
(2013) 09 MAD CK 0195
In the Madras High Court
Case No : C.M.A. No. 3750 of 2005

The Branch Manager, National Insurance Co., Ltd.	APPELLANT
Vs	
K. Premkumar and M. Devi	RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0195

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

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; S.M. Loganathan for R1, R2-Ex parte, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 31.12.2004, made in M.C.O.P. No. 754 of 2000, on the file of the Motor Accident Claims Tribunal, Sub-Court, Kanchipuram. The short facts of the case are as follows:-

The petitioner had filed the claim petition in M.C.O.P. No. 754 of 2000, on the file of the Motor Accident Claims Tribunal, Sub-Court, Kanchipuram, claiming compensation of a sum of Rs. 10,00,000/- from the respondents for the injuries sustained by her in a motor vehicle accident.

2. It was submitted that on 13.02.2000, at about 09.45 p.m., the petitioner was driving a Fiat Uno Car bearing registration No. TN21 C3006 from Chennai to Kanchipuram, along with his family members. When the car was proceeding on Sriperumbudur Bye Pass Road i.e., G.W.T. Road on the extreme left and when it was near Poornima Petrol Bunk, the first respondent's lorry bearing registration No. TSH 5857, which was proceeding ahead of the lorry at a high speed and in a rash and negligent manner and was turned suddenly towards the right side of the road without giving any indication and consequently dashed against the front of the car. As a result, the front portion of the car was fully damaged and the

petitioner, his wife and also their clerk had sustained grievous injuries. He was admitted at Miot Hospital at Porur, wherein first aid was given and subsequently admitted at St. Thomas Hospital, wherein a surgery was conducted. Subsequently, he took treatment at Devaki Hospital. Prior to the accident, the petitioner was working as a Lawyer and earning Rs. 20,000/- per month. Due to the disability sustained in the accident, he is not able to do his work as before. Hence, the petitioner had filed the claim petition against the respondents, who are owner and insurer of the lorry bearing registration No. TSH 5857.

3. The second respondent, in their counter statement, had submitted that the accident was caused only due to the negligence of the driver of the car bearing registration No. TN21 C3006, who had driven it at a high speed and dashed it against the lorry proceeding ahead of the car. It was submitted that the accident could have been averted if the driver of the car had driven the car at a moderate speed and in a cautious manner. It was submitted that as the first respondent's lorry driver did not have a valid licence at the time of accident, the conditions of policy of insurance had been violated and as such the second respondent is not liable to pay any compensation. It was submitted that the claim was excessive.

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

- i. Whether the accident had occurred due to the rash and negligent driving by the driver of the first respondent's lorry bearing registration No. TSH 5857? and
- ii. Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation?

5. In the same accident, the wife of the petitioner herein namely Shanthi had also filed the claim in M.C.O.P. No. 753 of 2000, against the same respondents, claiming compensation for the injuries sustained by her in the accident. On the request made by the counsels for their respective petitioners, through a joint memo, a joint trial was conducted and common evidence was recorded.

6. The petitioners in M.C.O.P. Nos. 754 and 754 of 2000 were examined as P.Ws. 1 and 2 respectively and one Dr. N.O. Samson was examined as P.W. 3 and 261 documents were marked as Exs. P1 to P261 namely copy of FIR, copy of accident register, copy of M.V.I.'s report, discharge summaries issued by St. Thomas Hospital to P.W. 1, copy of driving licence of P.W. 1, copy of charge sheet, copy of I.D. Card, copy of PAN Card, doctor certificate, prescriptions, payment receipts, medicine bills, lab receipts, car rent receipts, receipts issued by Hariharan, acknowledgment issued by Income Tax Department, Auditor's letter, Bar Association I.D. Card, X-ray and disability certificate. On the respondents' side one witness was examined as R.W. 1 and six documents were marked as Exs. R1 to R6 namely copy of copy application, affidavit and vakalat for getting copy of FIR, letter sent to first respondent, return cover, acknowledgment cards, letter sent to police officials.

7. P.W. 1 had adduced evidence that on the date of accident, when he was driving the car on Sriperumbudur Bye Pass Road and when the car was nearing the Poornima Petrol Bunk, he had seen the first respondent's lorry bearing registration No. TSH 5857, proceeding ahead of him at a distance of 30 to 40 feet and that he had given the indication to the lorry driver to overtake the lorry and that on receiving the indication, the lorry driver had taken the lorry to the left side of the road. Further, he deposed that when he was in the process of overtaking the lorry, the lorry driver, without giving any indication, had suddenly turned the lorry inside the Petrol Bunk and that on seeing this, he had applied brakes, but in spite of it the lorry had dashed against the car and the rear tyre of the lorry was meshed with the front tyre of the car and as a result, the car was dragged inside the petrol bunk. He deposed that he and his wife and clerk had sustained injuries.

