

(2010) 04 MAD CK 0322
In the Madras High Court
Case No : C.M.A. (MD) No. 256 of 2008

T. Thirupathi

APPELLANT

Vs

V. Selladurai and The Branch Manager, New India Assurance
Co.

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0322

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : K. Suresh Kumar, for the Appellant; K. Jagadeesan, for Respondent 1 and K. Murugesan, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

T. Mathivanan, J.—This memorandum of Civil Miscellaneous Appeal is directed against the award dated 19.04.2002 and made in M.C.O.P. No. 344 of 2001, on the file of the learned Second Additional Sub Judge, Madurai, passing an award of Rs. 72,000/- with interest at the rate of 9% per annum from the date of petition viz., 03.10.1997 till the date of payment. It is also directed that the amount shall be deposited within a period of two months. Impugning the award, the claimant has come forward with this appeal for enhancement of compensation.

2. For easy reference the appellant may hereinafter be referred to as petitioner. The respondents 1 and 2 herein may hereinafter be referred to as respondents 1 and 2 as in the case of the claim petition in M.C.O.P. No. 344 of 2001.

3. The related facts and circumstances which giving rise to the memorandum of Civil Miscellaneous Appeal may be summarised briefly as follows:

3.1. That on 01.04.1997, at about 3.00 a.m. near Aravakurichi petrol bunk located on Madurai-Karur road when the petitioner was travelling along with his vegetables in a Swaraj Mazda van bearing Registration No. TN-Y-6577, the driver

who was on the steering wheel had driven the said vehicle in a rash and negligent manner and allowed the same to hit against a lorry on its rear side. Due to the sudden impact, the petitioner had sustained multiple injury on all over his body including his head. Soon after the occurrence, he was removed to Meenakshi Mission Hospital and admitted as an inpatient from 01.04.1997 to 28.04.1997 and thereafter, he had been getting treatment in the said hospital as an outpatient. The petitioner was doing business on vegetables and thereby earning a sum of Rs. 5,000/- per month. In the said accident, the shaft of his right femur was fractured. Therefore, the petitioner had totally claimed a sum of Rs. 4,00,000/- towards compensation.

3.2. The first respondent being the owner of the vehicle remained ex parte. The second respondent being the insurance company in which the offending vehicle was insured at the relevant period alone had contested the claim petition on various grounds, which need not be reiterated herein.

3.3. In order to prove his case, the petitioner had examined himself as P.W.1. One Dr. Shanmugam was examined as P.W.2. During the course of their examination, Exs.P1 to P12 were marked. On the other hand, neither oral nor documentary evidence was adduced on behalf of the contesting second respondent. On appraising the related materials available on record, the Motor Accidents Claims Tribunal (II Additional Sub Judge), Madurai had proceeded to pass an award of Rs. 72,000/- on 19.04.2002 with interest at the rate of 9% per annum from the date of petition till the date of payment and the amount was also directed to be deposited within a period of two months from the date of award.

3.4. Being aggrieved by the award, the petitioner has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

4. Heard both sides.

5. The learned Counsel appearing for the petitioner has restricted his argument only on the question of quantum. The learned Counsel for the contesting second respondent has also agreed to restrict his argument only on the quantum. He does not want to traverse on other issues. Hence, it may be better to decide the question as to "whether the award of compensation passed by the Motor Accidents Claims Tribunal is not proportionate to the loss sustained by the petitioner and the medical expenses." The petitioner had claimed a total sum of Rs. 4,00,000/- towards compensation. But the Motor Accidents Claims Tribunal had awarded only a sum of Rs. 72,000/- under the following heads:

For medical expenses : Rs. 20,000.00 For all losses caused to the appellant due to the accident : Rs. 20,000.00 For nutrition : Rs. 2,000.00 For pain and suffering : Rs. 15,000.00 For grievous injury : Rs. 15,000.00 Total : Rs. 72,000.00

6. The learned Counsel appearing for the petitioner would submit that the

Tribunal should have passed a sum of Rs. 1,50,000/- towards medical expenses and that the Tribunal should have considered the fact that the petitioner had got treatment for more than three hospitals and that he was getting treatment for more than thirty days as an inpatient. Therefore, the learned Counsel has urged before this Court that at least a sum of Rs. 2,50,000/- should have been awarded towards compensation as against the claim of Rs. 4,00,000/-. Ex.P2 is the bill dated 31.03.1997, for a sum of Rs. 24,850/-, for having purchased vegetables from Jayalakshmi Trading Company, Hosur. Though the petitioner had produced Ex.P2 to show that he had purchased vegetables for Rs. 24,850/-, he had not examined the author of the bill to prove the contents. Further, there is no evidence excepting the oral evidence of P.W.1/petitioner to establish that the vegetables which was transported in the offending vehicle were completely damaged. Therefore, Ex.P2 cannot be taken into consideration for determining the quantum.

