

(2011) 01 MAD CK 0003

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2764 of 2005 and C.M.P. No. 14290 of 2005

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mr. P. Manoharan and Hari Paranthaman

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0003

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

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; M. Malar, for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/New India Assurance Company Limited, against the award and decree

dated 24.02.2004 made in M.C.O.P. No. 395 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track

Court No. 3, Poonamallee.

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

On 16.06.2002, at about 12.45 p.m., when the Petitioner was travelling on a motorcycle from Vellavedu to Poonamallee, and when he was

nearing Tirumazhisai, the Jeep bearing Registration No. TCF 2219 came in the opposite direction driven by its driver in a rash and negligent

manner and dashed against the motorcyclist. In the result, he had sustained multiple bone fracture injuries. Hence, the claimant has filed the

compensation petition against the Respondent for a sum of Rs. 4,00,000/- with interest.

3. The second Respondent/New India Assurance Company had filed a counter statement and resisted the claim petition. The Respondent denied

that the driver of the jeep had driven the vehicle in a rash and negligent manner and dashed against the motorcycle bearing Registration No. TN 20

H 8952. Actually, the rider of the motorcycle, by his reckless riding, had caused the accident. The Respondent had also denied the allegation in the

claim regarding age, income and occupation of the claimant. The rider of the motorcycle did not possess a valid driving licence at the time of

accident. The Respondent further stated that the claim amount is an excessive one.

4. On the pleadings of both parties, the Tribunal had framed three issues for consideration, namely;

(i) Was the accident committed by the driver of the Jeep?

(ii) Whether the Respondents are liable to pay compensation to the claimant?

(iii) What is the quantum of compensation, which the claimant is entitled to receive?

5. On the side of the claimant, two witnesses had been examined and five documents were marked. On the side of the Respondent, no documents, no witnesses.

6. p.w. 1, had adduced evidence stating that on 16.06.2002, at around 12.45 p.m., in the night, he and his friend were travelling on the motorcycle

bearing Registration No. TN 20 H 8952 from Vellavedu to Poonamallee, when they were nearing Tirumazhisai, the Jeep bearing Registration No.

TCF 2219 came from Poonamallee to Thiruvallur driven by its driver at high speed and in a rash and negligent manner and dashed against the

motorcycle. In the result, he had sustained bone fracture injuries and his friend had expired on the spot. Immediately, he was taken to Government

General Hospital for treatment. He further stated that he had undergone treatment for a period of one month. Subsequently, he underwent

treatment at Eye Hospital, Egmore. He further stated that he had sustained skull injury on the front portion of skull and that there was hemorrhage

in his brain and his vision had been impaired. p.w. 2, the Doctor had adduced evidence stating that he had examined the claimant and verified the

medical records and had assessed the disability sustained by the claimant as 45%. He also narrated the injuries which the claimant had sustained.

7. On considering the evidence of the witnesses and documentary evidence, the Tribunal had awarded a sum of Rs. 1,05,000/- with interest at the rate of 9% per annum. Aggrieved by the said award, the Appellant has filed the above appeal.

8. The learned Counsel for the Appellant argued that the Doctor had assessed the disability as 45% and that this was on the higher side. On the basis of 45% disability, the Tribunal had awarded a sum of Rs. 45,000/-. The learned Counsel further argued that the claimant sustained simple injuries for which, the Tribunal had awarded a total compensation of a sum of Rs. 1,05,000/- and that this was on the higher side.

9. The learned Counsel for the claimant argued that the claimant had sustained bone fracture injuries on his skull and had a brain hemorrhage due to the accident. His vision had been impaired. Further, the claimant's nose bone had also been fractured. p.w. 2, Doctor had properly assessed the disability. The Tribunal had not considered the compensation under the head of "attendant charges".

10. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels and on perusing the impugned award of the Tribunal, This Court is of the considered opinion that the compensation amount is slightly on the higher side. Therefore, it has to be modified.

Accordingly, this Court grants compensation which are as follows:

Rs.67,500/- towards 45% disability;

Rs.10,000/- towards pain and suffering;

Rs.5,000/- for transport;

Rs.5,000/- against nutrition;

Rs.7,000/- towards loss of income during medical treatment period and convalescent period;

Rs.3,000/- towards attendant charges.

In total, this Court awards a sum of Rs. 97,500/- 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. Therefore, this Court scales down the compensation from Rs. 1,05,000/- to Rs. 97,500/-.

11. This Court imposed a condition on the Appellant / New India Assurance Company Limited, on 09.09.2005 to deposit the entire compensation

amount with accrued interest to the credit of M.C.O.P. No. 395 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District

Judge, Fast Track Court No. 3, Poonamallee. Now, it is open to the claimant to withdraw the modified compensation amount as mentioned above

with accrued interest thereon lying in the credit of M.C.O.P. No. 395 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional

District Judge, Fast Track Court No. 3, Poonamallee, after filing necessary payment out of application, in accordance with law, subject to

withdrawals, if any made already. Likewise, the Appellant is at liberty to withdraw the excess compensation amount with accrued interest thereon

lying in the credit of M.C.O.P. No. 395 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court

No. 3, Poonamallee, after observing necessary formalities of the learned Tribunal.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims

Tribunal on the file of Additional District Judge, Fast Track Court No. 3, Poonamallee made in M.C.O.P. No. 395 of 2002, dated 24.02.2004 is

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