
(2011) 04 MAD CK 0463

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2539 of 2010 and M.P. No's. 1 of 2010 and 1 of 2011

Tata AIG Insurance Co. Ltd.

APPELLANT

Vs

S. Anitha and B. Ashok

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0463

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; Varadhakamaraj, for R1, for the Respondent

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant against the judgment and Decree dated 30.10.2009 made in M.C.O.P. No. 4826 of 2005, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

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

On 29.09.2005, at about 16.15 hours, while the Petitioner was walking on the EC Road, near Amaidi Kovil, Enjambakkam, Chennai, the Car bearing Registration No. TN-07-U-9819, driven by its driver in a rash and negligent manner, came from behind and hit the Petitioner. Due to the above said accident, the Petitioner sustained grievous injuries. She was admitted at Santhi Hospital, Neelankarai, Chennai - 41 for treatment. After the said accident, she is not able to do any normal work due to the injuries sustained. Hence, the Petitioner has filed a Claim Petition in M.C.O.P. No. 4826 of 2005 and claimed a compensation of Rs. 2,50,000/- from the Respondents. The first Respondent is the owner of the said Car and the second Respondent is its insurer.

3. The second Respondent-Tata AIG Insurance Company Limited in his counter has resisted the claim denying the averments in the claim regarding the manner of accident, age, occupation and monthly income of the Petitioner, the place,

date and time of accident, nature of injuries sustained by her, period of treatment, medical expenses and disability sustained by the Petitioner. It was also submitted that the vehicle bearing Registration No. TN-07-U-9819 had not been insured with them on the date of accident. It was submitted that the cheque for premium of Rs. 5,604/-, dated 17.06.2005 given by the first Respondent was dishonoured and by letter dated 23.06.2005, the Policy of Insurance was duly cancelled. It was also stated that the claim was excessive.

4. Another person was injured in the said accident and she had also filed a Claim Petition in M.C.O.P. No. 4732 of 2005 against the Respondents. Based on the memo filed for joint Trial, both the petitions were taken up together and common evidence was recorded in O.P. No. 4732 of 2005 and documents were marked in the said O.P. on behalf of the Petitioners, three witnesses were examined as P.W.1 to P.W.3 and eleven documents were marked as Ex.P.1 to Ex.P.11. P.W.1- Ms. K.K. Sujatha (Petitioner in O.P. No. 4732 of 2005). P.W.2- Ms. S. Anitha (Petitioner in O.P. No. 4826 of 2005). P.W.3- Dr. J.R.R. Thiagarajan. Ex.P.1 is the attested copy of FIR in Cr. No. 1057 of 2005 of J8 Neelankarai Traffic Investigation Branch. Ex.P.2 is the Discharge Summary of P.W.1 issued by the Government General Hospital. Ex.P.3 is the Medical Bills of P.W.1. Ex.P.4 is the Salary Certificate of P.W.1. Ex.P.5 is the Discharge Summary of P.W.2 issued by the Santhi Hospital. Ex.P.6 is the Medical Bills of P.W.2. Ex.P.7 is the Salary Certificate of P.W.2. Ex.P.8 is the X-ray film of P.W.2. Ex.P.9 is the Disability Certificate of P.W.2 issued by P.W.3. Ex.P.10 is the X-ray film of P.W.1. Ex.P.11 is the Disability Certificate of P.W.1 issued by P.W.3. On the side of the Respondents one witness was examined as R.W.1 and six documents were marked as Ex.R.1 to Ex.R.6. R.W.1- Mr. V.R. Ravishankar is the Claims Executive Officer in the second Respondent's company. Ex.R.1 is the Investigation Report. Ex.R.2 is the Notice to the first Respondent issued by the second Respondent. Ex.R.3 is the Certificate of Insurance. Ex.R.4 is the Receipt. Ex.R.5 is the Bank Advice. Ex.R.6 is the Returned Cheque.

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

(i) Whether the accident had happened due to the rash and negligent driving of the driver of the car bearing Registration No. TN-07-U-9819?

(ii) Whether the Respondents are liable to pay the compensation?

(iii) Whether the Petitioner is entitled for the compensation?

(iv) To what relief the Petitioner is entitled to?

6. From the evidences of the injured Petitioners P.W.1-Sujatha in M.C.O.P. No. 4732 of 2005 and P.W.2-Anitha in M.C.O.P. No. 4826 of 2005, it appears that on 29.09.2005, at about 16.15 hours, while the Petitioners were walking along the E.C. Road near Amaidhi Kovil, Enjambakkam, Chennai, a Car bearing Registration No. TN-07-U-9819, which was driven by its driver in a rash and negligent

manner, came from behind and hit the Petitioners. Thereby the Petitioners sustained grievous injuries. Apart from the oral evidence of P.W.1, Ex.P.1- Attested copy of FIR had been marked. On scrutiny of FIR, it is seen that one G. Udayachandraka, the eye witness of the accident had lodged a complaint on the date of occurrence itself. Pursuant to the complaint, a case has been registered against the driver of the Car. The narration of the incident in the FIR tallies with the narration as found in the petition as well as in the depositions of P.W.1 and P.W.2. The Tribunal on considering that no contrary evidence had been let in by the Respondents' side to disprove the contention of the Petitioner, and after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving of the driver of the first Respondent's vehicle.

