

(2013) 09 MAD CK 0049

In the Madras High Court

Case No : C.M.A. No. 2898 of 2008 and M.P. No. 1 of 2008

The Manager, The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mohammed Mubees and Sadasivam

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0049

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

Bench : Single Bench

Advocate : M. Rajasekar, for the Appellant; R. Neelakandan for R1, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—On 26.02.2002, at about 5.30 p.m., when the claimant was travelling by Auto bearing Registration No. TN-09-Y-9129

and when it was proceeding towards Gummidipoondi, the Tata Sumo Car bearing Registration No. TN-22-D-3578, coming from the opposite

direction and driven in a negligent manner, dashed against the Auto. After hitting the Auto, the Car also dashed against a cyclist and another

person. Hence, the claim has been filed against the owner and insurance company of the Car. The Insurance Company had filed a counter

statement and resisted the claim petition. The respondent denied that the accident had been caused by the driver of the Car. Further, the averments

in the claim regarding age, income of claimant, nature of injuries and mode of treatment was also not admitted.

2. In the same accident, another claim has been filed by the injured petitioner in M.C.O.P. No. 610 of 2003, claiming compensation from the same

respondents. The Tribunal had conducted joint trial. In this case, the claimant and Doctor was examined as PW 1 and PW 3. The below

mentioned documents have been marked namely F.I.R., Medical bills, Discharge Medical summary, Disability Certificate and Medical Certificate.

On the side of the respondents, no oral evidence and no documentary evidence.

3. PW 1 had adduced evidence that on 26.02.2002, at about 5.30 p.m., when he was walking on the G.N.T. Road and the other claimant in

M.C.O.P. No. 610 of 2003, was proceeding on his cycle, the driver of the 1st respondent had driven the Car bearing Registration No. TN-09-Y-

9128, in a negligent manner had dashed against him and the cyclist. PW 1 further stated that he had sustained bone fracture injuries on his leg,

shoulder, chest and skull and he had been admitted at Stanley Hospital, as an inpatient for a period of more than two months. During medical

treatment period, a surgical operation was conducted and steel plate was fixed. After the accident, his right leg had been shortened by 1 inch. The

Doctor had assessed the disability at 75%. PW 3 Doctor had spoken on the same lines of PW 1 regarding the nature of injuries and mode of

treatment. Further, the Doctor had assessed that the disability sustained by claimant at 75%.

4. After considering the evidence of the witnesses and on scrutinising the exhibits marked by him, the Tribunal had granted a sum of Rs. 2,83,700/-

with interest at the rate of 9% per annum. Against the said award, the Insurance Company had preferred the above appeal. The highly competent

counsel vehemently argued that the accident had not been committed by the driver of the Car. Further, the Tribunal had granted a sum of Rs.

1,50,000/- under the head of loss of earning capacity and had again awarded a sum of Rs. 75,000/- under the head of permanent disability which

is redundant.

5. The very competent counsel for the claimant argued that the claimant had sustained multiple bone fracture injuries and he had been admitted in

the Government Stanley Hospital, wherein a surgical operation was conducted and steel plate was fixed. The claimant had been hospitalised for a

period of more than two months. The claimant's right leg had been shortened by 1 inch. The Doctor had assessed the disability at 75%. After the

accident, he is unable to do his avocation as a Tailor.

6. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel 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. However,

the quantum of compensation assessed by the learned counsel is not appropriate in the instant case. Therefore, this Court restructures

compensation as follows:-

Rs. 1,12,500/- towards disability; Rs. 10,000/- towards nutrition; Rs. 15,000/- towards pain and suffering; Rs. 15,000/- towards attender

charges; Rs. 10,000/- towards transport; Rs. 6,700/- towards medical expenses and Rs. 30,000/- towards loss of amenities, loss of comfort due

to the claimant's right leg being shortened by 1 inch. In total, this Court awards Rs. 1,99,200/- as it is found to be appropriate. As such, the

compensation has been scaled down from Rs. 2,83,700/- to Rs. 1,99,200/- as it is found to be appropriate in the instant case. The rate of interest

is unaltered.

7. This Court directed the appellant to deposit the entire compensation amount with interest. Now, the claimant is permitted to withdraw the

modified compensation amount, as mentioned above, with proportionate interest thereon, lying in the credit of M.C.O.P. No. 53 of 2003, on the

file of the Motor Accident Claims Tribunal, Subordinate Court, Thiruvallure, after filing a memo., along with a copy of this order. Likewise, the

insurance company is at liberty to withdraw the excess compensation amount with proportionate interest thereon, after filing a memo., along with a

copy of this order. In the result, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed in

M.C.O.P. No. 53 of 2003, dated 09.11.2004, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Thiruvallure, is modified.

No costs. Consequently, connected miscellaneous petition is closed.