

(2009) 03 MAD CK 0142

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 862 of 2004 and Civil Miscellaneous
Petition No. 5187 of 2004

The Divisional Manager, The New India Ass. Co. Ltd.

APPELLANT

Vs

Sasikumar and P. Panneer

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 19, 2(15B), 51, 52A
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) ACJ 2413 : (2009) 5 MLJ 268

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : D. Venugopal and V. Ramakrishnan, for the Appellant; R. Yashod
Vardhan, S.C for R. Sunil Kumar, for R. 1, for the Respondent

Judgement

M. Venugopal, J.—The appellant/New India Assurance Company Limited, Pondicherry has preferred this Civil Miscellaneous Appeal, dis-satisfied with the award dated 12/9/2003 passed in M.C.O.P. No. 339 of 2001 by the Motor Accident Claims Tribunal - Principal Sub-Judge, Cuddalore awarding a total compensation of Rs. 11,05,000/- (Rupees eleven lakhs and five thousand only) together with interest at 9% p.a., from the date of filing of the petition till date of payment.

2. The facts of the claim in brief are as follows:

On 11/9/2000, at about 18.00 hours, when the first respondent/claimant was standing at Karaikadu bus stop, waiting for the bus, at that time, the Motor Cycle bearing Registration No. TN31B-3202 came from Cuddalore side to Virudhachalam side in a rash and negligent manner at a high speed and hit against the first respondent/claimant, as a result of the accident, the first respondent/claimant sustained a head injury and grievous injuries. Immediately, after the accident, the first respondent/claimant was taken to Krishna Hospital, Cuddalore and then referred to Apollo Speciality Hospital, Chennai for further

management. The first respondent/claimant was admitted as an in-patient from 22/12/2000 to 27/12/2000 at Government Hospital, Cuddalore.

3. The first respondent/claimant at the time of accident was hale and healthy and was about 23 years of age. He was studying in Dr. Ambedkar Law College, Chennai and because of the physical impairment and disability arisen out of the accident, he was not able to do any work and was not able to sit, stand, walk and his life was doomed. His parents had incurred an expense of more than Rs. 4 lakhs towards his medical treatment and medicine. His education was fully spoiled. The first respondent/claimant estimated the loss at Rs. 15 lakhs towards pain and suffering, shock and mental agony, loss of medical expenses, to and fro charges, future income and for development of physical impairment and disability sustained.

4. The second respondent/first respondent (owner of the offending motorcycle) was vicariously liable and the appellant/second respondent Insurance Company being the insurer of the offending vehicle were jointly and severally liable to pay the compensation to the first respondent/claimant. Hence the first respondent/claimant had projected the claim praying for passing of an award to an extent of Rs. 15 lakhs as compensation together with interest at 18% p.a., from the date of petition till date of realisation along with costs.

5. The appellant/second respondent Insurance Company filed a statement among other things mentioning that the claim petition filed by the first respondent/claimant was vexatious and unsustainable in law and denied that the vehicle bearing Registration No. TN31B-3202 was insured with it and that the driver had a valid driving license on the date of accident and further, denied the first respondent/claimant's age, occupation and monthly income, alleged insurance sustained, the period of treatment and the nature of disability and in any event, the compensation claimed was an exaggerated and excessive one.

6. The appellant/Insurance Company in its additional written statement took a plea that the vehicle belonged to the brother-in-law of the first respondent/claimant and that the motorcycle was driven by the first respondent/claimant himself along with his friends as against the permitted capacity and because of his rash and negligent driving, he lost control and fell down and resultantly sustained injuries and that the averments in the claim petition and the recitals of the First Information Report were false and made with an ulterior motive and the first respondent/claimant being a tort-feasor was not entitled to get any compensation from the Insurance Company.

7. The second respondent/first respondent was set ex parte before the trial Court.

8. Before the trial Court, on the side of the first respondent/claimant witnesses P.Ws.1 and 2 are examined and Ex.P.1 to Ex.P.16 were marked. On the side of appellant/Insurance Company and on the side of second respondent/first respondent, owner of the vehicle no witness was examined and no documents were marked.

