(2010) 10 MAD CK 0309

In the Madras High Court

Case No : C.M.A. (MD) No. 1469 of 2010 and M.P. (MD) No. 1 of 2010

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Mr. M. Albert Jeyaraj and Mr. T. Iruthayam RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 10 MAD CK 0309

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

Bench : Single Bench

Advocate : C. Jawahar Ravindran, for the Appellant; S. Deenadayalan, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the Appellant-Insurance Company against the judgment and Decree dated 30.10.2006 made in M.C.O.P No. 13 of 2006 on the file of the Motor Accident Claims Tribunal cum Fast Track Court, No. II, Pattukottai.

2. When the matter came up for admission, the same is opposed by Mr. S. Deenadayalan, the learned Counsel appearing for the first Respondent/claimant and by consent of the learned Counsel of both the parties, the appeal itself is taken up for final disposal.

3. Background facts in a nutshell are as follows:

The injured-Albert Jeyaraj met with motor vehicle accident that took place on 27.03.2005 at about 3.45 p.m. The said injured was a pillion rider in the Hero Honda motorcycle, bearing Registration No. TN-55-C-9115. The rider of the motorcycle was one Gnanaprakasam. When the motorcycle was nearing Maharajasamuthiram Kattatru Bridge, the rider of the motorcycle tried to overtake a bullock cart. Due to the same, the rider lost his control and in the process, the pillion rider fell down and sustained a fracture and grievous injuries all over the body. The claimant claimed a sum of Rs. 5, 00,000/-as compensation. The said motorcycle was insured with the Appellant-Insurance Company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle or not?

2. Whether the claimant is entitled to claim any compensation?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle and awarded a compensation of Rs. 3,38,800/-with interest at 7.5% per annum from the date of petition. The details of the compensation are as under :

Heads Amount Loss of income due to 20% disability Rs. 2,68,800/- Medical expenses Rs. 10,000/- Pain and suffering Rs. 5,000/- Transport charges Rs. 5,000/- Future discomfort Rs. 50,000/- ----------- Total... Rs. 3,38,800/- ------------

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

4. Learned Counsel appearing for the Appellant-Insurance Company questioned only the quantum of compensation awarded by the Tribunal and vehemently contended that the amount awarded by the Tribunal is excessive, exorbitant and also without any basis and justification. Further, he contended that the Tribunal ought not to have adopted the multiplier method in the case of injury. Therefore, the amount awarded towards loss due to disability is excessive. It is also further stated that the Tribunal is wrong in awarding a sum of Rs. 50,000/-towards future discomfort, which is without any basis and justification. Therefore, the award passed by the Tribunal is not in accordance with law and hence the same should be set aside.

5. Learned Counsel appearing for the first Respondent/claimant has submitted that the Tribunal had considered all the relevant materials and evidence on record 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.

6. Heard the counsel and perused the materials available on record. On the side of the claimant, P.Ws. 1 and 2 were examined and documents Exs.P1 to P18 were marked. On the side of the Appellant-Insurance Company, no one was examined and no document was marked to substantiate their claim. P.W.1 is the claimant. P.W.2 is Dr. Chellappan. Ex.P1 is the xerox copy of the First Information Report. Ex.P2 is the Wound Certificate. Ex.P3 is the Medical Report of the Vinothagan Hospital. Ex.P4 is the series of Prescriptions issued by Vinothagan Hospital. Ex.P5 are the series of Hospital Bills relating to the amount of Rs. 27,590/-. Ex.P6 are the series of the Hospital Bills relating to the amount of Rs. 14,100/-. Ex.P7 is the certified copy of the Passport. Ex.P8 is the Course

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Completion Certificate issued by the Institute of Technical Education, Singapore. Ex.P9 is the Appointment Order issued by the Surai Shipyard Limited. Ex.P10 is the certificate of experience for having employed in Surai Shipyard Limited from the period April 1991 to March 31, 1996. Ex.P11 is the series of Interview letters issued by Thamam Shipyard Limited. Ex.P12 is the Trip sheets for having travelled in a car from Pattukottai to Tanjore for treatment. Ex.P13 is the copy of the Motor Vehicle Inspector''s Report. Ex.P14 is the xerox copy of the Registration Certificate of the Hero Honda motorcycle. Ex.P15 is the Driving Licence of the rider of the Hero Honda motorcycle. Ex.P16 is the Insurance Policy of the Hero Honda motorcycle. Ex.P17 is the Disability Certificate. Ex.P18 is the X-ray film. After considering the above 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 rider of the motorcycle. The finding of the Tribunal is based on valid materials and evidence and it is a question of fact. Hence the same is confirmed.

