,000/- as additional compensation, which has been sought by the claimant in the

above appeal. This additional compensation amount comprises of an award of Rs. 1,00,000/- under the head of disability, Rs. 10,000/- towards

transport, Rs. 10,000/- towards nutrition, Rs. 15,000/- for attender charges, Rs. 25,000/- towards loss of earning during medical treatment period

and Rs. 40,000/- under the head of loss of amenities and loss of comfort, since the claimant had sustained injuries on his left front temporal region,

as per Doctor's evidence, which had rendered his speech incoherent. 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.

17. This Court directs the second respondent herein/Insurance Company to execute this Court's Judgment, by way of deposit, to the credit of

M.C.O.P. No. 621 of 2002, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpet, within a period of four weeks

from the date of receipt of a copy of this Judgment.

18. After such a deposit having been made, it is open to the claimant to withdraw the additional compensation amount, lying in the credit of

M.C.O.P. No. 621 of 2002, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpet, with accrued interest thereon,

after filing a memo, along with a copy of this Judgment. In the result, this civil miscellaneous appeal is allowed and the Judgment and decree dated

01.11.2006, made in M.C.O.P. No. 621 of 2002, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpet, is

modified. No costs.