
(2010) 06 MAD CK 0137
In the Madras High Court
Case No : C.M.A. No's. 91 of 2003

The New India Assurance Co. Ltd.

APPELLANT

Vs

Loganathan and K. Easwaran

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 06 MAD CK 0137

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; D. Selvaraju, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeals are filed by the appellant/Insurance Company against the Award and Decree made in MCOP Nos. 816 of 1995 and 666 of 1995 dated 23.11.2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Tiruppur.

2. Background facts in a nutshell are as follows:

On 09.07.1995 at about 14.30 hours, while one Loganathan was riding the bike bearing Registration No. TN-39-2433 along with one Jeevanandam, who was the pillion rider, from south to north direction from Tirupur to Dharapuram Road, a car bearing Registration No. TMI-2696 belonging to one Easwaran, the third respondent herein, which came in a rash and negligent manner, hit against the bike. Due to the said impact, the rider as well as the pillion rider fell down and sustained grievous injuries. Both of them were admitted in the Government Hospital, Tirupur. In C.M.A. No. 91 of 2003, the claimant claimed a compensation of Rs. 15,10,000/- but restricted his claim to Rs. 12,00,000/- and in C.M.A. No. 92 of 2003, the claimant claimed a compensation of Rs. 13,10,000/- but restricted his claim to Rs. 8,00,000/- before the Tribunal. The appellant / Insurance Company has resisted the claims. On pleadings, the Tribunal framed the following issues:

1) Whether the claimants are entitled to get any compensation or not?

2) Whether these petitions are to be allowed?

After considering the oral and documentary evidence, the Tribunal held that the claimants are entitled to get compensation of Rs. 4,50,000/- with interest at 9% p.a. from the date of petition in respect of MCOP No. 816 of 1995 (CMA No. 91 of 2003) and Rs. 2,10,000/- with interest at 9% p.a. from the date of petition in MCOP No. 666 of 1995 (CMA No. 92 of 2003) respectively. The details of the compensation awarded by the Tribunal in both these appeals are as under:

MCOP No. 816 of 1995 (CMA No. 91 of 2003):

Rupees Pain and suffering : 5,000/- Permanent disability : 4,28,000/- Medical expenses : 27,985/- ----- Total : 4,60,985/- ----- (But restricted to Rs. 4,50,000/-) MCOP No. 666 of 1995 (CMA No. 92 of 2003):

Rupees Medical Expenses : 1,079.70/- Pain and suffering : 5,000.00/- Disability : 2,04,000.00/- ----- Total : 2,10,079.70/- ----- (which is round off to Rs. 2,10,000/-)

Aggrieved by these awards, the appellant/Insurance Company has filed the present appeals.

3. Learned Counsel appearing for the appellant / Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. Further, he contended that the Tribunal ought not have awarded a compensation towards permanent disability on the basis of the multiplier method and the Tribunal should have awarded compensation considering the percentage of disability. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the claimants submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the correct conclusion and awarded a just, fair and reasonable compensation in both these appeals. Hence the common award passed by the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the Counsel. On the side of the claimants, witnesses P.W.1 to P.W.3 were examined and documents Ex.P1 to Ex.P9 were marked. On the side of the appellant/Insurance Company, no one was examined as witness and no document was marked to substantiate their claim. P.W.1-Loganathan is the claimant in CMA No. 91 of 2003. P.W.2-Jeevanandam is the claimant in CMA No. 92 of 2003. P.W.3-Mohammed Subair is the Doctor. The following exhibits were marked on the side of the claimants:

Ex.P1-Xerox copy of F.I.R.

Ex.P2-Loganathan discharge summary

Ex.P3-Wound certificate of Loganathan

Exs.P4 and P5-Medical bills of Loganathan

Ex.P6-Xerox copy of wound certificate relating to one Nachimuthu

Ex.P7-Medical bills of Jeevanandam

Ex.P8-Disability certificate of Jeevanandam

Ex.P9-Disability certificate of Loganathan

After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the car belonging to the appellant/Insurance Company and awarded a compensation of Rs. 4,50,000/- with interest at 9% p.a. from the date of petition in respect of MCOP No. 816 of 1995 (CMA No. 91 of 2003) and Rs. 2,10,000/- with interest at 9% p.a. from the date of petition in MCOP No. 666 of 1995 (CMA No. 92 of 2003). The finding given by the Tribunal is based on valid materials and evidence.