7. At the time of the accident, the injured was aged about 37 years. He was working in Surai Shipyard Limited, Singapore and earning Rs. 30,000/-per month. P.W.1, the claimant, in his evidence, has stated that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle and the rider was also charge-sheeted by Pattukottai Police Station in Crime No. 267/2005 under Sections 279 and 337 I.P.C. Due to the said accident, the claimant sustained right thigh fracture. Immediately, after the accident the injured was admitted in the Vinothagan Hospital, Tanjore. P.W.2, the Doctor, had examined the claimant on 17.10.2006 and determined the disability at 25% and issued Ex.P17 Disability Certificate. In the evidence of the Doctor, it is stated that there was a fracture of right thigh and also an operation was done and iron plates were also inserted. He was admitted in the Vinothagan Hospital, Tanjore as in-patient from 27.03.2005 to 09.04.2005. After discharge he took treatment in a Private Hospital as out-patient for a period of 134 days. Further, in his evidence, he has stated that due to the fracture of right thigh, he is unable to bend, stand, and sit substantially and also there is restricted movement of his right leg. After considering the above facts and circumstances of the case, since P.W.2-Doctor had examined the claimant after a period of one year, the Tribunal reduced the disability from 25% to 20%. In respect of the income, there is no concrete evidence available on record to prove that the claimant-injured was earning Rs. 30,000/-per month. Therefore, the Tribunal fixed the monthly income of the claimant at Rs. 7,000/-and calculated the annual income at Rs. 84,000/- (Rs. 7,000X12). After taking into consideration of the age of the claimant-injured as 37 years, the Tribunal adopted the multiplier of ''16'' and determined the loss of income at Rs. 13, 44,000/-(84,000X16). After taking into consideration of the disability at 20%, the Tribunal determined the loss of income due to 20% disability at Rs. 2,68,800/-(13,44,000X20/100). Learned Counsel appearing for the Appellant-Insurance Company vehemently contended that the Tribunal ought not to have adopted the multiplier method in the case of injury, and the correct

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method that should be adopted is only percentage method. Therefore, taking into consideration of the facts and circumstances of the case, I am of the view that it is reasonable to adopt percentage method. Normally the Courts award Rs. 1,000/-to 2,000/-per percentage of disability. In the present case, it is reasonable to award a sum of Rs. 2,000/-per percentage of disability. Further the counsel for the claimant has contended that the Tribunal ought not to have reduced the disability from 25% to 20%. Once the Doctor assessed the disability, the Tribunal ought not to have reduced the same. The disability assessed by the Doctor only has to be taken into consideration. If Rs. 2,000/-is awarded per percentage of disability, the loss of income due to 25% disability works out to Rs. 50,000/-. Therefore, the claimant is entitled to the modified compensation of Rs. 50,000/-towards loss of income due to 25% disability as against the sum of Rs. 2,68,800/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 10,000/-towards medical expenses on the basis of Ex.P6. It is contended by the learned Counsel appearing for the claimant that the claimant incurred medical expenditure to the extent of Rs. 27,590/-as per Ex.P5-Series of Hospital bills, and also incurred Rs. 14,100/-as per Ex.P6, totalling to Rs. 41,690/-, but the Tribunal has awarded only a sum of Rs. 10,000/-towards medical expenses and therefore, the Tribunal is wrong in awarding only a sum of Rs. 10,000/-as against Rs. 41,690/-incurred towards medical expenses on the basis of Ex.P5 and Ex.P6 (27,590+14,100). In this respect, I am of the view that it would be reasonable to award a sum of Rs. 41,690/-towards medical expenses as against Rs. 10,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5,000/-towards pain and suffering, which is very low and meagre. After taking into consideration of the nature of the injuries and also the evidence available on record, it would be reasonable to award a sum of Rs. 10,000/-towards pain and suffering as against Rs. 5,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5,000/-towards transport charges. The claimant was residing in Pattukottai, but the treatment was taken in the Vinothagan Hospital, Tanjore. Ex.P12 is the trip sheets for having travelled in a car from Pattukottai to Tanjore for treatment. After considering the same, it would be reasonable to award a sum of Rs. 10,000/-towards transport charges as against Rs. 5,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 50,000/-towards future discomfort. Learned Counsel appearing for the Appellant-Insurance Company vehemently contended that the amount awarded under this head is excessive. Further he submitted that the Tribunal has not awarded any amount towards attendant charges. The Supreme Court recently considered the scope of the aspect with regard to injuries affecting the earning capacity, in the case of Sri B.T. Krishnappa Vs. The Divisional Manager, United Insurance Company Ltd. and Another, . Paragraphs 16 to 19 of the said judgment read as follows:

16.In the case of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, , where the claimant was also a mason, this Court held that :

... It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation

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which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired.... (at page 204, Para 15).

17. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation that impacts life expectancy as well

18. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember :

... No amount of compensation can restore the physical frame of the Appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury" so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame". (See R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,)

19. Further, the Court in the same case also held that

In its very nature whenever a tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. (at Page 557, para 12)

After considering the principles enunciated in the above Supreme Court judgment, it would be reasonable to award a consolidated sum of Rs. 30,000/- towards Attendant Charges as well as the Loss of expectation of life as against the sum of Rs. 50,000/-awarded by the Tribunal towards future discomfort. The Tribunal has not awarded any amount towards extra nourishment. There is no dispute that the claimant was treated as in-patient in the hospital and after discharge he took treatment as out-patient. After taking into consideration of the same, it would be reasonable to award a sum of Rs. 7,500/-towards extra nourishment. The Tribunal has fixed the interest rate at 7.5% per annum form the date of petition. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that time, the interest fixed by the Tribunal is reasonable and hence the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Heads Amount Loss due to 25% disability Rs. 50,000/- Medical expenses Rs. 41,690/- Pain and suffering Rs. 10,000/- Transport charges Rs. 10,000/- Extra nourishment Rs. 7,500/- Attendant charges and loss of expectation of life Rs.

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30,000/- ----------- Total Rs. 1,49,190/- ----------- (Rounded off to Rs.1,50,000/-)

8. Under the circumstances, the Appellant-Insurance Company is directed to deposit the modified compensation of Rs. 1,50,000/-with interest at 7.5% p.a. from the date of petition, less the amount if any already deposited, within in a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same on making proper application.

9. With the above modifications, the Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

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