
(2010) 08 MAD CK 0063

In the Madras High Court

Case No : C.M.A. (MD) No's. 279 of 2008 and M.P. (MD) No. 1 of 2008

The New India Assurance Company Ltd.

APPELLANT

Vs

Veeramani and R. Devaraj

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

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

Citation : (2010) 08 MAD CK 0063

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. 203 of 2007 on the file of the Motor Accident Claims Tribunal, (Sub Court), Kulithalai, for

awarding compensation of Rs. 1,69,250/- (Rupees one lakh sixty nine thousand two hundred and fifty 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 in 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. in 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 in 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 rode the said from same direction east to west in a rash and negligent manner with high speed without obeying the traffic rules and

even without horning, 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 ride 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 maked 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 P.W.2, Veeramani had adduced evidence stating that he had sustained injuries on his right leg joint for which a suture 10 x 4 C.Ms. was done. On right leg 5 x 3 C.Ms. a suture was done Right hand, right hand joint, left leg toe were scarred, to prove these injuries Ex.P.7 accident report was marked. He also marked Ex.P.8 which is GC hospital certificate, it reveals that the patient was inpatient for one day. Ex.P.9 was marked which reveal that the claimant underwent treatment Thangian hospital. This exhibit also shows that the claimant had sustained libia bone fracture on his right leg which was of grievous nature. P.W.3 doctor had adduced evidence stating that the claimant's left leg front side is an incurable wound, the leg also is in a swollen stale on his left leg there is movement of only 30 degree. The joint movement on the leg is also 36. The fractured bone is also deformed and puss is oozing from the wound. The doctor P.W.2 examined the claimant and verified the medical documents and certified that the claimant sustained 35% partial disability.

9. P.W.4 on Kumar had adduced evidence stating that the claimant is suffering coconuts to his market regularly. In this business the claimant is earning Rs. 7,000/- per month. After considering the claimant's evidence, the Doctor's evidence and one Kumar, coconut merchants' evidence, the learned Motor Accidents Claims Tribunal, had awarded a compensation as follows: (i) Rs. 1,48,750/- awarded under the head of loss of income, after adopting a multiplier method that the claimant's age was 32, his annual loss of income was Rs. 8,750/- and adapted a multiplies of 17 and granted the same the tribunal further awarded Rs. 14,000/- towards medical cost, Rs. 5,000/- under the head of pain and suffering, Rs. 500/- under the head of transport and Rs. 1,000/- under the head of nutrition. In total the tribunal awarded Rs. 1,69,250/- together with interest at the rate of 6% per annum. The Tribunal further directs the second respondent's Insurance Company to deposit the said compensation within a period of two weeks. Such a deposit being made, the claimant is permitted to withdraw a sum of Rs. 69,250/- with accrued interest and costs. The balance compensation amount Rs. 1,00,000/- shall be deposited in a Nationalized bank for a period of three years under the fixed deposit scheme, accordingly the award was ordered.

10. Challenging the award and decree the appeal was filed to scale down the

compensation. The learned Counsel for the appellate argued that the Tribunal awarded Rs. 1,69,250/- is not reasonable without following the medical records, the award was granted. The Tribunal awarding compensation under the head of loss of income after adopting the multiplier method is wrong. The Tribunal has erroneously come to the conclusion without proper record and evidence that the claimants' age was 32, his annual income was Rs. 25,000/- The learned Counsel for the appellant has vehemently argued that there was absolutely no evidence that the claimants' avocation was effected. Hence, he prays to scale down the compensation amount.

11. Further per contra, the learned Counsel for the respondent argued that the Tribunal awarded the compensation after well considering the evidence of the claimants' side and medical records, the award was granted. The claimants' is doing coconut business, as such his earning was Rs. 7,000/- per month. The same was affirmed another coconut merchant one Mr. Kumar in his evidence. Further the Tribunal awarded the compensation under the heads of pain and suffering, transport, nutrition all on the lower side. In any event this quantum of compensation is fair and equitable. Hence, he prays to dismiss the above appeal.

12. On considering the facts and circumstances of the case argument advanced of the learned Counsels and findings of the learned Motor

Accidents Claims Tribunal passed in MCOP. No. 203 of 2007 dated 26.10.2007, this Court of the view that on considering the medical records,

doctors evidence, nature of injuries, the avocation was not a fall affected. As such the multiplier adopted by the Tribunal for granting compensation

under the head of loss of income is not pertinent. Hence, this Court awards the compensation as follow: (1) for loss of income Rs. 70,000/-

(granting Rs. 2000/- for each 1 percentage)(2) Pain and suffering, the Tribunal awarded Rs. 5,000/-, this Court awarded Rs. 20,000/-(3) Tribunal

awarded Rs. 500/- towards transport charges, this Court awards Rs. 5,000/-, (4) Tribunal awarded a sum of Rs. 1,000/- this Court awards Rs.

5,000/- and the Tribunal awarded Rs. 14,000/- under the head of medical expenses, this Court confirms the same. In total this Court awards Rs.

1,14,000/-.

13. Therefore, the original compensation amount is scaled down from Rs.

1,69,250/- to Rs. 1,14,000/-. Now the claimant is awarded Rs.

1,14,000/- together with interest at the rate of 6% per annum from the date of filing the claim petition till payment of compensation. This Hon"ble

Court imposed a condition on the appellant/Insurance Company to deposit the entire award amount to the credit of MCOP. No. 203 of 2007 on

the file of the Motor Accident 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 of any made as per this Court order, lying in the credit of MCOP. No. 203 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. 203 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. 203 of

2007, dated 26.10.2007 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Kulithalai is modified. The connected miscellaneous

petition is closed. There shall be no order as to costs.