

(2008) 01 MAD CK 0165

In the Madras High Court

Case No : C.M.A. No. 2518 of 2007 and M.P. No. 1 of 2007

The New India Assurance Company Limited

APPELLANT

Vs

S. Dhanasekaran and P.S. Udayakumar

RESPONDENT

Date of Decision : 05-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0165

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; N. Anand Venkatesh, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeal is filed by the appellant-Insurance Company against the award dated

24.01.2007 made in MCOP No. 5840 of 2003 by the Motor Accident Claims Tribunal(V Judge, Small Causes Court) Chennai.

2. Background facts in a nutshell are as under:

On 23.01.2003 at about 22.30 hours, the claimant/1st respondent herein was returning home from Aminjikarai to Maduravoyal on E.V.R. Salai in

his motor cycle bearing Registration No. TN-02-M-2513. When he was nearing old Post Office at Arumbakkam, a Scooter bearing Registration

No. TN 09-J-6953 belonging to the second respondent herein and insured with the appellant herein came from behind in a rash and negligent

manner and hit against the rear portion of the claimant's motor cycle. Due to the accident, the claimant was thrown out of his motor cycle and

sustained grievous injuries and he was admitted in Mohan Hospital. The claimant claimed a sum of Rs. 5,00,000/- as compensation before the

Tribunal. The Scooter was insured with the appellant-Insurance company, which resisted the claim. On pleadings, the following issues were framed

by the Tribunal:

a) Whether the accident had occurred due to the rash and negligent driving of the Scooterist or not?

b) Whether the claimant is entitled for any compensation or not? If so, what is the amount and from whom?

After considering the oral and documentary evidence available on record, the Tribunal awarded a compensation of Rs. 1,71,600/- with interest at

7.5% per annum from the date of petition. The details of the compensation are as under:

Rs.

Loss of earning for

five months (5931 x 5) 29,655/-

Transport charges 3,000/-

Extra nourishment 3,000/-

Damage to the cloths 1,000/-

Future medical treatment 25,000/-

Medical expenses 22,940/-

Mental agony 2,000/-

Pain and sufferings 15,000/-

Partial and permanent

disability 40,000/-

Loss earning power 30,000/-

Total 1,71,595/-

(Rounded off to Rs. 1,71,600/-)

Aggrieved by the award, the Insurance Company has filed the present appeal.

3. Learned Counsel appearing for the appellant-Insurance Company questioned only the quantum of compensation awarded by the Tribunal and

contended that the Tribunal has erred in awarding compensation under both the

heads viz., loss of earning power and permanent disability, in the case of injury. It is also further submitted that the amount awarded by the Tribunal is excessive and exorbitant and that 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 first respondent/ claimant submitted that the Tribunal had considered all the relevant materials and evidence available on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel. On the side of the claimant, witnesses P.W.1 and P.W.2 were examined and documents Ex.P1 to Ex.P18 were marked. On the side of the Insurance Company, no witness was examined and no documents were marked. P.W.1 is the claimant himself. P.W.2 is Dr.

Saichandran. Ex.P1 is the copy of the First Information Report. Ex.P2 is the copy of the rough sketch. Ex.P3 is the copy of charge sheet. Ex.P4 is the copy of the judgment. Ex.P5 is the discharge summary. Ex.P6 is the M.R.I report. Ex.P7 is the Lab report. Ex.P8 series are the Medical bills.

Ex.P9 is the future medical treatment certificate. Ex.P10 is the copy of the identity card issued by the Bar Council. Ex.P11 is the Saral form.

Ex.P12 is the copy of the Driving licence. Ex.P13 is the X-ray. Ex.P14 is the Police intimation report. Ex.P15 is the Scan X-ray. Ex.P16 is the

disability certificate. Ex.P17 is the X-ray. Ex.P18 is the X-ray report. Learned Counsel appearing for the Insurance Company vehemently

contended that there was discrepancy in the address of the company of the claimant/first respondent and also delay in filing the complaint. The

Tribunal, after considering the evidence, came to the correct conclusion that the case of the petitioner deserves consideration in the absence of any

contradictory evidence, merely because of some delay in giving a compliant. After the the accident, the injured was admitted in Mohan Hospital.

Ex.P14-Police Intimation Report reveals that the claimant while riding his motor cycle, hit by another Scooter bearing Registration No. TN-09-J-

6953 and sustained injuries and admitted in the Hospital. After considering the 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 Scooterist and the finding is based on valid materials and

evidence.

