
(2013) 09 MAD CK 0216
In the Madras High Court
Case No : C.M.A. No. 747 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

D. Saravanan and V. Yanadaiah

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0216

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

Bench : Single Bench

Advocate : K. Padmanabhan, for the Appellant; T.G. Balachandran for R1, for the Respondent

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 31.03.2005, made in M.C.O.P. No. 882 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court-IV, Chennai.

The short facts of the case are as follows:-

The first respondent herein/claimant stated that when he was travelling as a pillion rider on the motorcycle bearing registration No. TN09 L9875, on the Kodambakkam High Road, on 24.01.2000, at about 00.30 hours, the van bearing registration No. TME 9294 had been driven by it's driver in a negligent manner and hit against the motorcycle. Due to this, the claimant and the rider of the motorcycle had sustained injuries. The claimant had claimed Rs. 8,00,000/- as compensation against the appellant herein and the driver of the van.

2. The New India Assurance Company Limited filed a counter statement and resisted the claim. The Insurance Company had stated that the van bearing registration No. TME 9294 had not been covered with valid R.C., and F.C., and insurance policy. The averments in the claim petition regarding age, income and occupation of the claimant were also not admitted. It was submitted that as the necessary parties namely owner and insurer of the motorcycle had not been

impleaded, the claim was bad for non-joinder of necessary parties.

3. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Due to whose negligence was the accident caused? and

ii. What is the quantum of compensation, which the claimant is entitled to receive?

4. In the same accident, the rider of the motorcycle had also filed a claim against the same respondents. As such, the Tribunal conducted a joint trial and passed a common order. The claimant in the above appeal has been examined as P.W. 1. P.W. 1 has stated that on 24.01.2000, at about 12.30 a.m., when he was travelling as a pillion rider, on the motorcycle bearing registration No. TN09 L9875, on the Kodambakkam High Road, the van bearing registration No. TME 9294, driven by its driver in a reckless manner, dashed against the motorcycle.

5. P.W. 1 further stated that due to the said accident his right thigh bones were fractured and he had sustained multiple injuries all over his body. Initially, he was admitted in Government Hospital, Chennai and later he had been shifted to Apollo Hospital, wherein he had undergone treatment for a period of 13 days as an inpatient. During medical treatment period, a surgical operation was conducted and a steel plate was fixed. Thereafter, he had undergone treatment at MIOT Hospital, Chennai, as inpatient for about 45 days. During the medical treatment period, one more surgical operation was conducted on his leg and a bone transplant operation was also conducted and a bone from his hip had been removed and implanted in his leg. P.W. 1 further stated that he had spent a sum of Rs. 3,46,388/- towards medical expenses.

6. P.W. 2 Doctor had adduced evidence on the same lines of P.W. 1 regarding nature of injuries and mode of treatment and he had assessed the disability at 50%. The claimant had marked the following documents in support of his evidence namely FIR, Rough Sketch, Charge Sheet, Medical Discharge Summary issued by two hospitals and transport expenses particulars, "X" ray and Disability Certificate. On the side of the respondents, no oral and documentary evidence was let in.

7. On considering the evidence of the witnesses, the Tribunal had awarded a sum of Rs. 4,56,000/- with interest at the rate of 9% per annum. Aggrieved by the award, the Insurance Company has filed the above appeal.

8. The highly competent counsel vehemently argued that the Tribunal had awarded a sum of Rs. 50,000/- under the head of disability and had again awarded a sum of Rs. 50,000/- under the head of loss of earning, which is not pertinent to the instant case, as it is redundant. The Doctor had assessed the disability at 50%, which is on the higher side. The Tribunal had awarded a sum of Rs. 36,000/- towards loss of income during medical treatment period, which is also on the higher side. In the instant case, the owner and insurance company of

the motorcycle are necessary parties, but they have not been impleaded in the claim. As such, lacuna has arisen in the award. The rate of interest fixed by the Tribunal at 9% per annum instead of 7.5 % per annum is also erroneous. Hence, the very competent counsel expects the Court to set aside the Award.

9. The highly competent counsel for the claimant has vehemently argued that FIR has been registered against the driver of the van and the charge sheet has also been filed against him. Further, on scrutiny of rough sketch, it is seen that the driver of the van had committed the said accident as per the tyre marks seen on the rough sketch. Therefore, the owner and Insurance Company of the motorcycle are not necessary parties in the instant case.

10. The claimant had undergone two surgical operations at two different hospitals, as inpatient, for about 60 days. The claimant's hip bone was removed and implanted in the fractured bone of his leg. The claimant had spent a sum of Rs. 3,46,388/- towards medical expenses. In order to prove the same, Ex. P7 medical bill series had been marked. As per Doctor's evidence, a re-operation is required to remove the steel plate and screw from the operated area. As such, future medical expenses would be incurred. However, the Tribunal had not granted adequate compensation under the heads of disability, pain and suffering, attendant charges, nutrition, transport and loss of earning during medical treatment period and loss of amenities and loss of comfort. Hence, the very competent counsel expects the Court to dismiss the appeal since there is no shortenings in the conclusions of the Tribunal order.

11. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any lapse in the conclusions arrived at regarding negligence, liability and quantum of compensation. This Court is of the view that the claimant had spent a sum of Rs. 3,46,388/- towards medical expenses as per medical bills marked as Ex. P7. Besides, the claimant had undergone two surgical operations and a bone implantation had also been done. Regarding negligence and liability, it is seen that a criminal case has been levelled against the driver of the offending vehicle and the offending vehicle had been insured with the appellant herein. Hence, this Court is not inclined to entertain the appeal. The rate of interest fixed at 9% per annum remains unaltered, since it is not against any provisions of law and it does not come under the ambit of Exorbitant Interest Act.

12. This Court already directed the appellant Insurance Company to deposit the entire compensation amount with interest. Hence, the claimant is permitted to withdraw the entire compensation with accrued interest thereon, as per the decision of the Tribunal, lying in the credit of M.C.O.P. No. 882 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court-IV, Chennai, after filing a memo along with a copy of this Order. In the result, the appeal is dismissed and the order passed in M.C.O.P. No. 882 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court-IV, Chennai, dated

31.03.2005, is confirmed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.