9. After contest, on consideration and appreciation of oral and documentary evidence, the trial Court has consequently passed the award of Rs. 11,05,000/- payable by the appellant/second respondent Insurance Company to the first respondent/claimant along with interest at 9% p.a., from the date of filing of the petition till date of realisation. The Tribunal has determined the lawyer's fee at Rs. 18,050/-.

10. The learned Counsel appearing for the appellant/Insurance Company urges before this Court that the First Information Report was lodged only on 27/12/2000, after a delay of 3 months for which the first respondent/claimant has assigned a reason that he has been taking treatment and the same cannot be accepted, in as much as he is not an illiterate and only a law College student and further that the finding of the Tribunal in regard to aspect of negligence, against the rider of Motorcycle is baseless in law and there has been collusion between the parties in manipulating the document so as to make the appellant/Insurance Company liable to pay the compensation and that a fraud has been perpetuated and furthermore, the disability of 65% for neurological deficiency by P.W.2 Doctor is an exaggerated one and the award of Rs. 3,05,000/- under various heads is also excessive and the amount of Rs. 8 lakhs awarded towards Medical bill expenses will have to be scaled down and therefore, prays for allowing the appeal to promote substantial cause of justice.

11. To prove negligence, the first respondent/claimant has examined himself as P.W.1. In his evidence, he has deposed that on 11/9/2000, at about 6.00 p.m., he was standing at Karaikadu bus stop in order to proceed to Kullanchavadi at that time, a motorbike proceeding to Vridhachalam from Cuddalore came in a fast speed and negligently and dashed against him, as a result of which he suffered injury on his head and fell down and at that time, his relative Ravi was present and he was immediately taken in an auto to the Krishna Hospital for providing first aid and on refusal, he was admitted into the Apollo Hospital, Chennai for further treatment and he went to Apollo Hospital in an ambulance and he remained as in-patient for 4 months and he was treated at the Apollo Hospital for two months without regaining his conscience and after four months, he was admitted as in-patient at the Cuddalore Head Quarters hospital, where he took treatment for a week and since he stayed at Madras along with his parents and took treatment for four months, there was a delay in registering a case by the Police and while he was at Cuddalore Government Hospital, a complaint was given and a case was registered and at the time of accident, he was 23 years old, studying at Dr. Ambedkar Law College at Chennai, doing his second year law Course and because of the accident, he could not continue his studies and that the driver of the motor cycle admitted the offence as seen from Ex.P.16 judgment of Criminal Court in S.T.C. No. 378 of 2003 dated 28/3/2003.

12. P.W.2 Doctor Chandran in his evidence has stated that he has not treated the first respondent/claimant and that he has issued him Ex.P.14 disability certificate dated 30/7/2003 whereunder, he has assessed the permanent disability at 65%.

13. In Ex.P.1, xerox copy of First Information Report, the name of the complainant is mentioned as Sasikumar, who is none other than the first respondent/claimant in the case. Moreover, in Ex.P.1 First Information Report, the accused person is described as rider of motorcycle bearing Registration No. TN31B-3202. The date of occurrence is said to be on 11/9/2000 at 18.00 hours. However, a perusal of Ex.P.1 First Information Report shows that the information has been received by the Cuddalore O.T. Police Station on 27/12/2000 @ 14.45 hours. As a matter of fact, it is quite evident from Ex.P.1 First Information Report that the Cuddalore O.T. Police have registered a case in Crime No. 1348 of 2000 under Sections 279 and 338 of the Indian Penal Code. In fact, in Ex.P.1 First Information Report, P.W.1/first respondent/claimant has stated that on 11/9/2000 at about 6.00 Clock in the evening, he along with his village friend Ravi after distributing betrothal invitation to his relatives has been standing in Karaikadu bus stop along with his friend Ravi in order to proceed to Kullanchavadi and at that time, when they were standing on the eastern side of Cuddalore - Vridhachalam main road, at that time, a motor cycle coming from Cuddalore route to Vridhachalam route has come in a fast speed and negligently and dashed against him, as a result of which he fell down and suffered a serious head injury and immediately he saw the motor vehicle as Bullet and the number of the vehicle bearing Registration No. TN31B-3202 and that his friend Ravi and the motorcycle rider and the nearby persons lifted and made him to sit and because of the injury sustained, his hands and legs were shivering etc., and that he was immediately taken to Cuddalore Government Hospital in an auto which came that way and since the Hospital authorities informed that they cannot treat him and directed him to go to Apollo Hospital at Chennai, on the same day, he was admitted into the Apollo Hospital at Chennai and that he took treatment at Chennai on 20/12/2000 and later got discharged and again admitted himself into the Government Hospital at Cuddalore as in-patient and after discharging himself from the Hospital on 27/12/2000, he preferred the complaint.