8. P.W. 1 had adduced evidence that due to the accident, he had sustained fracture of 2 of his bones below his left knee and that the flesh in these regions had been crushed and that he had also sustained lacerated injuries over his forehead. He had deposed that he had received first aid at Miot Hospital and later taken treatment at St. Thomas Hospital, wherein a surgery was conducted on 15.02.2000 and a steel plate was fixed in the fractured area. He deposed that he was discharged on 23.02.2000. As he experienced pain in the operated area, he was readmitted in the same hospital on 25.02.2000, wherein it was found that the nerves and blood vessels in the fractured area had been affected. He was referred to Devaki Hospital, Chennai, for skin treatment, wherein he received treatment as an outpatient for a day and subsequently readmitted at St. Thomas Hospital, wherein he received treatment till 16.03.2000. After the surgical operation, his skin had started getting black in the operated region. He had received treatment under Dr. Agastian, Dr. Thiagarajan and Dr. Fasludheen. He deposed that another surgical operation has to be conducted to remove the steel plate fixed in his leg and that a skin grafting operation has to be conducted. He deposed that due to the accident, he is unable to drive a car as he is not able to press on the clutch and that due to this he had appointed a driver. He deposed that his left leg had been shortened by half an inch and due to this, he experiences pain while walking, standing and climbing stairs for long period.

9. P.W. 3 Doctor had adduced evidence that he had given treatment to the petitioner. He deposed that the petitioner was admitted in their hospital on 14.02.2000 at 06.00 a.m., and that on examination he had observed that 2 bones in the petitioner's left leg had been fractured and that skin below his left knee had been crushed. Further, he deposed that a surgical operation was conducted and steel plate with screw were fixed in the fractured area and that the petitioner was discharged on 23.02.2000. Further, he adduced evidence that the petitioner was again readmitted at their hospital on 25.02.2000 and was then referred to Devaki Hospital, Chennai for treatment of crushed skin and that he was again readmitted at the hospital on 29.02.000 and received treatment as an inpatient till 18.03.2000.

10. He deposed further that due to the injuries sustained, the petitioner would not be able to bend his right knee and heel and that he experiences pain while walking and that he could walk only with the support of a crutch. Further, he had deposed that the petitioner's left leg had been shortened by 2 cms and that the skin of his left leg looks black in colour and that a skin grafting has to be done in his left leg failing which the bones in his left leg would get affected. He deposed further that two surgical operations have to be carried out on his left leg and that the cost of surgical operation to remove steel plates would be Rs. 25,000/- and that the plastic surgery for skin grafting would be Rs. 25,000/-. He deposed that the disability sustained by the petitioner was 50% and in support of his evidence, he had marked Ex. P. 257 disability certificate.

11. P.W. 2 had also adduced evidence, which is similar to the evidence of P.W. 1 regarding manner of accident.

12. R.W. 1 Selvi, Assistant of the second respondent's firm, had adduced evidence that they had made a request to the Thiruvallur Judicial Magistrate Court No. II, to furnish details of FIR and that their application was returned stating that no such FIR had been filed by the police regarding the accident. She deposed that no charge sheet had been filed by the petitioners. She further deposed that a notice was sent to the driver of the first respondent to adduce evidence and that the notice was returned stating that no such person was available and the returned cover was marked as Ex. R3. A private notice was sent to the driver through court even after receiving it, the driver had not come to Court and adduced evidence. He further deposed that their petition for examination of Inspector was allowed by Court and private notice was sent on 08.09.2004 and another notice was sent to Sub-Inspector of Police and he was told to appear before Court and had given evidence on 15.09.2004 and that another notice was also sent to him. Further, she deposed that the accident could have been caused only due to the negligence of the lorry driver and that the accident had been caused by the contributory negligence of both parties and in support of her evidence, she had marked Ex. R1 to R6.

13. R.W. 1 had admitted in her evidence that FIR had been against the first respondent's lorry driver. Hence, the Tribunal, on scrutiny of FIR and on scrutiny of evidence of P.W. 1 and P.W. 2 and on considering the other oral and documentary evidences held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's lorry.

