

(2011) 04 MAD CK 0061

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3761 of 2008 and M.P. No. 1 of 2008

The Divisional Manager, The National Insurance Co. Ltd.

APPELLANT

Vs

V. Krishnamurthy and V. Sathish

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0061

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

Bench : Single Bench

Advocate : S. Vadivel, for the Appellant; M. Selvan, for R-1, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / National Insurance Company Limited against the award and decree

dated 28.09.2007 made in M.A.C.T.O.P. No. 677 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, II

Additional Sub Judge (Incharge), Cuddalore.

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

On 13.10.2004, at around 06.30 p.m., when the Petitioner was proceeding on his bicycle, on the Nellithope market street, Pondicherry, the first

Respondent's motorcycle bearing Registration No. PY-01-Y-3096, coming from the opposite direction and driven by its driver at high speed,

dashed against the cyclist. In the result, the Petitioner had sustained grievous injuries. Hence the claim petition was filed against the Respondents for

compensation of a sum of Rs. 5,00,000/- with interest.

3. The second Respondent / Insurance Company had filed a counter statement and resisted the claim petition. The Respondent denied that the

accident had been committed by the rider of the motorcycle. Actually, the Petitioner had suddenly crossed the road on his bicycle and dashed

against the motorcyclist. As such the accident took place. The age, income and occupation of the claimant were also denied. The claim amount is

an excessive one.

4. On the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Who was responsible for the accident?

(ii) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

5. On the side of the claimant, the claimant was examined as PW1 and a doctor was examined as PW2. The following documents were marked

namely, First Information Report, Wound Certificate, Medical Discharge Summary, Motor Vehicle Inspector's Report, Claimant's occupational

certificate, disability certificate, X-ray etc., On the side of the Respondents, no witness was examined and no documentary evidence was given.

6. PW1 had adduced evidence stating that on 13.10.2004, at around 6.30 p.m., when he was proceeding on his bicycle on the Nellithope market

street, Pondicherry, the first Respondent's motorcycle, coming in the opposite direction and ridden by its rider in a negligent manner, dashed

against him. He further stated that in the said accident, he had sustained grievous injuries all over his body. Immediately, he was taken to the

Government Hospital, Panruti for preliminary treatment. Thereafter, he had undergone treatment at a Private Hospital. PW2, the doctor, had

assessed the disability as 40%, after examining the claimant. The claimant's right foot joint was fractured and the fractured bone was un-united. His

right leg foot had been thickened by about 5.5 cm, on his right leg, the fifth toe was fractured.

7. On considering the evidence of the witnesses, the Tribunal had awarded a sum of Rs. 1,64,000/-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.

8. Aggrieved by the said award, the Insurance Company has filed the above appeal to scale down the compensation.

9. The learned Counsel for the Appellant argued that the Tribunal had adopted multiplier method and awarded compensation of a sum of Rs.

1,44,000/-under the head of "loss of income due to disability" and this is not pertinent in this case, as the claimant's avocation has not been

affected. The learned Counsel further argued that the claimant had suffered simple injuries, but the doctor had assessed disability at 40%, which is on the higher side.

10. The learned Counsel for the claimant argued that the claimant was engaged as a painter and was earning a sum of Rs. 5,000/-per month. After the accident, he is unable to do his normal work as painter. The Tribunal's award of compensation under the heads of pain and suffering, nutrition, attender charges, transport were on the lower side.

11. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the Tribunal's adoption of multiplier method is not correct. Hence, this Court restructures the compensation as follows:

Rs.80,000/- towards loss of income due to disability;

Rs.5,000/- for nutrition;

Rs.5,000/- for transport;

Rs.5,000/- for attender charges;

Rs.15,000/- for pain and suffering;

Rs.10,000/-towards loss of income during medical treatment period and convalescent period Rs. 10,000/- for loss of amenities and loss of comfort.

In total, this Court awards Rs. 1,30,000/-as compensation as it is found to be fair and equitable. 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. As such, this Court scales down the compensation

from Rs. 1,64,000/- to Rs. 1,30,000/-.

12. On 04.12.2008, this Court imposed a condition on the Appellant / National Insurance Company to deposit Rs. 1,00,000/-together with

proportionate interest to the credit of M.C.O.P. No. 677 of 2005 on the file of the Motor Accident Claims Tribunal, IInd Additional Sub Judge

(Incharge), Cuddalore. Now, this Court directs the Appellant to deposit the balance compensation amount with interest, as observed above, within

a period of six weeks from the date of receipt of this order. After such deposit has been made, it is open to the claimant to withdraw the modified

compensation amount with accrued interest as fixed by this Court lying in the credit of M.C.O.P. No. 677 of 2005 on the file of the Motor

Accident Claims Tribunal, I Ind Additional Sub Judge (Incharge), Cuddalore, after filing a Memo along with this order.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims

Tribunal on the file of Principal Subordinate Judge, II Additional Sub Judge (Incharge), Cuddalore made in M.A.C.T.O.P. No. 677 of 2005,

dated 28.09.2007 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.