6. MCOP No. 816 of 1995 (CMA No. 91 of 2003):

At the time of accident, the claimant was 34 years old. He was engaged in a centring work under M/S. Subramaniam and Company, Tirupur and he was earning Rs. 4,000/- per month. P.W.1-the claimant in his evidence, has stated that the accident was occurred only due to the rash and negligent driving of the driver of the car belonging to the third respondent herein and insured with the appellant/Insurance Company. A case has been registered against the driver of the car by Tirupur Rural Police Station in Crime No. 363 of 1995 under Sections 279 and 337 I.P.C. Due to the said accident, he sustained the following injuries:

- a) Fracture of right hand and right leg
- b) One right leg toe cut down
- c) Injuries on right eye and upper five teeth
- d) Injuries all over the body.

After the accident, he was admitted in the Government Hospital at Tirupur and later, transferred to Sri Ramakrishna Hospital, Coimbatore, for better treatment. He was in the said hospital from 09.07.1995 to 12.08.1995 as in-patient. Even though the claimant claimed that he was earning Rs. 4,000/- as monthly salary, the Tribunal has fixed his monthly salary at Rs. 3,500/-. P.W.3-Doctor, who examined the claimant, has determined the disability at 60%. Ex.P9-disability certificate was marked to prove the same. After taking into consideration the oral and documentary evidence, the Tribunal has computed the compensation towards disability as follows:

$$3500 \times 12 \times 17 \times 60/100 = 4,28,000/-)$$

The Counsel appearing for the appellant/Insurance Company vehemently contended that the Tribunal ought not have adopted the multiplier method in the case of injury and further submitted that there is no finding given by the Tribunal or in the evidence of P.W.3-doctor who assessed the disability as 60%, that the disability suffered by the claimant would affect 100% of earning capacity. Therefore, the correct method should be adopted in the present case is the percentage method. Normally, the Courts award Rs. 1000/- to 2000/- per percentage of disability. Therefore, considering the nature of injuries sustained, it is reasonable to award Rs. 2,000/- for 1% disability. Accordingly, the award would be for 60% disability is Rs. 1,20,000/- (Rs. 2,000 x 60) towards permanent disability as against the compensation of Rs. 4,28,000/- awarded by the Tribunal. The Tribunal has also awarded a sum of Rs. 27,985/- towards medical expenses. Exs.P4 and P5 are the medical bills. It is an actual expenditure incurred by the claimant. Hence, the amount awarded by the Tribunal is very reasonable and the same is confirmed. The Tribunal has awarded Rs. 5,000/- towards pain and suffering. After considering the nature of injuries sustained and the injured also admitted as in-patient in the hospital for a period of 25 days, it is reasonable to award a sum of Rs. 20,000/- towards pain and suffering as against the amount of Rs. 5,000/- awarded by the Tribunal. Further, the Tribunal has not awarded any compensation towards extra nourishment. The claimant was admitted in the Government as well as the private hospital at Coimbatore for a period of 25 days as in-patient. Therefore, I feel that it is reasonable to award a sum of Rs. 5,000/- towards extra nourishment. The Tribunal has also not awarded any compensation towards transport charges. After taking into consideration the fact that the injured was in the hospital for 25 days, certainly, he would have incurred expenses towards transport charges. Therefore, it is reasonable to award a compensation of Rs. 5,000/- towards transport charges. The Tribunal has also not awarded any compensation towards attendant charges, when the injured was taking treatment in the hospital. Therefore, it is reasonable to award a compensation of Rs. 5,000/- towards attendant charges. The claimant was working as centering worker and was earning Rs. 4,000/- per month. He took treatment in the hospital for a period of 25 days and after discharge from the hospital, he was not able to work for a period of three months. Taking into consideration the period of treatment, it would be appropriate to award a sum of Rs. 15,000/- towards loss of earning during the treatment period. The Tribunal has not awarded any amount towards loss of amenities. Taking into consideration the nature of the injuries sustained and the evidence given by the doctor that the toe of the injured was cut down, I am of the view that it is reasonable to award a sum of Rs. 27,015/- towards loss of amenities. The Tribunal has awarded interest at 9% per annum. The accident took place on 09.07.1995. Taking into consideration the date of accident as well as the prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation are as under:

Rupees Permanent disability 1,20,000/- Extra nourishment 5,000/- Pain and

suffering 20,000/- Transport 5,000/- Attendant charges 5,000/- Loss of earning during treatment 15,000/- Medical Expenses 27,985/- Loss of amenities 27,015/- ----- Total : 2,25,000/- -----

Therefore, the claimant is entitled to the modified compensation of Rs. 2,25,000/- with interest at 9% p.a. from the date of petition as against the compensation of Rs. 4,50,000/- awarded by the Tribunal.

