
(2010) 08 MAD CK 0271

In the Madras High Court

Case No : C.M.A. NPD. No. 832 of 2005 and C.M.P. No. 4674 of 2005

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

G. Rajendran and S. Peer Muhaideen

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0271

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

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; A.R. Jawaharlal, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Insurance company against the award dated 07.04.2004 made in MCOP No. 4637 of 1999 by the Motor Accident Claims Tribunal (VI Court of Small Causes), Madras.

2. Background facts in a nutshell are as follows:

One Mr. G. Rajendran, injured claimant met with a motor vehicle accident that took place on 28.10.1998 at about 5.10 am. He was returning from Koyambedu Market to go to Kothaval Chavadi Market along with vegetable goods in a Van bearing Registration No. TN72-A-0579, belonging to the 2nd respondent, and insured with the appellant-Insurance Company from West to East at PEVR Salai, Dashaprakash Signal Point. The said vehicle was driven by its Driver in a rash and negligent manner at a great speed and dashed against the MTC Bus and thereby driver of the Van and the others sustained grievous injuries. Immediately the claimant was admitted in the Government General Hospital, Chennai. The claimant claimed a compensation of Rs. 1,00,000/-. The appellant-Insurance company resisted the claim. On pleadings the Tribunal framed the following issues:

1. In whose negligence the accident was 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 accident occurred only due to rash and negligent driving of the driver of the van and awarded a compensation of Rs. 31,500/- with interest at 9% per annum from the date of Claim Petition and the details of the same are as under:

Permanent disability Rs. 15,000/- Loss of Earning Power Rs. 10,000/- Transport charges Rs. 250/- Damages to Clothes and Vegetables Rs. 500/- Pain and sufferings Rs. 5,000/- Extra Nourishment Expenses Rs. 250/- Loss of Earning Rs. 500/- ----- Total ... Rs. 31,500/- -----

Aggrieved by that award, the 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 also without basis and justification. He further submitted that the Tribunal is wrong in adopting multiplier method in the case of injury and there is no material available to show that 20% 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 1st 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 3 were examined and documents Exs.P1 to P3 were marked. On the side of the respondent-Insurance company, R.Ws.1 and 2 were examined and documents Exs.R1 to R3 were marked. PW1-G.Rajendran is the claimant. PW2-Mr. T. Amala Doss, is a Sub-Inspector of Police (Traffic Records). PW3-R. Thiagarajan is the Doctor. Ex.P1 is the O.P. Sheet. Ex.P2 is the F.I.R. copy. Ex.P3 is the Disability Certificate. RW1-Mr. B. Narendran, is an Assistant Administrative Officer in the Insurance Company. RW2-Mr. Sankaranarayanan, is a Junior Assistant in the Office of the Regional Transport Authority. Ex.R1 is the Insurance Policy. Ex.R2 is the Investigation report. Ex.R3 is the Xerox copy of the Driving license. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to rash and negligent driving of the driver of the van belonging to the 2nd respondent and awarded a compensation of Rs. 31,500/- with interest at 9% per annum and the finding is based on valid materials and evidence.

6. The present case, the injured claimant was travelling in the Van along with his goods. He is the owner of the goods. There is no dispute it is also covered under the policy. The claimant was aged about 35 years at the time of accident. He is doing vegetable business and he was earning a sum of Rs. 100/- per day. In his evidence, he stated that the accident was caused by the Driver of the vehicle. PW3 is the Doctor, who examined the injured, has determined the disability at 20%. In his evidence, he has stated that due to the injury, the insured is suffering from Head ache and giddiness and also unable to carry any goods. Considering the above oral and documentary evidence, the Tribunal awarded a sum of Rs. 15,000/- towards 20% permanent disability. Normally, the Courts award Rs. 1,000/- to Rs. 2,000/- per percentage of disability. If Rs. 1,000/- is awarded for 1% disability, the award amount works out to Rs. 20,000/- (Rs.1,000 x 20%) as against Rs. 15,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 500/- towards Loss of earning which is very low and it would be very reasonable to award Rs. 1,500/- under this head as against Rs. 500/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 250/- towards Extra Nourishment and it is reasonable to award Rs. 2,250/- as against Rs. 250/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 250/- towards Transport Expenses, which is very low and I am of the view that it is reasonable to award Rs. 2,250/- under this head as against Rs. 250/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 500/- towards Damages to Clothes and Vegetables, which is very reasonable and the same is confirmed. Similarly, the Tribunal awarded a sum of Rs. 5,000/- towards Pain and Suffering, which I feel is very reasonable and the same is confirmed. The Tribunal has also awarded a sum of Rs. 10,000/- towards Loss of Earning Power. Once the Tribunal awarded the Compensation towards loss of permanent disability, a sum of Rs. 10,000/- awarded towards Loss of Earning Power is unwarranted and therefore, the same is deleted. The Tribunal has fixed the rate of interest at 9% p.a from the date of Claim Petition. The accident has occurred on 28.10.1998. 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:

20% Permanent disability	Rs. 20,000/-	Loss of Earning	Rs. 1,500/-	Extra Nourishment Expenses	Rs. 2,250/-	Transport Expenses	Rs. 2,250/-	Damages to Clothes and Vegetables	Rs. 500/-	Pain and Sufferings	Rs. 5,000/-
----- Total ... Rs. 31,500/- -----											

In the present case only the heads under which compensation was awarded alone modified and the awarded amount stands confirmed. Therefore, the claimant is entitled to the compensation of Rs. 31,500/-.

7. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.