

(2010) 03 MAD CK 0286
In the Madras High Court
Case No : C.M.A. No. 33 of 2005

The New India Assurance Co. Ltd.

APPELLANT

Vs

P. Appa Rao and A. Sarabutheen

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 184
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 03 MAD CK 0286

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

Bench : Single Bench

Advocate : T.M. Venkataraman, for the Appellant; M. Swamikkannu, for R1, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree, dated 14.07.2004, made in M.C.O.P. No. 1964 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, awarding a compensation of Rs. 2,00,500/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/second respondent, The New India Assurance Co., Ltd., Chennai-15 has filed the above appeal praying for the award to be scaled down.

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

On 12.04.2000, at about 23.30 hours, the petitioner was riding his cycle from west to east in Barnabi road on the northern side of the road. When he was proceeding opposite to Arulmighu Bathala Ponniamman Koil, a Maruthi Van bearing registration No. TN04 E4173 came from behind him in a very high speed, rash and negligent manner and dashed against the petitioner, due to which he sustained multiple injuries, besides his cycle was also damaged. The driver of the

van is responsible for the said accident. Hence, the first respondent as the owner of the offending vehicle and the second respondent as the insurer of the offending vehicle are jointly and severally liable to pay compensation to the injured petitioner with interest and costs.

4. Immediately, after the said accident, the injured was taken to KMC Hospital, Chennai, for preliminary treatment. Thereafter, he was referred to Government General Hospital, Chennai-3, wherein he was an inpatient for three days, thereafter he continued treatment as an out patient. In the said accident, he sustained severe injury on the left side of the skull and concussion of the brain, injury on the left fore head, left eye vision blurred. Dislocation of bone in left leg knee. The said case was registered by the Traffic Investigation Wing, Chepauk, Chennai-10 in Crime No. 175 of 2000 an alleged offence under Sections 279 and 337 of I.P.C. For the said accident, the petitioner has claimed a compensation of a sum of Rs. 3,00,000/-.

5. The second respondent/New India Insurance Co., Ltd., has filed a counter statement and resisted the claim stating that there was no valid insurance policy for the Maruthi Van bearing registration No. TN04 E4173. On the date of the said accident, the driver of the van was duly holding a valid licence, further that the second respondent does not admit that the Insurance Company is liable to indemnify with the owner of the vehicle. Further, the respondent does not admit the age, place, time, date of the accident, address of the owner and his driver and the insurer of the vehicle. The second respondent further submitted that the petitioner has to prove the period of medical treatment, expenses incurred and disability suffered. The injuries to the petitioner was simple in nature and superficial but in no way grievous. The petitioner has to prove that he had undergone treatment at the KMC Hospital and Government General Hospital, Chennai. Further, the petitioner suddenly crossed the road towards north without seeing the vehicle coming on the said road and caused the accident. The accident occurred due to the negligence of the petitioner. There is contributory negligence on the side of the petitioner. The claim amount of Rs. 3,00,000/- is excessive. Hence, the second respondent prays to dismiss the claim petition.

6. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Who was the cause of the said accident?

(ii) What is the quantum of compensation, which the petitioner is entitled to get?

7. On the petitioners' side three witnesses were examined as PW1, PW2 and PW3 and eight documents were marked as Exs.P1 to P8. On the respondents' side no witness was examined and no documents were marked.

8. The petitioner was examined as PW1. The PW1 in his evidence had adduced evidence stating that on 12.04.2000, at about 11.30 p.m. he was riding his cycle from Nungambakkam High Road towards Pattalam, when he was nearing

Barnaby road, Ponniammam Temple, the Maruthi Van bearing registration No. TN04 E4173 came from behind and dashed against the cyclist, resulting in the petitioner sustained injuries on his left eyebrow, on his face below the left eye and fore his upper lip and injury on the fore head, dislocation of the left leg knee. Immediately, he was rushed to the KMC Hospital for preliminary treatment, thereafter he was referred to Government General Hospital, Chennai-3, wherein he was an inpatient from 14.03.2000 to 15.04.2000 as an inpatient. The KMC Hospital issued an O.P. Chit marked as Ex.P1, Ex.P2-Medical Discharge Summary issued by the Government General Hospital. The PW1 further adduced evidence stating that he had undergone treatment in a private hospital from 16.04.2000 to 15.05.2000. The PW3 indicates the medical report of the private hospital. Ex.P4-Medical Bill series. The PW1 stated that before the accident, he was earning a sum of Rs. 250/- per day employed in a Wine Shop. For 4 to 5 months he is unable to pursue his normal work. After the said accident the petitioner lost his memory power, unable to walk and squat. On the side of the respondents, no one opposed the contents of the petitioner. As such, the Tribunal accepted the petitioner's submission.

