
(2008) 09 MAD CK 0157

In the Madras High Court

Case No : C.M.A. No. 1438 of 2008 and M.P. No's. 1 and 2 of 2008

The New India Assurance Co. Ltd.

APPELLANT

Vs

K. Chandrasekar and A. Jankiraman

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : (2008) 09 MAD CK 0157

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; Munuswamy, for C and K Law firm, for the Respondent

Judgement

R. Sudhakar, J.—By consent of both parties, the appeal itself is taken up for disposal.

2. The Insurance Company has filed this appeal challenging the award dated 26.10.2007 in MCOP No. 4508 of 2003 on the file of the Motor Accidents Claims Tribunal (2nd Fast Track Court), Chennai.

3. The finding of negligence on the part of the driver of the Van which caused the accident and the liability fixed on the insurance company to compensate the claimant is not in dispute and such finding of the Tribunal is confirmed.

4. It is a case of injury. The accident in this case happened on 15.9.2003. The injured claimant K. Chandrasekar, aged 49 years said to be working as a works manager in Madras Lamps (P) Ltd., was riding a motor cycle and that vehicle was hit by the Van insured with the appellant. In that accident, he suffered fracture of both bones of left leg. He was treated in Vijaya Hospital, Chennai from 15.9.2003 to 7.10.2003 and thereafter on 4.2.2004. It is also on record that he has undergone two surgical procedures. One for implanting and another for bone grafting. For the injuries suffered by the claimant, the following treatment was given.

Patient underwent closed nailing for both bones and cancellous screw for tibial plateau on 18.9.2003. Post operatively managed with antibiotics, analgesics, antacids and vitamin supplements. Condition on discharge: satisfactory.

Subsequently, he was admitted on 4.2.2004 and the following procedure was done.

Procedure Done: On Feb.4th 2004, under spinal anaesthesia, patient underwent removal of proximal interlocking screw. The fracture site was opened and infective focus found and sent for c/s. Bone grafting was also done.

Post operatively patient treated with antibiotics, analgesics and antacids. Patient was advised to continue the following drugs.

A sum of Rs. 5,00,000/- (Rupees five lakhs only) was claimed as compensation.

5. In support of the claim petition, the claimant was examined as P.W.1. One Dr. Thiagarajan, who assessed the disability, was examined as P.W.2. Documents Exs.A1 to A8 were marked. Ex.A1 & A2 are the discharge summaries. Ex.A3 is the x-ray. Ex.A4 series are medical bills. Ex.A5 is the salary certificate. Ex.A6 is the F.I.R. Ex.A7 is the disability certificate. Ex.A8 is the x-ray. No oral and documentary evidence was let in on behalf of the appellant/ respondent before the Tribunal.

6. The injured claimant stated that his income was Rs. 6,250/- p.m. which was supported by Ex.A5, and that was accepted by the Tribunal. The disability was assessed at 50% under Ex.P7. As against the claim of Rs. 5,00,000/- the Tribunal granted a sum of Rs. 3,30,000/- as compensation with interest at the rate of 7.5% p.a.

Sl. No. Head Amount granted by this Court 1 Loss of income during Rs. 20,000/- the period of treatment

2 Transport expenses Rs. 5,000/-

3 Extra nourishment Rs. 25,000/-

4 Medical expenses as Rs. 1,00,000/- per Ex.A-4 Series

5 Mental agony Rs. 10,000/-

6 Pain and suffering Rs. 25,000/-

7 Disability at 50% Rs. 70,000/-

8 Loss of earning power Rs. 75,000/-

Total Rs. 3,30,000/-

7. The only contention raised by the learned Counsel for the appellant is on the quantum of compensation. According to him, the award is exorbitant and has to be reduced and the compensation awarded on some heads are unreasonable.

According to the learned Counsel for the appellant, the sum of Rs. 25,000/- granted for extra nourishment is on the higher side and a sum of Rs. 75,000/- granted for loss of earning power is not justified in view of the Full Bench decision in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, . There is no proof for loss of income and the sum of Rs. 25,000/- granted towards pain and suffering is also on the higher side.

