

(2010) 08 MAD CK 0409

In the Madras High Court

Case No : C.M.A. (MD) No's. 278 of 2008 and M.P. (MD) No. 1 of 2008

The New India Assurance Company Ltd.

APPELLANT

Vs

Anandraj and R. Devaraj

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

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

Citation : (2010) 08 MAD CK 0409

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

Bench : Single Bench

Advocate : B. Vijay Karthikeyan, for the Appellant; V. Kannan, for R-1 and V. Gopalsamy, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant the New India Assurance Company Limited, against the award and decree made in M.C.O.P. No. 202 of 2007 on the file of the Motor Accident Claims Tribunal, (Sub Court), Kulithalai, for awarding compensation of Rs. 2,29,000/- (Rupees two lakhs twenty nine thousand only) together with 6% interest per annum from the date of filing of the claim petition till the date of compensation.

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

(a) The accident took place on 26.01.2007 at about 6.30 p.m in Karur-Trichy Main Road, near Mahathanapuram Bus Stop, within the limits of Lalapet Police Station.

(b) On the above said ill-fated day, at about 6.30 p.m., the petitioner was traveling as a pillion rider on the Hero Honda Splendor plus bearing Registration NO. TN 47 P 9437 along with his friend viz., Veeramani he ridden the same in the mud portion of the above said place, with extreme left side in a slow speed and obeying traffic rules carefully, at that time the first respondent's Lorry bearing Registration No. TN-60-3299 was coming from same direction i.e., east to west

and was driven by its driver in a rash and negligent manner that too high speed, without obeying the traffic rules even without honking, dashed behind the petitioner's motor cycle.

c) Due to the above accident, the petitioner sustained fracture over his lower right femur, right thigh, right elbow and all over his body. The rider Veeramani also sustained grievous injuries.

(d) Immediately the injured petitioner was taken to the Dr.Rajnikanth Hospital, Karur, Where he was admitted and treated as inpatient from 26.01.2007 to 31.01.2007. One operation performed in his right leg on 27.01.2007. Till now he is taking out patient treatment at the same Hospital. He has spent huge sum of Rs. 50,000/- towards his medical and transport expenses.

(e) Since accident occurred due to the rash and negligent driving of the driver of the lorry. A case was registered by the Lalapet Police against the lorry driver, u/s 279, 337 of I.P.C. in Cr. No. 40/2007.

(f) The petitioner is aged 23 years only at the time of accident and he was a coconut merchant and also an agriculturist and was earning not less than Rs. 10,000/- per month by his occupations.

(g) In spite of best treatment given to the petitioner he has been permanently disabled. He is unable to do any physical work by using his right leg. Due to the accident the petitioner has lost his business and also not able to do his agriculturist work as before. He is a unmarried young man, due to the accident his future marital life is big question mark. His family members are suffering mentally and monetarily.

(h) For pain and suffering for mental agony, for total permanent disability, for monetary loss, for dis-figuration, for medical and transport expenses, for loss of income, for the attendance on him by his relations, for future treatment, for nutrition and for the loss of the acceleration of the income, the petitioner is hereby making a consolidated claim of compensation of Rs. 7,00,000/-(Rupees Seven Lakhs only).

(i) The accident took place solely because of the rash and negligent driving of the lorry driver the 1st respondent is a owner of the Lorry and 2nd respondent is the insurer of the same. Hence both the respondents are jointly and severally liable to pay the compensation to the petitioner.

3.The second respondent/The New India Insurance Company Limited has filed a counter statement and resisted the claim petition as follows:

(a) The age of the petitioner mentioned in column 3 is false and denied. The occupation of the petitioner mentioned in column 4 is false and denied. The monthly income of the petitioner mentioned in column 6 is false and denied. The petitioner is put to strict proof of the facts mentioned in columns 8 and 9 of the petition. The details of injuries alleged to have caused to the petitioner as

mentioned in column 11 is false and denied. The details of doctor and hospital who alleged to have given treatment to the petitioner, as mentioned in column 12, are all false and denied. The details of period of treatment and expenditure of Rs. 50,000/- as mentioned in column 13 of the petition are all false and denied. The details of disability alleged to have been caused to the petitioner as mentioned in column 13A of the petition is false and denied. The petitioner is not entitle to get a compensation of Rs. 7,00,000/- as claimed in column 21 and 21A of the petition.