14. The Tribunal, on scrutiny of oral and documentary evidence, had awarded a sum of Rs. 13,325/- for transport expenses as per bills marked as Exs. P149 to P163, Rs. 88,670/- was awarded for medical expenses as per medical bills marked as Exs. P17 to P148, Rs. 1,50,000/- was awarded for loss of income during medical treatment and convalescence period, Rs. 25,000/- was awarded for nutrition, Rs. 30,000/- was awarded for pain and suffering, Rs. 1,50,000/- was awarded for disability of 50%, Rs. 1,50,000/- was awarded for future medical expenses and future loss of income. In total, the Tribunal had awarded a

sum of Rs. 6,06,995/- as compensation to the petitioner and directed the second respondent, on behalf of the first respondent, to pay the said sum together with interest at the rate of 9% per annum from the date of filing the claim till the date of payment of compensation with costs, within two months from the date of it's order.

15. Aggrieved by the said Award, the Insurance Company has preferred the present civil miscellaneous appeal.

16. The learned counsel for the appellant has contended in the appeal that the first respondent herein has not proved the involvement of the lorry bearing registration No. TSH 5857, in the alleged accident through an independent witness. It is also contended that the Tribunal had failed to note that criminal proceedings had not been initiated as alleged by the first respondent. It is also contended that the Tribunal had failed to draw inference from Ex. P3 that if the alleged lorry was involved in the accident, there would have been damages to the lorry, moreso, when the first respondent has deposed that the car dashed against the diesel tank of the lorry.

17. It is also contended that the Tribunal in any event ought to have placed reliance on the evidence of R.W. 1 and Exs. R1 to R6 and held that the involvement of vehicle is not proved beyond doubt and dismissed the claim.

18. Further, it is contended that the Tribunal failed to note that admittedly P.W. 1 drove the car at 70 Km. speed and attempted to overtake the lorry at the time of the alleged accident. It was also contended that the award passed under the head of future medical expenses is erroneous as he had not been substantiated by documentary evidence. Hence, it is prayed to set aside the award passed by the Tribunal.

19. The learned counsel appearing for the claimant has submitted that the claimant had sustained multiple bone fracture injuries on his left leg and his left leg bone had been fractured in two places. Initially, he had been treated at Miot Hospital and thereafter, he was referred to St. Thomas Hospital, wherein a surgical operation was conducted and steel plate was fixed in the operated area on his left leg. The learned counsel has further submitted that the claimant had undergone treatment as an inpatient as well as outpatient and the claimant had spent a sum of Rs. 89,000/- towards medical expenses. After the accident, he had closed his office for about one year. The claimant is an income tax assessee. As per Doctor's evidence, he had sustained 50% disability and the Doctor had also stated that another surgical operation has to be conducted to remove the steel plate from the operated area. The claimant's left leg had been shortened by 2 Cms.

20. On considering the facts and circumstances 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, since FIR had been registered

against the driver of the offending vehicle and the said vehicle had been insured with the appellant Insurance Company. However, the quantum of compensation is on the higher side. Therefore, this Court reassesses the compensation as follows:

- i. Rs. 89,000/- is awarded towards medical expenses,
- ii. Rs. 1,00,000/- is awarded towards disability,
- iii. Rs. 15,000/- is awarded towards pain and suffering,
- iv. Rs. 10,000/- is awarded towards transport expenses,
- v. Rs. 10,000/- is awarded towards nutrition,
- vi. Rs. 10,000/- is awarded towards attender charges,
- vii. Rs. 75,000/- is awarded towards loss of earning during medical treatment period, and
- viii. Rs. 2,00,000/- is awarded towards loss of amenities and loss of comfort due to his left leg being shortened of 2 Cms, as per Doctor's evidence. In total, this Court awards Rs. 5,09,000/- as compensation to the claimant as it is found to be appropriate in the instant case. The rate of interest remains unaltered.

21. As per the submissions of the learned counsel for the appellant Insurance Company, it is seen that the entire compensation amount had already been deposited and the claimant was permitted to withdraw 50% of the deposited amount.

Now, the claimant is at liberty to withdraw the balance compensation, as per this Court's findings, with proportionate interest thereon, subject to the deduction of earlier withdrawal, lying in the credit of M.C.O.P. No. 754 of 2000, on the file of the Motor Accident Claims Tribunal, Sub-Court, Kanchipuram, after filing a memo along with a copy of this Judgment. Likewise the appellant is at liberty to withdraw the excess compensation amount with proportionate interest thereon after filing memo.

In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 31.12.2004, made in M.C.O.P. No. 754 of 2000, on the file of the Motor Accident Claims Tribunal, Sub-Court, Kanchipuram, is modified. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.