14. In Ex.A.2 Motor Vehicle Inspection report issued by the Motor Vehicles Inspector, Cuddalore in respect of the offending Motorcycle Bullet TN31B-3202, it is opined that the accident was not due to any mechanical defects of the vehicle.

15. As seen from Ex.P.16, judgment passed by the learned Judicial Magistrate No. II, Cuddalore in S.T.C. No. 378 of 2003 dated 28/3/2003 it is quite evident that the accused Sivakumar, S/o.Palanivel Sinnakatusahai, Cuddalore Taluk has been complained under Sections 279 and 338 of the Indian Penal Code in regard to the causing of hurt by driving or riding on a public way and causing grievous hurt by an act endangering life of personal safety of others and the accused has been found guilty under Sections 279 and 338 of the Indian Penal Code and a fine of Rs. 300/- has been imposed for the offence u/s 279 of the Indian Penal Code with a default sentence of simple imprisonment for two weeks and a fine of Rs. 1,000/- has been imposed for an offence u/s 338 of the Indian Penal Code with a default sentence of simple imprisonment for one month and a total fine of Rs. 1,300/- has been imposed and the same has been paid.

16. At this juncture, this Court points out that even though the appellant/Insurance Company has taken a plea in the additional written statement filed before the Tribunal to the effect that the offending motorcycle has been driven by the first respondent/claimant himself along with his friends as against the permitted capacity and because of his rash and negligent driving, he has lost control and has fallen down and sustained injuries etc. Surprisingly no one has been examined as a witness on behalf of the appellant/Insurance Company before the Tribunal to substantiate their case. Per contra, Ex.P.16, the judgment in S.T.C. No. 378 of 2003 passed by the learned Judicial Magistrate No. II, Cuddalore clearly goes to show that the accused Sivakumar has been found guilty by the Criminal Court under Sections 279 and 338 of the Indian Penal Code and he has been imposed with a total fine of Rs. 1,300/- for the above offences under Sections 279 and 338 of the Indian Penal Code and the same has been paid by him. Suffice it to point out by this Court that the appellant/Insurance Company has not proved its stand that the first respondent/claimant has driven the motorcycle himself along with his friends etc., and that he has been responsible for the rash and negligent driving. Inasmuch as the appellant/Insurance Company has not proved its case in regard to its allegation that the first respondent/claimant has driven the motorcycle etc., and in view of the fact that Sivakumar the motorcycle driver has been found guilty by the competent Criminal Court as judgment passed in S.T.C. No. 378 of 2003 and also bearing in mind another important fact that the said accused has paid a total fine of Rs. 1,300/- imposed by the criminal Court, this Court comes to the inevitable conclusion that the offending motorcycle rider bearing Registration No. TN31B-3202 is solely and squarely responsible for the causing of accident and the point is answered accordingly.