(b) All the allegation in column 23 of the petition, are all false and denied. The allegation that on 23.07.2007 at about 6.30 p.m. on Karur to Trichy Main Road, near Mahadhanapuram Bus Stop, within the limits of Lalapettai Police Station while the petitioner was travelling as a Pillion rider on the Hero Honda Splender Plus Motor cycle bearing registration No,TN-47.P.9437 along with his friend Veeramani, who rode the said Motor cycle in the mud portion of the above said place with extreme left side, in slow speed and obeying traffic rules carefully, and at that time, the driver of Lorry T.N.60.3299 drove the said vehicle from same direction east to west in a rash and negligent manner with high speed without obeying the traffic rules and even without honning, dashed against the petitioner's motor cycle, are all false and denied. In fact the rider of the said motor cycle namely Veeramani, rode the said motor cycle in highly rash, negligent and reckless manner, without driving licence to rode the same, and without knowing and obeying the road traffic rules and rudiments in the middle of the road and suddenly crossed to his right side of the road and caused the accident. As such the rider of the motor cycle Veeramani alone was solely responsible for the accident. As such there is a contributory negligence on the part of the rider of the Motor cycle, namely Veeramani.

c) The allegation that due to the said accident, the petitioner sustained fracture over his lower end tibia right leg, contusion over his right leg, abrasion over his right femur, right thigh, right elbow and all over his body and that the rider Veeramani also sustained grievous injuries, are all false and denied.

(d) The allegation that immediately the injured petitioner was taken to Dr.Rajnikanth Hospital, Karur, admitted and treated as an inpatient there from 25.01.2007 to 31.01.2007 and one operation performed in his right leg on 27.01.2007, and that till now he is taking out patient treatment at the same Hospital, and spent huge amount of Rs. 50,000/- towards his medical treatment and transport expenses, are all false and denied.

(e) The allegation in para 3 that the accident was occurred purely due to the rash and negligent driving of the driver of Lorry, is false and denied. The petitioner is put to strict proof of the facts with regard to registration of case by the police and nature of its disposal. In fact, the rider of the said Motor cycle namely Veeramani who rode the said motor cycle in highly rash and negligent manner, without having driving licence to ride the motor cycle and without knowing and following the road traffic rules and rudiment, and rode the said motor cycle in the

middle of the road and suddenly came to the rightern side of the Road, and caused the accident. As such the rider of the motor cycle Veeramani alone was solely responsible for the accident. As such there is a contributory negligence on the part of the rider of the motor cycle. Therefore the petition is bad for non-joinder of the Owner and Insurer of the Motor cycle. As such this respondent is not liable to pay any compensation to the petitioner.

(f) The allegation in that the petitioner is aged 23 years only at the time of accident and he as working a Coconut Merchant and also an agriculturist and was earning not less then Rs. 10,000/- per month by his occupations, are all false and denied. The further allegation that due to the accident, the petitioner has lost his business and also not able to do his agriculturist work as before, and that he is unmarried young man due to the accident, his future martial life is in big question work, and his family members are suffering mentally and monetarily, are all false and denied.

(g) The estimation of compensation various heads as stated by the petitioner at a sum of Rs. 7,00,000/- is not correct and he is not entitle to get such amount as compensation.

(h) This respondent is not liable to pay any compensation to the petitioner, much the claimed compensation, neither jointly nor severally along with the 1st respondent. This respondent is neither liable to pay compensation nor interest the petitioner. Nowadays, the Nationalized Banks are giving interest only at 6% per annum to their depositors.

(i) The respondent is not liable to pay compensation of Rs. 7,00,000/- with interest and costs as prayed for in the prayer para, to the petitioner. All other allegations in the petition, are denied as false in each and every particular.

(j) If for any reason this Court awarded any compensation to the petitioner, the owner and Insurer of the Motor cycle and 1st respondent, the owner Lorry, alone are liable to pay the same. The petition deserves dismissal.

(k) The 1st respondent is not co-operating with this respondent, in contesting the claim. Hence, this respondent may be permitted to contest the claim on all grounds that are available for the 1st respondent.

(l) Therefore, it is prayed that this Court may be pleased to dismiss the petition, with costs.

