
(2010) 09 MAD CK 0172

In the Madras High Court

Case No : C.M.A. No. 1608 of 2006 and C.M.P. No. 7150 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

A. Kannusamy and V. Muthusamy

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Insurance Act, 1938 — Section 64VB
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) 09 MAD CK 0172

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

Bench : Single Bench

Advocate : K. Suryanarayanan, for the Appellant; A. Arasu Ganesan, for R1, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/second Respondent against the Award and Decree, dated 14.11.2005, made in M.C.O.P. No. 216 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore, awarding a compensation of Rs. 1,55,000/- together with 9% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

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

On 22.02.2001, at about 07.30 p.m. while the Petitioner was walking on his extreme left hand side on the Panruti-Kumbakonam main road at Panruti, from south to north direction, the first Respondent's vehicle bearing registration No. TN49 Y1677, came in the opposite direction at a very high speed in a rash and negligent manner, without adhering to any regulations and hit against the

Petitioner and caused the accident. Due to the accident, he sustained grievous injuries and multiple fractures all over his body and head. Immediately after the said accident, he was admitted in Government Hospital and then he was referred to Government Hospital, Cuddalore. At the time of the accident, he was hale and healthy and earned a sum of Rs. 7,500/- per month as a leading contractor. Due to the said accident, he became a permanent disabled man. The accident had occurred only due to the rash and negligent driving of the driver of the first Respondent's vehicle. As such, he claimed a compensation of Rs. 5,00,000/- with interest before the Tribunal.

4. The second Respondent, in their Counter, had resisted the claim petition as follows:

This Respondent denies the allegations that the van bearing registration No. TN49 Y1677 was insured with this Respondent and that the vehicle had a valid permit, F.C. and the Insurance Certificate and that the driver had a valid driving licence on the date of the accident.

This Respondent denies the due compliance of Section 64-V.B. of the Insurance Act.

Without prejudice to the contentions raised in Paragraphs 2 and 3 this Respondent states that the accident had taken place solely due to the negligent crossing of the road by the Petitioner.

This Respondent denies the Petitioner's age, occupation, monthly income, the injuries sustained, the period of treatment, the alleged medical expenses and the nature of disability.

This Respondent submits that the petition is not in order. The Petitioner should have claimed the amount under each and every entry of column No. 21-A of the petition. The lumpsum amount claimed by the Petitioner is unsustainable and the petition is liable to be dismissed on this short ground.

This Respondent submits that the FIR had been lodged as against the driver of the vehicle number TN49 X1677 and he was chargesheeted for offence under Sections 279 & 338 of I.P.C. by the learned Judicial Magistrate, Panruti in STC 1010/2001. But, the Motor Vehicle Inspector has inspected the vehicle bearing registration No. TN49 Y1677. As per the Petitioner's documents the vehicle with registration No. TN49 X1677 alone caused the accident. The said vehicle has not been insured with this Respondent. Hence, this Respondent is an unnecessary party and cannot be saddled with any liability.

The Petitioner is a permanent resident of Palur Panruti Taluk. The policy was issued to the owner of vehicle number TN49 Y1677 by the Neyveli Branch. Hence, this Tribunal has no jurisdiction to try this petition and on that ground also the petition is liable to be dismissed.

5. The learned Motor Accident Claims Tribunal framed two issues for the

consideration namely:

(i) Whether the accident had occurred only due to the rash and negligent driving of the driver of the first Respondent's vehicle?

(ii) Whether the Petitioner is entitled for compensation, If so what is the quantum of compensation?

6. On the Petitioner's side, the claimant himself was examined as PW1 and Dr.R.Venugopal was examined as PW2 and five documents were marked as Exs.P1 to P5 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Xerox copy of the Motor Vehicle Inspector's Report, Ex.P3-Xerox copy of the Wound Certificate, Ex.P4-X-ray, Ex.P5-Disability Certificate. On the Respondents' side no one was examined and no documents were marked.

7. The claimant, PW1 had adduced evidence stating that on 22.02.2001, at about 07.30 p.m. he was proceeding on the Panrutti-Kumbakonam main road from south to north direction, on his extreme left side. At that time, the first Respondent's vehicle bearing registration No. TN49 Y1677 was coming from north to south direction at high speed and in a rash and negligent manner and dashed against him. In the result, he sustained grievous bone fracture injuries. Immediately, he was taken to the Government Hospital, Cuddalore. Further, he adduced evidence stating that initially a case was registered against the offending vehicle that the vehicle bearing registration No. TN49 X1677. Subsequently, the vehicle number mentioned as TN49 Y1677. Mistakenly, the registration was furnished as "X" instead of "Y" Supporting his accident, the First Information Report was registered against the driver of the offending vehicle. The vehicle was inspected by the Motor Vehicle Inspector. Further, the PW1 had adduced evidence stating that he had sustained bone fracture injury on his right hand and forehead.