17. Coming next to the quantum of compensation to be awarded, it is to be pointed out that the first respondent/claimant in the claim petition has made a total claim of Rs. 15 lakhs as compensation. However, the Tribunal has granted Rs. 8 lakhs towards medical expenses as per Ex.P.13 and it has also awarded a sum of Rs. 3,05,000/- towards pain and suffering, injuries, permanent disability, studies being affected, transportation expenses, attendant expenses and future medical expenses and thus, in all, it has granted a total compensation of Rs. 11,05,000/- (Eleven lakhs and five thousand only) to the first respondent/claimant payable by the appellant/second respondent Insurance Company.

18. P.W.1/first respondent/claimant, in his evidence has stated that at the time of accident, he is aged 23 years and that he has been studying second year law course at Dr. Ambedkar Law College at Chennai and because of the accident, he cannot continue his studies and presently that he is not well, without strength and is not able to walk and his two hands are shivering and when he reads normally tears flow from his eyes and therefore, he is not able to do any job and further, he is not able to attend to his morning nature's call and he is also not able to walk, take bath, not able to eat his own food and therefore, for attending these works, he requires male help always and because of the injury sustained

on the head, he often gets fainted and that his marriage life and marital relationship are affected, as informed by the Doctor and that he has studied the first year without any arrears and in good manner and if he has not met with the accident, certainly, he would have become a good Advocate in the Advocate profession and earned a lot and helped his family and that he is the only male issue to his parents and that he has employed an assistant for attending his work on a day payment of Rs. 100/- and that he requires an assistant's help daily and he is visiting the Apollo Hospital at Chennai every month, incurring an expense of Rs. 2,500/- per trip in a hired car and he takes an assistant with him during the said trip to Madras and that he has incurred an medical expense of Rs. 7,96,063/- and he continues to take medicines.

19. In Ex.P.3, xerox copy of accident register in respect of the first respondent/claimant, it is mentioned as follows:

Old case of RTA, admitted and treated at Apollo Hospital, Chennai now he came here with following complaints c/o. Difficulty in walking, difficulty in using both upper limbs and difficulty in speech. O/E conscious, oriented etc., and further, he has been directed to be admitted in MS ward and duty Doctor has been directed to be informed and opinion of ortho is to be obtained.

20. A perusal of Ex.P.3 (second page) indicates inter alia that "As per the orthopaedician opinion, the injury sustained by this individual is grievous in nature." In Ex.P.4 it is the intimation of the Apollo Hospital, Chennai shows that the first respondent/claimant has been admitted on 12/9/2000 and has been discharged on 22/10/2000. In Ex.P.6 report of the Apollo Specialised Hospital, Chennai it is mentioned that "Haemorrhage in right cerebellar hemisphere with intraventricular extension" and further, the CT scan brain (plain) report indicates that "Haemorrhagic contusion right cerebellum and bleed in the posterior horn of left lateral ventricle and when compared to the scan dated 12/9/2000, the lesion is resolving."

21. P.W.2 Doctor in his evidence has stated that he examined the first respondent/claimant on 30/7/2003 for the purpose of issuing him the disability certificate and that the first respondent/claimant is not able to walk properly and even while walking and standing with the help of assistance, he finds it difficult and that he cannot speak properly and that his two hands and legs have been shivering and that he has seen the C.T. Scan report and discharge intimation issued by the Apollo Hospital, Chennai and further, he has seen the Accident Register copy and perused the O.P. chits issued by Cuddalore Government Hospital and he sent the first respondent/claimant to Neurologist Dr. Velumani and also seen the report issued by the said Doctor and that he has assessed the disability sustained by the first respondent/claimant at 65% as per Ex.P.14. In the disability certificate Ex.P.14 dated 30/7/2003 issued by P.W.2 Doctor, the clerical findings are as follows:

a. Unsteady (stagerring) ataxic joint with difficulty in standing and walking even

with support.

b. Difficulty in speaking (slurring speech) - cerebellar dysarthria

c. Tremors of both upper and lower limbs with weakness, diminished power and incoordinated movements.

In short, P.W.2 Doctor has opined that the disability sustained by the first respondent/claimant is permanent in nature and the extent of physical impairment is 65% (Sixty-five percent).