8. Heard Mr. Munusamy, learned Counsel for the first respondent. He states that the award of the Tribunal is justified in view of the several hospital admissions and surgical procedures done. According to him, the grievous nature of injuries suffered by the claimant calls for higher compensation. He also stated that no amount was granted for attender charges.

9. As far as the first contention with regard to extra nourishment is concerned, the claimant was treated on two occasions in the hospital. The first period is 22 days and thereafter on the second occasion the claimant was treated on day care basis. The injured claimant is 49 years old and the fracture is both bone of the left leg. Since some amount has been granted for pain and suffering and mental agony, the sum of Rs. 25,000/- granted for extra nourishment is excessive and no special reason is given for the same and therefore, the same is to be modified and the compensation for pain and suffering has to be marginally enhanced in view of the nature of injury and treatment taken. There is no evidence on record to show the nature of employment and loss of earning power that he suffers consequent to the injuries. Therefore, in view of the Full Bench decision in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , the claimant is not entitled to compensation both under the disability and loss of earning power. In any event, though a plea has been taken that he has lost his employment, no material has been placed to show that the injured claimant is out of employment consequent to the injuries. In the absence of specific material evidence to support the plea of no employment, the question of granting loss of earning power cannot be sustained.

10. Insofar as the loss of income is concerned, the fact remains that he was treated in the first instance from September to October 2003 and thereafter once again in February 2004 which apparently proved that he was not in a position to join duty atleast for a period of 5 to 6 months. Therefore, the loss of income during the period of treatment in a sum of Rs. 20,000/- is justified. The claimant was in hospital for two occasions and he has suffered fracture of both bones and left leg and had to go for change of dressing. Therefore, he is entitled to higher sum for transport charges. As far as the medical expenses is concerned, the Tribunal granted Rs. 1,00,000/- for medical expenses incurred in the hospital which is covered by the bills. Insofar as the amount granted for extra nourishment is concerned, the claimant needs sufficient nutritious food for recouping himself as before however as observed earlier, the sum of Rs. 25,000/- has to be reduced marginally. Insofar as the disability is concerned, the amount of Rs. 70,000/- granted by the Tribunal is justified since the claimant, who was

the works manager in a private company, suffered fracture of both bone of left leg and the same will have some effect on his ability to move and consequently it will affect his role as a works manager. In such view of the matter, the award of the Tribunal stands modified as follows:

Sl. No. Head Amount granted by the Tribunal this Court

1 Loss of income during Rs. 20,000/- Rs. 20,000/- the period of treatment

2 Transport expenses Rs. 5,000/- Rs. 10,000/-

3 Extra nourishment Rs. 25,000/- Rs. 20,000/-

4 Medical expenses Rs. 1,00,000/- Rs. 1,00,000/-

5 Mental agony Rs. 10,000/- Rs. 10,000/-

6 Pain and suffering Rs. 25,000/- Rs. 30,000/-

7 Disability Rs. 70,000/- Rs. 70,000/-

8 Loss of earning power Rs. 75,000/- ---

9 Attender charges --- Rs. 7,500/-

Total Rs. 3,30,000/- Rs. 2,67,500/-

Since the accident happened in the year 2003 and the award was passed in the year 2007, the interest granted at 7.5% stands confirmed.

11. In the result, the civil miscellaneous appeal is partly allowed as follows.

(i) The award of the Tribunal is reduced to Rs. 2,67,500/- from Rs. 3,30,000/-.

(ii) The interest will be 7.5% p.a. as awarded by the Tribunal.

(iii) Learned Counsel for the appellant seeks six weeks time to deposit the balance award amount and the same is allowed.

(iv) On such deposit, the claimant is entitled to withdraw the amount as per the order of this Court.

(v) Consequently, M.P. Nos . 1 and 2 of 2008 are closed.

(vi) There shall be no orders as to costs.