

(2010) 07 MAD CK 0059

In the Madras High Court

Case No : C.M.A. NPD. No. 1193 of 2004

The Oriental Insurance Co. Ltd. and V. Gowri

APPELLANT

Vs

H. Sundarajan

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0059

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

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; S. Kalyanaraman, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Insurance company against the award dated 31.10.2001 made in

MCOP No. 896 of 1998 by the Motor Accident Claims Tribunal (Principal Sub Court), Cuddalore.

2. Background facts in a nutshell are as follows:

The respondent/claimant met with motor vehicle accident that took place on 25.06.1998 at about 4.45 P.M. While the petitioner was traveling in a

bus bearing registration No. PY-01-J-2709 belonging to the second appellant and insured with the first appellant-Insurance company from

Cuddalore to Thavalakuppam, the driver driven the same in a rash and negligent manner at a very high speed. As a result of which, the bus was

capsized at Chinnakanganakuppam, Pondicherry-Cuddalore Main Road. Due to the said impact, the respondent-claimant sustained grievous

injuries and multiple fractures all over his body. The claimant was immediately admitted in the Government Hospital, Cuddalore and then

transferred to Ashoka Hospital, Pondicherry and later at Vijaya Health Centre, Madras, for advanced treatment. He claimed a sum of Rs.

10,00,000/- as compensation before the Tribunal. The first appellant-Insurance company resisted the claim. On pleadings the Tribunal framed the

following issues:

1. On whose negligence the accident occurred?
2. Whether the claimant is entitled to any compensation from the appellants herein? If so how much?

After considering the oral and documentary evidence, the Tribunal held that the respondent-claimant is entitled to compensation and awarded a

sum of Rs. 2,43,475/- with interest at 9% per annum from the date of petition and the details of the same are as under:

Permanent disability Rs. 1,44,000/-

Medical expenses Rs. 54,475/-

Transport charges Rs. 20,000/-

Pain and sufferings Rs. 25,000/-

Total ... Rs. 2,43,475/-

Aggrieved by that award, the first appellant-Insurance company has filed the present appeal.

3. The learned Counsel appearing for the appellant-Insurance company questioned only the quantum of compensation awarded by the Tribunal

and contended that the amount awarded by the Tribunal is excessive, exorbitant and without basis and justification. He further submitted that the

Tribunal was wrong in adopting the multiplier method in the case of injury and there is no material available to show that 60% disability affects the

earning capacity and future career of the injured and the amount awarded towards pain and suffering is on the higher side and, therefore, the award

passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. The learned Counsel appearing for the respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence 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 learned Counsel appearing for the appellant and perused the materials available on record. On the side of the claimant, P.Ws.1 to 5

were examined and documents Exs.P1 to P137 were marked. On the side of the appellant-Insurance company no one was examined and no

document was marked in support of their claim. P.W.2 is the claimant. PW3 is Doctor Raju. Ex.P120 is the xerox copy of the eligibility certificate.

Ex.P121 is the xerox copy of the school mark sheet. Ex.P122 is the xerox copy of the school transfer certificate. Ex.P123 is the Chennai Tamil

Nadu Hospital Receipt. Ex.P124 is the leg photo. Ex.P125 is the disability certificate. Ex.P126 is the x-ray. Exs.P127 to P135 are the medical

bills. Exs.P136 and P137 are car hire receipts. After considering the oral and documentary evidence, the Tribunal had given a categorical finding

that the accident had occurred due to rash and negligent driving of the driver of the second appellant and awarded a compensation of Rs.

2,43,475/- with interest at 9% per annum and the finding is based on valid materials and evidence.

6. At the time of accident, the claimant was aged about 19 years, studying final year B.Sc., Chemistry at St Joseph College, Cuddalore. PW2-the

claimant, in his evidence, has stated that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the

second appellant and due to the said impact, he had sustained fracture in his left hand, right leg and multiple injuries all over the body and he took

treatment in Government Hospital, Cuddalore and then transferred to Ashoka Hospital, Pondicherry and later at Vijaya Health Centre, Madras for

advanced treatment. PW4 - Dr. Raju, who examined the claimant, deposed that the left hand radial nerve was found inactive and left leg foot

became numbness and had issued Ex.P125-disability certificate determining the disability at 70%. After considering the oral and documentary

evidence, the Tribunal came to the conclusion that the disability fixed by the doctor is excessive and fixed the same at 60%. Considering the fact

that the claimant is a student, the Tribunal fixed the notional income at 15,000/- and after taking into consideration of the age, adopted the

multiplier of "16" and determined a sum of Rs. 1,44,000/- (Rs. 15,000 x 16 x

60/100) towards permanent disability. The learned Counsel appearing for the appellant-Insurance company vehemently contended that it is not a fit case for adopting multiplier method. There is no concrete evidence available on record to show that the disability assessed by the Doctor affects the earning capacity and future career of the injured. Therefore, the correct method should have been adopted in the present case is only percentage method and 60% fixed by the Tribunal is on the higher side. After taking into consideration the facts and circumstances of the case, it is reasonable to fix the disability at 45%. Normally the Courts award Rs. 1,000/- to 2000/- per percentage of disability. If Rs. 2000/- is awarded per percentage of disability, the award amount works out to Rs. 90,000/- (Rs. 2000/- x 45%) as against Rs. 1,44,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 54,475/- towards medical expenses. Exs.P127 to P135 are the medical bills and it is the actual expenditure incurred by the claimant. Hence, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal awarded a sum of Rs. 25,000/- towards pain and sufferings, which is very excessive. Considering the nature of injuries sustained, it would be reasonable to award Rs. 15,000/- under this head as against Rs. 25,000/- awarded by the Tribunal. The Tribunal awarded Rs. 20,000/- towards transport charges, which is on the higher side and it would be reasonable to award a sum of Rs. 10,000/- under this head as against Rs. 20,000/- awarded by the Tribunal. The Tribunal has fixed the rate of interest at 9% p.a from the date of petition. The accident had occurred on 25.06.1998. Keeping in view the prevailing rate of interest at the relevant time, the rate of interest awarded by the Tribunal is confirmed. The details of modified compensation as per the above discussion are as under:

45% Permanent disability Rs. 90,000/-

Medical expenses Rs. 54,475/-

Pain and sufferings Rs. 15,000/-

Transport charges Rs. 10,000/-

Total Rs. 1,69,475/-

Therefore, the claimant is entitled to the modified compensation of Rs. 1,69,475/- as against the compensation of Rs. 2,43,475/- awarded by the Tribunal.

7. The learned Counsel appearing for the first appellant-Insurance company has submitted that the entire award amount has already been

deposited as per the order of this Court dated 15.06.2004. Therefore, the claimant is permitted to withdraw the modified award amount of Rs.

1,69,475/- with interest at 9% p.a. from the date of petition, after adjusting the amount already withdrawn, on making proper application. The

appellant-Insurance company is permitted to withdraw the balance amount on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.