7. MCOP No. 666 of 1995 (CMA No. 92 of 2003):

At the time of accident, the claimant was 35 years old. He is working as car driver in M/S. Yuvaraj Internationals, Tirupur. He claimed that he was earning Rs. 3,000/- per month. P.W.2-the claimant, in his evidence, has stated that the accident was occurred due to the rash and negligent driving of the driver of the car belonging to the appellant/Insurance Company. A case has been registered against the driver of the car by Tirupur Police Station in Crime No. 363 of 1995 under Sections 279 and 337 I.P.C. Due to the said accident, the claimant sustained the following injuries:

- a) Right toe second finger broken.
- b) Injuries to right toe, right leg, right shoulder.
- c) Injuries all over the body.

After the accident, he was admitted in the Government Hospital at Tirupur. Later, he took treatment at TMF Hospital, Tirupur, for a period of 33 days from 09.07.1995 to 12.08.1995 as in-patient. Even though the claimant claimed that he was earning Rs. 3,000/- as monthly salary, there was no documentary evidence to prove the same. Therefore, the Tribunal has fixed his monthly salary at Rs. 2,500/-. P.W.3-Doctor, who examined the claimant, has determined the disability at 40%. Ex.P8 is the disability certificate given by the Doctor. After taking into consideration the disability, the Tribunal has computed the compensation towards permanent disability as follows:

$(2500 \times 12 \times 17 \times 40/100 = 2,04,000/-)$

The learned Counsel appearing for the appellant/Insurance Company vehemently contended that the Tribunal ought not to have adopted the multiplier method in the case of injury. He further submitted that there is no finding that the disability sustained by the claimant at 40% would affect the earning capacity of 100% and to prove the same, there is no evidence by the Doctor and also in Ex.P8, no where it is stated about the same. Therefore, this Court is of the view that the correct method should be adopted in the present case is the percentage method. Normally the Courts award Rs. 1000/- to 2000/- per percentage of disability. Therefore, considering the nature of injuries, it is reasonable to compute the compensation on the basis of percentage method and it would be appropriate to award Rs. 2,000/- for 1% disability. Accordingly, the award would be for 40% disability is Rs. 80,000/-(Rs. 2,000 x 40) as against the compensation of Rs.

2,04,000/- awarded by the Tribunal. The Tribunal has also awarded a sum of Rs. 1,079.70/- towards medical expenses. It is an actual expenditure incurred by the claimants and Ex.P7-medical bills proved the same. Hence, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded Rs. 5,000/- towards pain and suffering. The learned Counsel for the respondents contended that the compensation awarded by the Tribunal under this head is very low and meagre. After considering the nature of injuries and also the evidence given by the Doctor, it is reasonable to award a sum of Rs. 20,000/- towards pain and suffering as against the amount of Rs. 5,000/- awarded by the Tribunal. The Tribunal has also not awarded any amount towards transport charges. Taking into consideration that the injured took treatment for 33 days, certainly, he would have incurred expenses towards transport charges. Therefore, it is reasonable to award a compensation of Rs. 5,000/- towards transport charges. The Tribunal has not awarded any compensation towards extra nourishment and attendant charges. He was admitted in the Government Hospital at Tirupur and later at TMF Hospital, Tirupur, for a period of 33 days as in-patient and certainly, he would have incurred expenses towards extra nourishment and attendant charges. Therefore, it is reasonable to award a sum of Rs. 5,000/- under each heads. Further, the Tribunal has not awarded any compensation towards loss of amenities. Therefore, it is reasonable to award a sum of Rs. 10,000/- towards loss of amenities. The Tribunal has awarded interest at 9% p.a. The accident occurred on 09.07.1995. Taking into consideration the date of accident as well as the prevailing rate of interest during that period, the rate of interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation are as under:

Rupees Permanent disability	80,000/-	Extra nourishment	5,000/-	Pain and suffering	20,000/-	Transport	5,000/-	Attendant charges	5,000/-	Medical Expenses	1,079/-	Loss of amenities	10,000/-	-----	Total :	1,26,079/-

Therefore, the claimant is entitled to the modified compensation of Rs. 1,26,079/- with interest at 9% p.a. from the date of petition as against the compensation of Rs. 2,04,000/- awarded by the Tribunal.

8. In respect of the claimants in both the appeals, it is stated that the Insurance Company has already deposited the entire amount awarded by the Tribunal as per order dated 14.02.2003 and also the claimants had already withdrawn 50% of the amount awarded by the Tribunal. Under these circumstances, the claimant in C.M.A. No. 91 of 2003 is permitted to withdraw the modified award amount of Rs. 2,25,000/- with interest at 9% per annum, less the amount already he withdrawn, on making proper application. The claimant in C.M.A. No. 92 of 2003 is permitted to withdraw the modified award amount of Rs. 1,26,079/- with interest at 9% per annum, less the amount already he withdrawn, on making proper application, the appellant/Insurance Company is also permitted to withdraw the balance amount, on making proper application.

9. With the above modification, both the Civil Miscellaneous Appeals are disposed of. No costs.