4. After considering the claim petition and counter statements of the Insurance Company, the learned Motor Accidents Claims Tribunal had framed three issues and passed common orders on two claim petitions viz., MCOP. Nos. 202 and 203 of 2007. The issues are as follows:

1. Who was the cause for the accident?

2. From whom the compensation amount is to be paid to the claimant? And what is the quantum of compensation?

5. On the side of the claimants 4 witnesses were examined P.W.1, Anandaraj, claimant in MCOP. No. 202 of 2007, P.W.2, Mr.Veeramani, claimant in MCOP. No. 203 of 2007, P.W.3, Dr.Selvaraj and P.W.4, Mr.Kumar and 14 document were made as

Ex.P.1 - First Information Report

Ex.P.2 - Accident Register of claimant in MCOP. No. 202 of 2007

Ex.P.3 - Wound Certificate of Anandaraj

Ex.P.4 - Discharge medical certificate of Anandaraj

Ex.P.5 - Medical receipt bill of Anandaraj

Ex.P.6 - Rough sketch

Ex.P.7 - Accident Register of Veeramani

Ex.P.8 - Discharge Medical Certificate of Veeramani

Ex.P.9 - Inpatient Certificate of Veeramani

Ex.P.10 - Medical receipt of Veeramani

Ex.P.11 - Disability Certificate of Anandaraj

Ex.P.12 - X-ray

Ex.P.13 - Wound Certificate of Veeramani

Ex.P.14 - X-ray of Veeramani

6. On the side of the respondent no evidence was examined and no documents were marked.

7. Claimant in MCOP. No. 203 of 2007 Mr.Veeramani's brother one Bhakayaraj had lodged a complaint to the police station on 25.01.2007 stating that his brother Veeramani and another claimant Anandaraj were travelling on the Hero Honda Motor cycle bearing Registration No. TN47-B-9437 from Mahaphanapuram bus stand to the eastern side and at that point of time, the Lorry bearing Registration No. TN-60-3299 came in the opposite direction in a rash and negligent manner and at high speed and dashed against the motor cycle supporting this accident Ex.P-1 First Information Report and Ex.P-6 rough sketch were marked. P.W.2 Veeramani had adduced evidence stating that his vehicle was proceeding in front of the respondent lorry and at that point of time the respondent vehicle came at high speed and in a rash and negligent manner, and hit the two wheeler another cycle, the result that the accident had happened. The first respondent's vehicle insured with the second respondent's Insurance Company. The learned Motor Accidents Claims Tribunal considering the evidence of the claimants' side and perusing the First Information Report and rough sketch had come to the conclusion that the accident took place due to the rash, negligent and speedy

driving of the driver of the first respondent's lorry. The lorry was insured by the second respondent's Insurance Company. As such the second respondent is liable to pay compensation to the claimants.

8. The claimant Anandaraj had adduced evidence stating that he had sustained 6 injuries namely (1) A scar of 15 x 10 cms on his left leg (2) Sutures and extending by 10.4 cm on his right hand (3) There is a scar on the femur bone, (4) A swelling in the ligament on his right leg, (5) A scar injury on the thigh of his right leg, (6) a scar injury on his right hand wrist. To prove these injuries Ex.B-2 accident register, Ex.P.3, the claimant underwent surgical operation on his right leg. On the operated bone screws were affixed. Further the claimant was an inpatient from 25.01.2007 to 31.07.2007. During this period he underwent another operation and fixed a steel plate with screws.

9. P.W.3 doctor had adduced evidence stating that he sustained 35% disability and his right leg has been reduced by 2 cms. Further the claimant's right leg lower portion has become swollen. The doctor also had marked Ex.P.11 disability certificate Ex.P.12 X-ray. The learned Motor Accidents Claims Tribunal after considering the evidence of the Claimants and Doctor and after perusing the medical records he awarded compensation to the claimant as follow: The Tribunal had come to the conclusion that the income of the claimant was Rs. 30,000/- per annum, and the age of the claimant was 23 years. The Tribunal awarded the compensation by adopting the multiplier method as Rs. 10,500 x 17 = 1,78,500/- under the head of loss of income. Further the Tribunal awarded Rs. 44,000/- towards medical costs, for pain and suffering Rs. 5,000/- was awarded. Rs. 500/- towards transport costs and Rs. 1000/- towards nutrition. In total the Tribunal awarded Rs. 2,29,000/- together with interest at the rate of 6% per annum, from the date of filing the claim petition till date of payment of compensation.