22. The learned Counsel for the first respondent/claimant cites the decision B. Anandhi Vs. R. Latha and Another, , wherein this Court has inter alia upheld the Tribunals assessment of loss of income at Rs. 10,000/- p.m., adopting a multiplier of 18 and arriving at a figure of Rs. 21,60,000/- towards loss of earning capacity + Rs. 15,000/- for transportation charges, Rs. 20,000/- for extra nourishment, Rs. 20,000/- for attendant, Rs. 1,50,000/- for future attendants, Rs. 5 lakhs for pain and suffering and permanent disability, Rs. 1 lakh towards loss of matrimonial life and Rs. 1 lakh for future medical expenses in an appeal.

23. He further, relies on the decision Regional Director, E.S.I. Corporation Vs. Veeran Kutty A.V., , wherein, under Employees' State Insurance Act, 1948, Sections 2(15B), 19, 51 and 52A, a permanent total disablement due to occupational disease, the beneficial interpretation social security legislation has been stressed. 24. Added further, the learned Counsel for the first respondent/claimant brings to the notice of this Court to the decision National Insurance Co. Ltd. Vs. Ujjwala and Others, , wherein in regard to the death of a deceased boy aged 19, passed in XII class examination, the Tribunals award of Rs. 5 lakhs has been up held in an appeal filed by the Insurance Company. He also presses into service the decision United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , wherein the appellate Courts assessment of compensation at Rs. 7 lakhs has been upheld in an appeal projected by the Insurance Company.

25. Further, the learned Counsel for the first respondent/claimant relies on the decision Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , wherein the Honourable Supreme Court has inter alia observed "that in respect of an amputation of left hand above elbow of a carpenter, the disablement is total and not partial etc."

26. He also cites the decision of Supreme Court in S.C. Mittal and Ors. v. Rajasthan State Road Transport Corporation and Ors. 2006 ACJ 875, wherein the award of Rs. 90,000/- granted by the Tribunal has been enhanced to Rs. 2,25,000/-.

27. It is not out of place to make a significant mention that Salmon L.J. in (1968) 1 ALL ER 726 has observed "that the damages awarded should be such that the ordinary sensible man would not instinctively regard them as either mean or

extravagant, but would consider them to be sensible and fair.

28. No wonder it is the manifest duty of a Tribunal/a Court of law to award as perfect a sum as was within its power, in the considered opinion of this Court. Continuing further for mental and physical shock, pain and suffering - suffered and actually to suffer, for loss of amenities in life, for loss of expenditure in life one can award special damages.

29. As far as the present case is concerned, the first respondent/claimant has suffered a permanent physical disability to the extent of 65% physical impairment which cannot be denied and disputed in the considered opinion of this Court. Admittedly, the first respondent/claimant has been admitted as an in-patient at the Apollo Hospital, Chennai for nearly two months etc. As per Ex.P.13 Medical bills produced on the side of the first respondent/claimant, the amount comes to Rs. 8,16,777/-. Out of Rs. 8,16,777/-, a sum of Rs. 77,669.60, Rs. 30,929.35/-, Rs. 26,844/-, Rs. 15,269.95, Rs. 18,650.80, amounting to Rs. 1,69,363.70 N.P., rounded off to Rs. 1,69,364/- represent double entry and further, an expenditure statement of Rs. 1,72,844 also represents the double entry in Ex.P.13. Moreover, the first respondent/claimant has made a sum of Rs. 1,47,825.00 towards deposit (inclusive of Rs. 1,825/- towards return of medicines) in regard to the medical expenses before the medical expenses before the hospital authorities.

30. Continuing further, there is also a double entry in regard to a sum of Rs. 1,461/- towards patient material bill. Thus, in all, the double entry amounts and the deposit amount so made comes to Rs. 4,91,494/- (Rs. 1,69,364 + Rs. 1,47,825/- + 1,72,844 + 1,461). If the aforesaid sum of Rs. 4,91,494/- is deducted from and out of a sum of Rs. 8,16,777/-, the balance comes to Rs. 3,25,283/-. Therefore, the first respondent/claimant is entitled to get the sum of Rs. 3,25,283/- towards medical expenses in accordance with Ex.P.13 medical Bills.

