
(2011) 06 MAD CK 0234

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 559 of 2011 and M.P. No's. 1 and 2 of 2011

The Divisional Manager, National Insurance Company Ltd.

APPELLANT

Vs

Devaraj and M. Srinivasan

RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 06 MAD CK 0234

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

Bench : Single Bench

Advocate : D. Bhaskaran, for the Appellant; R. Muralidharan, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—This appeal has been filed by the Appellant against the award and decree dated 30.08.2010 made in M.C.O.P. No. 80 of 2009 on the file of the Motor Accident Claims Tribunal Court, Tindivanam.

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

On 14.06.2008, at about 5 p.m., when the Petitioner was walking on the extreme left side of the Tindivanam Marakkanam Road near Mannarsamykovil, a Hero Honda motor cycle bearing Reg. No. TN 32 Q 1103 coming from behind the Petitioner and ridden by its rider at a high speed and in a rash and negligent manner dashed against him. In the result, the Petitioner sustained grievous injuries. Hence, the Petitioner has filed a claim of Rs. 10 Lakhs against the Respondents. The 1st Respondent is the owner of the Motor cycle and the 2nd Respondent is its insurer.

3. The 2nd Respondent, in his counter has resisted the claim and denied the averments in the claim regarding nature of injuries, age, income and avocation of the injured and medical expenses and disability. The 2nd Respondent has also

denied averments in the claim that the vehicle was covered under a valid registration certificate, fitness certificate, permit and Tax particulars at the time of accident. It was also stated that the vehicle was not insured with them at the time of the accident and that the driver did not have a valid licence at the time of accident. It was also stated that the claim was excessive.

4. On the Petitioners side, three witnesses were examined and fourteen documents were marked as Exhibits P1 to P14. On the Respondents side, no witness, no documents.

5. On the averments of both the parties, the Tribunal framed three issues for consideration in this case, namely,

- a. Who was responsible for the accident?
- b. Are the Respondents liable to pay compensation?
- c. If so, what is the quantum of compensation he is entitled to get?

6. PW1, the Petitioner adduced evidence that was in consonance with the version of accident as mentioned in the claim regarding manner of accident. He further adduced evidence that after the accident, he initially took treatment in Govt. Hospital, Dindivanam and then had taken treatment at Govt. General Hospital, Pondicherry. In support of his evidence, he had marked Ex.P1 F.I.R., and Ex.P2, Motor Vehicle Inspectors Report. The Tribunal, on considering that no contra evidence had been let in by the Respondents to counter the averments made in the F.I.R., held that the accident had been caused by rash and negligent riding of the 1st Respondent's motor cycle by its rider.

7. PW1 had adduced evidence that due to the accident, he had sustained fractures of bone on his right leg, thigh and right hand and also severe injuries in his head; that he is able to walk only with the support of a walker and that subsequent to the accident, he is not able to do any work as he used to do before the accident. In support of his evidence, he had marked Exhibits P3, wound certificate issued by Tindivanam Govt. Hospital. Ex.P4, the discharge slip issued by Pondicherry Govt. Hospital. Ex.P5, the discharge slip issued by Govt. General Hospital, Chennai. Ex.P6 to Ex.P11 the Trip sheet and Ex.P12 the Medical records issued by the Govt. General Hospital Chennai. PW3, the Doctor, who had examined the Petitioner adduced evidence that on 09.04.2010, he had examined the medical records of the Petitioner and also examined him to assess the disability sustained by him in the accident on 14.06.2008; that he had found that a surgery had been done on his right elbow; that the muscles on his right elbow were thin, and the Petitioner experienced pain on touching this portion; that the right forearm joint movements were reduced by 30%; that the wrist movements of his right hand were reduced by 30%; that the ability of the muscles controlling the movements of the forearm joint and wrist have been reduced by 20%; that the movement of his right hip joint was reduced by 30% and the ability of the muscles controlling this movement has been reduced by 20% and that the right

thigh muscles have shrunk by four cms., and his right knee muscles have shrunk by 2 cms.; that the length of right leg has been reduced by 1"; that the Petitioner has difficulty in climbing steps, sit and squat, walking on inclined regions; and lifting heavy articles with his right arm. He had further adduced evidence that on taking X"ray of fractured hand, he had found that the two bones which had been fractured had malunited. PW2 adduced evidence that the disability sustained by Petitioner was 67% and in support of his evidence had marked Ex.P13, the X"ray and Ex.P14, the disability certificate.