6. P.W.1 is the claimant himself. He was aged about 37 years at the time of the accident and is also an Advocate in profession and claimed that he

was earning Rs. 6,000/- per month. Due to the accident, he has sustained fracture of right ankle; fracture of spine of Tibia in the right leg; fracture

of right knee, ligament-tear in right leg; and fracture of left shoulder and bruises and lacerations all over the body and took first aid treatment at

Dhanaraj Clinic and subsequently took treatment at Mohan Clinic as inpatient. He is unable to walk, ride two wheeler and climb steps. PW.2 Dr.

Saichandran examined the claimant and found that the claimant had sustained dislocation of left acrochio clavicular joint permanently and due to

stiffening of muscle, the movement of left shoulder joint is reduced by 30 degrees. He also found that the claimant had sustained fracture of right

tibial spine and the muscles and tendons were torn and he could flex his left knee only to an extent of 90 degrees and the knee is not stable and it is

degenerated. PW2-Doctor assessed the disability at 40% partial and permanent. Ex.P16 is the disability certificate and Exs.P17 and P18 are the

X-ray and X-ray reports. He has opined that the claimant has to undergo a surgery. The claimant has produced Ex.P11-Assessment order for the

year 2002-2003, in which the annual income was mentioned at Rs. 71,176/-. Based on Ex.P11, the Tribunal arrived his monthly income at Rs.

5,931/-. The Tribunal, considering the nature of injuries sustained and period of treatment, has come to the conclusion that the claimant might not

have been in a position to go to work and suffered total loss of earning for five months and awarded a sum of Rs. 29,655/- (Rs. 5,931 x 5)

towards loss of earning. Considering the injuries sustained by the claimant, I feel that the amount awarded towards loss of earning is very

reasonable and the same is confirmed. The Tribunal has also awarded Rs. 3,000/- towards transport charges and Rs. 3,000/- towards extra

nourishment which are also very reasonable and hence the same are confirmed. The Tribunal has also awarded a sum of Rs. 1,000/- towards

damage to the cloths, which I feel is very reasonable and the same is confirmed. The Tribunal has further awarded a sum of Rs. 15,000/- towards

pain and suffering. Considering the nature of the injuries sustained, I feel that the Tribunal has correctly awarded under this head and the same is

confirmed. The Tribunal has also awarded a sum of Rs. 2,000/- towards mental agony, which is also very reasonable and the same is confirmed.

The Tribunal has also awarded a sum of Rs. 22,940/- towards medical treatment and Rs. 25,000/- towards future medical treatment. PW2 Dr.

Saichandran stated that the petitioner requires a surgery to stabilise his right knee and it will cost Rs. 50,000/- in a private hospital. The Tribunal,

after considering the said evidence and Ex.P8 medical bills, correctly awarded under these heads also and the same are confirmed. The Tribunal

has further awarded a sum of Rs. 40,000/- towards 40% partial and permanent disability based on Ex.P16 Disability certificate, which I feel is

very reasonable and the same is confirmed. Further, the Tribunal has awarded a sum of Rs. 30,000/- towards loss of earning. After considering the

principles enunciated in the Full Bench decision of this Court, in the case of Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, ,

the amount awarded by the Tribunal towards loss of earning is unwarranted. Accordingly, the amount awarded by the Tribunal at Rs. 30,000/-

towards loss of earning is set aside. The details of the modified compensation are as under:

Loss of earning for

five months(5931 x 5) 29,655/-

Transport charges 3,000/-

Extra nourishment 3,000/-

Damage to the cloths 1,000/-

Future medical treatment 25,000/-

Medical expenses 22,940/-

Mental agony 2,000/-

Pain and sufferings 15,000/-

Partial and permanent

disability 40,000/-

Total 1,41,595/-

(Rounded off to Rs. 1,41,600/-)

Therefore the claimant is entitled to the modified compensation of Rs. 1,41,600/- as against the compensation of Rs. 1,71,600/- awarded by the Tribunal. The interest rate awarded by the Tribunal at 7.5% p.a from the date of petition, is very reasonable and the same is confirmed.

7. It is stated by the learned Counsel appearing for the appellant-Insurance Company that the entire award amount has already been deposited as per the order dated 12.11.2007. In these circumstances, the first respondent-claimant is permitted to withdraw the modified award amount of Rs.

1,41,600/- with interest at 7.5% p.a from the date of petition, after adjusting the amount, if any already withdrawn, from the deposit. It is needless

to say that the appellant-Insurance Company is also entitled to withdraw the balance amount available in the deposit, on making proper application.

8. The Civil Miscellaneous Appeal is disposed of with the above modification. No costs.