9. One Dr. Thiyagarajan was examined as PW3. The PW3 in his evidence had adduced evidence stating that the petitioner sustained injuries on his left eye below, forehead and also sustained injuries on his leg. As such the Doctor assessed the injuries and certified that the claimant sustained 25% disability, for which the PW3 issued a Disability Certificate, which is marked as Ex.P7.

10. As per the evidence of the PW1 and Ex.P5-FIR, which indicate that a case was registered in Crime No. 175/2000 against the driver of the Maruthi Van under Sections 337 and 184 of the Motor Vehicles Act. Considering the evidence of the PW1 and documentary evidence, the Tribunal had come to the conclusion that the accident had happened due to the rash and negligent driving by the driver of the Maruthi Van. Even though, the second respondent has filed a counter statement and resisted the claim of the petitioner, but no one came forward to adduce evidence, as such, the Tribunal had come to the conclusion that the first respondent's car insured the second respondent. Hence, both the parties are jointly liable to pay compensation. As such, the Tribunal had awarded the compensation as follows:

1. Rs.15,000/- awarded under the head of loss of income,
2. Rs.2,000/- awarded under the head of transport expenses,
3. Rs.3,000/- awarded under the head of nourishment,
4. Rs.500/- awarded under the head of damage to cycle,
5. Rs.6,000/- awarded under the head of medical expenses,
6. Rs.40,000/- awarded under the head of pain and suffering,
7. Rs.54,000/- under the head of permanent disability,

8. Rs.80,000/- under the head of loss of earning power.

In total, the Tribunal awarded a compensation of Rs. 2,00,500/- to the petitioner, together with interest at the rate of 9% per annum. The Tribunal directed the second respondent to deposit the award amount within a period of two months. In turn, the said amount should be deposited at the Union Bank of India, Ashok Nagar, Chennai-82 for a period of three years under the scheme of fixed deposit. The Advocate fee fixed at Rs. 7,010, accordingly the Tribunal ordered.

11. Challenging the said award and decree, the appellant/second respondent has filed this appeal to scale down the quantum of compensation.

12. Learned Counsel appearing for the appellant argued that the Tribunal awarded Rs. 40,000/-, Rs. 54,000/- and Rs. 80,000/- towards pain and suffering, permanent disability and loss of earning power respectively, which are not pertinent. The Tribunal awarded a sum of Rs. 50,000/- under the head of loss of income during the treatment period of the petitioner, which is erroneous. Hence, the learned Counsel prays to scale down the quantum of compensation.

13. Learned Counsel appearing for the first respondent argued that after considering the evidence of the petitioner, medical evidence, duration of the treatment and the nature of injuries, the Tribunal awarded the said compensation. So, the award is a well considered one. As such, the appeal is not maintainable.

14. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal and arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the award granted by the Tribunal is erroneous. Hence, this Court scales down the award and restructure the same as follows:

1. Under the head of loss of income, this Court grants a sum of Rs. 10,000/-,
2. Under the head of transport, this Court grants a sum of Rs. 3,500/-,
3. Under the head of nutrition, the Tribunal awarded a sum of Rs. 5,000/-, this Court confirms the same,
4. Under the head of damage to the cycle, the Tribunal awarded a sum of Rs. 500/-, this Court confirms the same,
5. Under the head of medical expenses, the Tribunal awarded a sum of Rs. 6,000/-, this Court confirms the same,
6. Under the head of pain and suffering, the Tribunal awarded a sum of Rs. 40,000/-, this Court reduces it to Rs. 25,000/-,
7. Under the head of permanent disability, the Tribunal awarded a sum of Rs. 54,000/-, this Court reduces it to Rs. 50,000/-,
8. Under the head of loss of earning capacity, the Tribunal awarded a sum of Rs.

80,000/-, this Court reduces it to Rs. 40,000/-.

In total, this Court awarded a sum of Rs. 1,40,000/- 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 found to be fair and equitable.

15. On 06.01.2005, this Court directed the appellant to deposit the entire compensation amount, into the credit of the M.C.O.P. No. 1964 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai.

16. On 10.03.2005, this Court permitted the claimant to withdraw 50% of the award amount with entire accrued interest and costs, lying in the credit of the M.C.O.P. No. 1964 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai.

17. As the accident happened in the year 2000, it is open to the claimant to withdraw the balance compensation amount, as per this Court award amount with accrued interest thereon, lying in the credit of the M.C.O.P. No. 1964 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, after filing necessary payment out application in accordance with law, subject to deduction of withdrawals if any, as per this Court Order.

18. The appellant is at liberty to withdraw the excessive compensation amount, lying in the credit of the M.C.O.P. No. 1964 of 2000, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, after observing necessary formalities before the concerned Court.

19. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 14.07.2004, in M.C.O.P. No. 1964 of 2000, passed by the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, is modified. There shall be no order as to costs.