7. On the second Respondent's side, one V.R. Ravishankar, working as Claims Executive in the second Respondent Company has been examined as R.W.1. He has deposed that the validity of the Insurance Policy has been denied in the counter itself. Cover note No. 556791 was availed for Policy No. 0100228363 on payment of cheque No. 866357, Indian Bank, Neelankarai for Rs. 5,604/- as premium. The said cheque was dishonoured and no premium amount was realized by the Insurer for the Cover Note availed on and from 19.06.2005 to 18.06.2006. On such dishonour of cheque, the second Respondent's Company sent notice dated 23.06.2005, cancelling the Policy of Insurance for the absence of valid consideration. In support of his evidence, the Investigation Report, copy of the notice sent to the insured, Certificate of Insurance, Cheque Receipt issued by the second Respondent Company, Bank Return Memo and Returned Cheque were marked as Exs.R.1 to R.6 respectively.

8. It was stated on the second Respondent's side that on dishonour of Cheque (Ex.R.6), the second Respondent's Company sent notice dated 23.06.2005 for cancelling the Policy of Insurance. But, on the second Respondent's side, only copy of notice Ex.R.2 has been filed without proof of receipt for having sent the notice. The acknowledgment card to show receipt of the notice has also not been filed. Hence, the Tribunal held that the Insurance Policy was in force at the time of accident and held that the second Respondent is liable to compensate the Petitioners on behalf of the first Respondent.

9. On scrutiny of Ex.P.5, the discharge summary, it is seen that the Petitioner had taken treatment as an inpatient from 29.09.2005 to 04.10.2005. She had suffered Bimallelar fracture of right ankle. Open reduction and internal fixation was done to her. The Doctor who had assessed the disability of the Petitioner, was examined as P.W.3. P.W.3 adduced evidence that the disability suffered by the Petitioner was 45% and in support of his evidence had marked disability certificate as Ex.P.9. From scrutiny of Ex.P.7-Salary Certificate, it is seen that the salary of the Petitioner was stated as Rs. 4,000/- per month. But, as no person connected to the said document was examined, the Tribunal held that the Petitioner's income could be taken as Rs. 3,700/- per month.

10. Considering the oral and documentary evidence, the Tribunal awarded Rs. 73,300/- as compensation to the Petitioner . The break up of the compensation is as follows:

Rs. 40,000/- for Loss of Income due to permanent disability of 45%;

Rs. 11,100/- for Loss of income during the medical treatment period of three months (Rs. 3,700/- x 3);

Rs. 2,000/- for Transport Expenses to Hospital;

Rs. 2,000/- for Nutrition;

Rs. 13,200/- for Medical Expenses as per Ex.P.6-Medical Bills; and

Rs. 5,000/- for Pain and Sufferings.

11. In total, the Tribunal awarded a compensation of Rs. 73,300/- together with interest at the rate of 9.5% per annum from the date of filing the Petition till the date of payment of compensation and directed the second Respondent to deposit the award with interest within two months from the date of its order.

12. Aggrieved by the judgment and Decree passed by the Tribunal, the second Respondent/Insurance Company has filed the present Appeal to set aside the award. The learned Counsel for the Appellant has argued that the Lower Court had erred in fastening the liability on the Appellant/insurer in a case where there was no valid contract of Insurance, since the cheque for premium had been dishonoured and there was no valid consideration for the contract of Insurance itself. It was also argued that the Lower Court had grossly erred in fastening liability on the insurer without even right of recovery since there was no dispute that the cheque for premium was dishonoured. It was also pointed out that as per decision of the Supreme Court in 1991 ACJ 650 (SC), no notice was necessary to be sent to the insured/owner of the vehicle, as it was within his knowledge, that the cheque had been dishonoured. The learned Counsel further argued that the claimant had sustained simple injuries, but the Doctor had assessed her disability as 45%, which is on the higher side.

13. Learned Counsel for the claimant argued that the claimant is aged about 19 years. She has sustained grievous injuries including bone fractures. Therefore, the Doctor, after examining the claimant and verifying the medical records has assessed the disability as 45%, which is relevant in this case. The claimant had spent a sum of Rs. 13,200/- towards medical expenses. The Tribunal had not considered the attender charges, which is an essential one in an accident case.

14. Considering the facts and circumstances of the case and the arguments advanced by the learned Counsel on either side and on perusing the impugned award passed by the learned Motor Accidents Claims Tribunal, this Court is of the considered opinion that the claimant's age was 19 years. She had sustained bone fracture injury and the doctor had certified that she had sustained 45% disability and she had also spent Rs. 13,200/- towards medical expenses. The

rest of the compensation is not on the higher side, considering that it has been granted under the relevant heads. Therefore, this Court confirms the said award which is fair and justifiable. At the time of accident, the Insurance Policy was not in force. Therefore, the Appellant is at liberty to recover the said compensation amount from the owner of the vehicle. The Tribunal fixed the rate of interest at 9.5% per annum, this Court modified the interest at 7.5% per annum. Therefore, this Court directs the Appellant to comply with this Court order within a period of six weeks from the date of receipt of a copy of this order.

15. It is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 4826 of 2005 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, after filing necessary payment out application, in accordance with law, subject to withdrawals, if any, made already.

16. In the result, the above Civil Miscellaneous Appeal is disposed of. Consequently, the judgment and Decree dated 30.10.2009 made in M.C.O.P. No. 4826 of 2005, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai, is modified. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.