8. Based on the oral and documentary evidence, the Tribunal awarded a compensation of Rs. 4,05,500/- to the Petitioner. The breakup of compensation is as follows:

For disability at 67% - Rs. 1,34,000/-

For Loss of future income

due to disability - Rs. 1,34,000/-

For pain and sufferings - Rs. 50,000/-

For mental agony, Loss of amenities and comfort - Rs. 20,000/-

For attendant charges - Rs. 50,000/-

For Damage to clothes and articles - Rs. 1,000/-

For nutrition - Rs. 3,000/-

For conveyance expenses (as per ExsP6 to P11) - Rs. 13,500/-

9. The Tribunal directed the Respondents 1 and 2 to deposit the above said award with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, within two months from the date of its order.

10. Aggrieved by the said award passed by the Tribunal, the 2nd Respondent has filed the present appeal to set aside the award passed by the Tribunal. The learned Counsel for the Appellant has argued that the Tribunal failed to note that the assessment of disability by the Doctor, PW2 was highly exaggerated and has no basis.

11. It was also pointed out that the Tribunal after having awarded Rs. 1,34,000/- towards disability had again awarded a lump sum of Rs. 1,34,000/- for loss of earnings, which is unsustainable. Further, the award of Rs. 50,000/- towards pain and sufferings and Rs. 20,000/- towards mental agony is also without any basis and unsustainable. Further, the Tribunal had granted an award of Rs. 50,000/- for attender charges, which is also not based on any proof, Material or basis. Further, the award of Rs. 13,500/- for conveyance expenses has also been done without adjudicating the issue. The Tribunal had also failed to note that no independent witness of the occurrence was examined to prove the manner of

accident and negligence. The claims Tribunal had also filed to note that as the claimant had failed the claim u/s 166 of the Motor Vehicles Act, he has to prove that the accident happened due to negligence of the driver of the vehicle. As such, it was pointed out that the award granted by the Tribunal was excessive.

12. The learned Counsel for the claimant argued that the claimant had sustained grievous injuries including crushed muscles and multiple bone fractures. His right leg was shortened by 1". His joint movements have also been restricted by 300. He had undergone treatment at Govt. Hospital, Pondicherry and Govt. General Hospital, Chennai. After the accident, he is unable to walk, sit, and run and he is unable to perform his normal works as a carpenter. The learned Counsel further argued that the Tribunal ought to have adopted multiplier method for assessing the compensation in the instant case. The claimant depends upon his physical strength for his avocation. The Tribunal has not given any award for loss of earning during medical treatment period. The Petitioner has sustained bone fracture on his right arm and right thigh. Considering the nature of injuries, duration of treatment, age and avocation, the compensation amount awarded by the Tribunal is a reasonable one. As such, the appeal is not maintainable against the impugned award of the learned Tribunal.

13. Considering the facts and circumstances of the case and arguments advanced by the learned Counsel on either side and on perusing of the impugned order on the file of the Motor Accident Claims Tribunal Court, Tindivanam, this Court is of the considered opinion that the Tribunal had awarded a sum of Rs. 1,34,000/- under the head of Loss of earning power and another award of Rs. 20,000/- under the head of mental agony. Both these awards are incorrect as they are redundant. Therefore, this Court restructures the compensation as follows;- Rs. 1,34,000, Rs. 30,000/-, Rs. 40,000/-, Rs. 20,000/-, Rs. 1,000/-, Rs. 10,000/-, Rs. 15,000/- and Rs. 25,000/- are granted towards Loss of income due to disability, Loss of income during medical treatment and convalescent period, Pain and suffering, attender charges, towards damage to clothes, extra nourishment, conveyance expenses and Loss of amenities and comfort respectively. In total, this Court awards, Rs. 2,75,000/- as compensation. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation, which is fair and sustainable in the instant case. Therefore, this Court scales down the compensation from Rs. 4,05,000/- to Rs. 2,75,000/-. This Court directs the National Insurance Company Limited, to deposit the compensation amount, as ordered by this Court, within a period of six weeks from the date of receipt of this order, after deducting earlier deposits made. After such a deposit being made 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. 80 of 2009, on the file of the Motor Accidents Claims Tribunal Court, Tindivanam, after filing a memo along with a copy of this order, subject to withdrawals, if any, made already.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently, the award and decree passed in M.C.O.P. No. 80 of 2009, by the learned Motor Accidents Claims Tribunal, Tindivanam dated 30.08.2010 is modified. Consequently, connected Miscellaneous Petitions are closed. No order as to costs.