
(2010) 03 MAD CK 0172

In the Madras High Court

Case No : C.M.A. No. 296 of 2005 and C.M.P. No. 1564 of 2005

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mumtaj Bivi and Ponnusamy

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(1)
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 03 MAD CK 0172

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

Bench : Single Bench

Advocate : S.J. Jagadev, for the Appellant; P. Mani, for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree, dated 23.11.2001, made in M.C.O.P. No. 1041 of 1999, on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge), Tindivanam, awarding a compensation of Rs. 60,000/- with 9% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/second respondent has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

3. The short facts of the case are as follows:

The petitioner, Mumtaz, aged about 47 years, was a ladies tailor, earning a sum of Rs. 3,000/- per month. On 19.02.1998, when the petitioner, along with her relatives were travelling in a van bearing registration No. TN32 Z3868 from Kallakurichi towards Madras and when the van had passed Tindivanam and was proceeding at a distance of 2 kms. away from Tindivanam on GST road, the first respondent's lorry bearing registration No. TAY 2319, driven by its driver at a

high speed and in a rash and negligent manner, came from the opposite direction and dashed against the said van. In the impact, the petitioner and her relatives sustained sever injuries. The petitioner sustained fracture in her left and right shoulder and left leg and also sustained grievous injuries all over her body. Due to the injuries sustained, the petitioner has sustained disability, mental agony and loss of income.

4. As the accident had been caused by the driver of the first respondent's lorry, the owner of the lorry i.e. the first respondent and the insurer of the lorry i.e. the second respondent are jointly and severally liable to pay compensation to the petitioner. The petitioner has claimed a compensation of Rs. 1,00,000/- from the respondents with interest and costs u/s 166(1) of the Motor Vehicles Act.

5. Regarding the said accident, a criminal case has been registered at the Tindivanam Police Station in Crime No. 116/1998, as against the driver of the first respondent's lorry, under Sections 279 and 337 of I.P.C.

6. The second respondent, in his counter, which was adopted by the first respondent, has resisted the claim denying the averments in the claim regarding the manner of the accident. It has been stated that the respondents' driver took his trip at Chennai and was proceeding towards Villupuram. He drove the lorry slowly, carefully, adhering the traffic rules. While the lorry was nearing Tindivanam town limit, he slowed down the speed of the lorry as it was a dark night. When the lorry was nearing the town limit, a passenger van, coming in the opposite direction, was driven in a rash and negligent manner and its driver attempted to overtake a vehicle proceeding ahead of it, by crossing the meridian line, with its dazzling halogen lights switched on. On seeing the van coming in the opposite direction, the driver of the lorry slowed down his vehicle and further took the lorry to the left of the road. In spite of it, the van dashed against the lorry and caused the accident. As such, it has been submitted that the accident has been caused only by the driver of the van.

7. The second respondent has also not admitted the averments in the claim regarding the age, income and occupation of the petitioner, nature of injuries sustained the period of treatment and has stated that these should be proved through documentary evidence. It has been stated that the claim of Rs. 1,00,000/- is excessive. It has also been contended that as the collision was between two vehicles, the owner and insurer of the van, in which the petitioner has alleged that she had travelled in, should have been impleaded as necessary parties in the claim case, to decide on the negligence issue. As such, it has been submitted that the claim application is bad for non-joinder of necessary parties and has sought dismissal of the claim petition as against him, with costs.

8. Two other passengers in the van, who are relatives of the petitioner and who had also sustained injuries in the said accident, have filed M.C.O.P. No. 1421 of 1999 and M.C.O.P. No. 1584 of 1999, before the Tribunal. The Mumtaz, the petitioner in M.C.O.P. No. 1041 of 1999 was examined as PW1; Shakila, the

petitioner in M.C.O.P. No. 1421 of 1999 was examined as PW2 and Mrs. Shamsath, the petitioner in M.C.O.P. No. 1584 of 1999 was examined as PW3.

9. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Was the accident caused due to the negligence of the driver of the first respondent's lorry?

(ii) What is the quantum of compensation, which the petitioner is entitled to get?

10. On the petitioner's side four witnesses were examined as PW1 to PW4, PW4 is the Doctor, who had assessed the disability of the petitioner and 12 documents were marked as Exs.P1 to P12. On the respondents side no witness was examined and the insurance policy taken for the first respondent's lorry was marked as Ex.R1.