10. Aggrieved by the said award and decree the appellant Insurance Company filed this above appeal to scale down the compensation. The learned Counsel for the appellant has pointed out in his appeal that the compensation amount Rs. 2,29,000/- is on the higher side without proper adherence to law. There is no proper document evidence to show that the claimant has been permanently affected by the injuries and he cannot continue his avocation in future. The multiplier method adopted by the Tribunal is against the principles laid down by this Court and the Hon'ble Supreme Court. The learned Counsel for the appellant vehemently argued that the Tribunal had come to a conclusion that the claimant's income was Rs. 30,000/- per annum and he found Rs. 10,500/- as annual loss to the claimant. Further the Tribunal adopted the multiplier of 17 and avoided the compensation to the claimant under the head of loss of income is erroneous. Hence, the learned Counsel for the appellant prays to scale down the award amount.

11. Per contra, the learned Counsel for the respondent argued that the claimant underwent surgical operations twice. He also sustained 6 injuries and his age was

23 years. The doctor also assessed the disability at 35% sustained by the claimant. The learned Counsel for the respondent has further argued that the Tribunal had awarded the compensation under the heads of pain and suffering, transport costs and nutrition are on the lower side. After the said accident the claimant is unable to do his business, his physical condition is not normal. The learned Motor Accidents Claims Tribunal, after well considering the evidence of the claimant side and the medical records the Tribunal awarded the compensation which is fair and equitable. Hence the learned Counsel prays to discuss the above appeal with costs.

12. On considering the facts and circumstances of the case, arguments advanced by the learned Counsel for their respective parties, and finding of the learned Motor Accidents Claims Tribunal passed in MCOP. No. 202 of 2007 dated 26.10.2008, this Court is of the view that the Tribunal had adopted the multiplier method for awarding compensation under the head of loss of income and awarded a compensation a sum of Rs. 1,78,500/- without crystal clear evidence. As such this Court set aside the said award under the head of loss of income. Hence this Court awards the compensation as follows: (1) Considering the claimant's age and nature of injuries, mode of treatment and disability certificate issued by a Doctor that the claimant sustained 35% disability, and his age being 23 years. As such this Court awards compensation under the head of loss of income a sum of Rs. 70,000/- (Rs. 2,000/- carrying for each percentage) (2) The Tribunal awarded Rs. 44,000/- under the head of medical expenses, this Court confirms the same, (3) The Tribunal awarded Rs. 5,000/- under the head of pain and suffering, this Court awards Rs. 25,000/-, (4) Tribunal awarded Rs. 500/- towards transport, this Court awards Rs. 5,000/- under the same head and (5) The Tribunal awarded Rs. 1,000/- towards nutrition. In total this Court awards Rs. 1,49,000/- together with interest at the rate of 6% per annum from the date of filing the claim petition till the date of payment of compensation, which is equitable and fair.

13. Therefore this Court scaled down the compensation from a sum of Rs. 2,29,000/- to Rs. 1,49,000/-, with interest mentioned above. This Hon'ble Court imposed a condition on the appellant/Insurance Company to deposit the entire award amount to the credit of MCOP. No. 202 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kulithalai, on 25.02.2008 within a period of four weeks. Further this Court permits the claimant/respondent to withdraw the half of the award amount on 28.10.2008. Now it is open to the claimant to withdraw the balance compensation amount with accrued interest there on from the date of filing the claim petition till the date of payment of compensation, subject to deduction of the withdrawals if any made as per this Court order lying in the credit of MCOP. No. 202 of 2007 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Kulithalai, after filing necessary application in accordance with law.

14. Likewise the appellant/New India Insurance Company limited is at liberty to

withdraw the excess award amount already deposited into the Credit of MCOP. No. 202 of 2007 on the file of the Motor Accidents Claims Tribunal, Kulithalai, after observing the necessary formalities of the Tribunal.

15. In the result, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the award and decree passed in MCOP. No. 202 of 2007, dated 26.10.2007 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Kulithalai is modified. The connected miscellaneous petitions are closed. There shall be no order as to costs.