7. The petitioner in his evidence would state that due to the accident, he had sustained fracture over his right leg and soon after the occurrence he was taken to Government Hospital and since his condition was critical, he was brought to Madurai Government Hospital. He would state further that he was then removed to K.K. Nager Chenthil Nursing Home and then to Meenakshi Mission Hospital. It is also revealed from his evidence that he had been taking treatment for about 28 days as an inpatient in the above said hospital. Ex.P3 is the letter of reference given by one Dr. A. Devadoss, Director and Chief of Orthopaedics, Chenthil Nursing Home, K.K. Nagar, dated 10.04.1997 and thereby the petitioner was referred to Meenakshi Mission Hospital. This letter is enclosed with the medical bills to the tune of Rs. 1,780/-. Ex.P4 is the C.T. Scan Report in respect of brain in which it is stated that no significant focal pathology seen in the brain parenchyma. Ex.P5 is the discharge summary issued by Meenakshi Mission Hospital dated 28.04.1997 in which it is stated that the right shaft of femur was found fractured. Ex.P6 is the statement of amount which was incurred by the petitioner at Meenakshi Mission Hospital. It reveals that the petitioner had paid a sum of Rs. 1,24,540.70. Ex.P7 is the another set of medical bills and vouchers for having purchased medicines in respect of which the petitioner was not able to give clear account as to whether the bills and vouchers found under Ex.P7 have been included in the statement of amount given under Ex.P6. Since the document under Ex.P7 is shrouded with doubts it can safely be discarded. Hence, for awarding compensation towards medical expenses, the statement of amount which is detailed under Ex.P6 can be taken into consideration and therefore, a sum of Rs. 1,24,500/- can be awarded.

8. With regard to the assessment of disability, P.W.2 Dr. Shanmugam would state in his evidence that on 08.09.2001, he had examined the petitioner and after taking x-ray he had issued a disability certificate under Ex.P8 in which he would state that fracture of shaft of right femur was found. Therefore, the injury was grievous in nature and he would state further that due to the disability there is a difficulty in squatting, pain over right leg on standing for a considerable time or

walking for a considerable distance. On the basis of the difficulties experienced by the petitioner on clinical examination he had assessed the following disabilities:

Moderate pain : 6% Insensibility : 2% Reduced movements Right hip :15% Right back :12% Necessity for another surgery : 5% Total :40%

9. Apart from this, he would state in his evidence that a steel plate was inserted near the right thigh and for the removal of that steel plate by another operation it would cost a sum of Rs. 15,000/- to Rs. 20,000/-. However, the assessment of percentage of disability may vary from doctor to doctor upto 5%. Hence, for determining the actual disability 35% can safely be taken into account.

10. In this connection, this Court has thought it fit to seek the assistance of the following decisions reported in:

i) S. Raja v. The Managing Director, Metropolitan Transport Corporation Ltd., Division I, Chennai-2 2009 (2) TN MAC 690

ii) R. Senthil Kumar v. P. Palaniswamy and Ors. 2007 (4) CTC 642.

11. In the case of R. Senthil Kumar v. P. Palaniswamy and Ors. reported in 2007 (4) CTC 642, it is held thus:

When the method of awarding lump sum amount for permanent disability is adopted, the age of the claimant shall play an important role. Awarding damages at a fixed rate disregarding the age of the claimant, according to the opinion of this Court, will definitely result in injustice, as the same would amount to treating unequals equally. The said rate may range from Rs. 1,000/- to Rs. 2,000/- per 1% disability depending upon the age of the claimant. Maximum rate shall be applied in case of youngsters and minimum rate shall be applied in case of aged persons. Applying such a test, this Court holds that applying the maximum rate, viz., Rs. 2,000/- per 1% disability in the case of appellant/claimant shall be absolutely justifiable. Thus, the lump sum amount to be awarded towards compensation for permanent disability to the appellant/claimant in this case shall, have to be fixed at Rs. 2,000 x 25 : Rs. 50,000/-. If such a method of calculation is adopted, the award of compensation for permanent disability comes to Rs. 50,000/-.

Therefore, applying the above method, this Court awards a sum of Rs. 70,000/- (Rs.2,000 x 35 : Rs. 70,000/-) towards compensation for permanent disability. The award of a sum of Rs. 2,000/- towards extra nourishment is confirmed.

12. In view of the above, this Court awards the compensation under the following heads:

For medical expenses : Rs. 1,24,500.00 For pain and suffering : Rs. 10,000.00
For permanent disability : Rs. 70,000.00 For Loss of earning during the period of treatment : Rs. 2,000.00 For extra nourishment : Rs. 2,000.00 Total : Rs. 2,08,500.00

13. In the result, this memorandum of Civil Miscellaneous Appeal is allowed in part enhancing the award of the Tribunal from Rs. 72,000/- to Rs. 2,08,500/-. The respondents 1 and 2 are jointly and severally liable to pay the above said amount with the interest at the rate of 7.5% per annum within a period of two months from the date of receipt of a copy of this judgment. No costs.