8. PW2, Dr. R. Venugopal had adduced evidence stating that he had examined the claimant on 23.06.2005 and verified the medical records of the claimant stating that the claimant had sustained bone fracture injury on his right hand and it also became bent and deformed. The right shoulder joint bone and right hand elbow movements have been reduced. Hence, he assessed the disability at 40%.

9. After considering the evidence of PW1 and PW2 and documents, which were marked by the claimant, the learned Tribunal had come to the conclusion that the driver of the first Respondent had committed the accident, therefore the second Respondent/Insurance Company is liable to pay compensation and awarded the compensation as follows:

- i. Rs. 10,000/- under the head of pain suffering,
- ii. Rs. 2,000/- under the head of nutrition,
- iii. Rs. 3,000/- under the head of attender charges,

iv. Rs. 15,000/- under the head of loss of income during the medical treatment period,

v. Rs. 50,000/- under the head of loss of income due to 40% disability,

vi. Rs. 75,000/- under the head of loss of earning capacity,

In total, the Tribunal awarded a sum of Rs. 1,55,000/- as compensation to the Petitioner, together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the second Respondent to deposit the compensation amount of Rs. 1,55,000/- together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, within a period of one month. In turn, the said amount to be deposited, under a fixed deposit scheme, in a nationalised bank for a period of three years and the claimant was permitted to withdraw the interest, once in six months. Accordingly ordered.

10. Aggrieved by that award and decree, the Appellant/second Respondent has filed the above appeal praying to scale down the compensation amount awarded by the Tribunal.

11. The learned Counsel appearing for the Appellant argued that the compensation amount awarded by the Tribunal is an arbitrary one. Rs. 75,000/- under the head of loss of earning capacity is not pertinent to the present case. Further, he argued that the Tribunal argued that Rs. 15,000/- awarded under the head of attender charges. The Doctor assessed the disability on the grounds, which are not proper, since the claimant sustained simple injuries. Therefore, he prays to scale down the compensation amount awarded by the Tribunal.

12. The learned Counsel appearing for the first Respondent argued that the claimant had sustained bone fracture injury on his right hand and it also became bent and deformed. The right shoulder joint bone and right hand elbow movements have been reduced. Hence, he sustained 40% disability. Further, the Tribunal after considering the nature of injuries, oral and documentary evidence, awarded the compensation of Rs. 1,55,000/-, which is fair and reasonable. Therefore, he prays to dismiss the appeal.

13. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing on either side and the award and decree passed by the Tribunal, this Court is of the view that there is a discrepancy in the said award passed by the Tribunal. Hence, this Court decided to restructure the compensation as follows:

i. The Tribunal awarded a sum of Rs. 50,000/- under the head of 40% disability, this Court enhances the same to Rs. 80,000/- under the same head,

ii. This Court awards a sum of Rs. 5,000/- under the head of transport expenses,

iii. The Tribunal awarded a sum of Rs. 2,000/- under the head of nutrition, this

Court enhances the same to Rs. 5,000/- under the same head,

iv. The Tribunal awarded a sum of Rs. 15,000/- under the head of loss of income during the medical treatment period, this Court confirms the same,

v. The Tribunal awarded a sum of Rs. 10,000/- under the head of pain and suffering, this Court enhances the same to Rs. 15,000/- under the same head,

vi. The Tribunal awarded a sum of Rs. 75,000/- under the head of loss of earning capacity and another sum of Rs. 3,000/- under the head of attender charges, this Court set aside the same,

In total, this Court awards a sum of Rs. 1,20,000/- as compensation to the claimant, together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, which is fair and equitable.

14. Now, this Court directs the Appellant/Insurance Company to deposit the compensation amount of Rs. 1,20,000/- with interest at the rate of 9% per annum, from the date of filing the claim petition till the date of payment of compensation, into the credit of the M.C.O.P. No.216 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore, within a period of six weeks from the date of receipt of a copy of this Order, incase the amount has not been deposited in the Trial Court. If, the Appellant has deposited the entire compensation amount, then the Appellant is at liberty to withdraw the excess compensation amount, after observing necessary formalities of the Court below.

15. As the accident had happened in the year 2001, this Court permits the claimant to withdraw the compensation amount i.e. Rs. 1,20,000/- with accrued interest thereon, lying in the credit of the M.C.O.P. No. 216 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore, after filing necessary payment out application in accordance with law, subject to the deduction of withdrawals, if any.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 14.11.2005, made in M.C.O.P. No. 216 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore is modified. Consequently, connected civil miscellaneous petition is closed. No costs.