31. As per Ex.P.12 Medical Bills, the actual amount comes to Rs. 1,501/- and therefore, the first respondent/claimant is entitled to get the same. Though the first respondent/claimant has claimed a sum of Rs. 318/- in Ex.P.12 document, there is no receipt for the same and hence, this Court has not awarded that amount to the claimant. Inasmuch as the first respondent/claimant has suffered a permanent disability and physical impairment to an extent of 65% and because of the fact his life has been very badly affected, resulting in future loss of income, this Court awards a sum of Rs. 4,80,000/- in this regard.

32. Towards pain and suffering, this Court awards a sum of Rs. 75,000/-. If the first respondent/claimant has not met with the accident, then certainly in the normal course of things, he will be completing his Law Course and coming out successfully to get himself enrolled as a Lawyer and to practice as an Advocate and to earn monthly income for himself and for his family in the future.

33. Towards attendant assistance, this Court awards a sum of Rs. 50,000/- to the

first respondent/claimant. Since first respondent/claimant at the time of accident, has been 23 years of age and since his marriage prospects have been affected because of the accident, this Court grants a sum of Rs. 20,000/- in this regard.

34. Bearing in mind towards transport expenses, the first respondent/claimant has incurred a sum of Rs. 5,000/- for two months for his visiting to Apollo Hospital, Chennai and also taking note of the future, this Court awards a sum of Rs. 25,000/- in this regard. Towards future medical expenses and also as a global compensation (inclusive of the nourishment expenses), this Court awards a sum of Rs. 50,000/- as an equitable sum to meet the ends of justice.

35. Towards loss of amenities of life, frustration, discomfort etc., this Court awards a consolidated sum of Rs. 25,000/- to the first respondent/claimant.

36. Thus, in all, the first respondent/claimant is entitled to receive a total compensation of Rs. 10,51,784/- (Rupees ten lakhs fifty one thousand seven hundred and eighty four only) {Rs. 3,25,283/- + Rs. 1,501/- + Rs. 4,80,000/- + Rs. 75,000/- + Rs. 50,000 + Rs. 20,000/- + Rs. 25,000/- + Rs. 50,000/- + Rs. 25,000/-} together with interest at 9% p.a., from the date of filing of the petition till date of payment payable by the appellant/Insurance Company. This Court opines that no case is made out for reducing the rate of interest from 9% p.a. The Lawyer's fee is fixed at Rs. 17,518/- (Rupees Seventeen thousand five hundred and eighteen only). Resultantly, the award of Rs. 11,05,000/- (Rupees Eleven lakhs and five thousand only) granted by the Tribunal is marginally on the higher side and the point is answered accordingly.

37. Earlier, this Court in Civil Miscellaneous Petition No. 5187 of 2004 dated 30/3/2004 has permitted the first respondent/claimant to withdraw a sum of Rs. 7 lakhs from the amount deposited as an interim measure.

38. The first respondent/claimant is given the liberty to receive the balance amount to which he is entitled to in M.C.O.P. No. 339 of 2001 on the file of the Motor Accidents Claims Tribunal - Principal Sub-Judge, Cuddalore by filing necessary payment out application as per Civil Rules of Practice. Likewise, the appellant/Insurance Company is also entitled to receive its share/balance amount by projecting necessary payment out application as per Civil Rules of Practice.

39. For the reasons mentioned supra, this Court allows Civil Miscellaneous Appeal in part and consequently, the award passed in M.C.O.P. No. 339 of 2001 on the file of the Motor Accidents Claims Tribunal - Principal Sub-Judge, Cuddalore stands modified. There shall be no order as to costs, bearing in mind the facts and circumstances of the case.