11. Ex.P1 is the copy of FIR registered at the Tindivanam Town Police Station. On scrutiny of the Ex.P1, it is seen that the complaint had been given by one Babu, the driver of the van involved in the accident. It has been stated in the complaint that the driver of the respondent's lorry, coming from Chennai had driven the lorry at a high speed and dashed the lorry against the van resulting in the van turning turtle. A minor girl Amrina, who had travelled in the van, was also injured in the accident. Her mother Shakila, PW2, had filed a claim petition in M.C.O.P. No. 1192 of 1998. Another person, who had travelled in the van and who was also injured had filed a claim petition. In that case, as the respondents had remained absent, the case had been decided as against the respondents and the copy of the Criminal Court Judgment in that case has been marked as Ex.P2. From a scrutiny of Ex.R1, it is seen that the first respondent's lorry had been covered under a valid policy of insurance with the second respondent and was valid till 28.11.1998. As the accident happened on 19.02.1998, the Tribunal held that the first respondent's lorry had been insured with the second respondent at the time of accident.

12. Mumtaz, who was a passenger in the van was examined as PW1. The PW1 has travelled with her entire family in the said van from Thyagagurukkam in Kallakurichi Taluk of Villupuram District. She had deposed that 14 persons had travelled in the said van and that she was one among them; that when the van had proceeded beyond Tindivanam, the first respondent's lorry, coming in the opposite direction and which was driven at a high speed and in a rash and negligent manner by its driver, had dashed against the van and caused the accident.

13. The Tribunal, on considering the evidence of the PW1 and the FIR marked as Ex.P1 and also on scrutiny of the Ex.P2, the copy of the Judgment made in the M.C.O.P. No. 1192 of 1998 and Ex.P4, the Wound Certificate issued to Amrina, the daughter of the Shakila at Tindivanam Government Hospital, as well as document Ex.R1 held that the accident had been caused only by the driver of the

first respondent's lorry and hence rejected the contention made on the part of the respondents side that the accident had been caused by the rash and negligent driving by the driver of the van. As such, the Tribunal held that as the first respondent's lorry had been covered under a valid policy of insurance with the second respondent, the second respondent is liable to pay compensation to the petitioner.

14. The petitioner, PW1, in her evidence deposed that in the said accident, she had sustained severe injuries on her left leg, left shoulder, hip and neck; that she had sustained fracture of bones in her right shoulder and left shoulder; that immediately after the accident she had been admitted in the Tindivanam Government Hospital and had taken treatment there; that the Wound Certificate issued at Tindivanam Government Hospital has been marked as Ex.P3; that after the accident, she has not been able to do tailoring work, as such work demands co-ordinated movements of her hands and legs; that she has four daughters and a son and that two of her daughters are married and the other two have not get married; that she is the only earning member in her family.

15. One Dr. K. Ramanujam, a retired Medical Officer of the Government Hospital, Pondicherry and presently working as a Medical Officer of a private hospital and who had assessed the disability of the PW1 was examined as PW4. The PW4, in his evidence deposed that he had carried out a medical examination of the petitioner on 13.06.2002 and has stated that in the road traffic accident on 20.02.1998, the petitioner had sustained injuries in various parts of her body; that she had sustained severe injuries on both her left and right shoulder; that due to this, the petitioner is not able to move her left and right shoulder normally; that she has pain in the area of shoulder on both sides of the chetika nerves; that she has pain in her leg and also experiences pain on touching her leg; that he had inspected the medical records issued to her at the hospital. PW4 has stated that the petitioner has sustained 45% disability in the accident and in support of his evidence has marked Ex.P10, the Disability Certificate.

16. The Tribunal, on scrutiny of the Ex.P3, the Wound Certificate issued at Tindivanam Government Hospital, held that the age of the petitioner was 47 years. On examination of the Ex.P3, it is seen that X-rays were taken on the petitioner. The Tribunal on considering that the petitioner had to take care of two unmarried daughters and that she was the only earning member of her family and on considering her claim that she was earning a sum of Rs. 3,000/- per month by doing tailoring work and also holding that she had sustained 45% disability in the accident, awarded a lumpsum compensation of Rs. 60,000/- to the petitioner under both the heads of pecuniary and non-pecuniary losses incurred by her. It further held that the second respondent, being the insurer of the first respondent's lorry, liable to pay the compensation to the petitioner.

17. The Tribunal directed the second respondent to deposit the above said award together with interest at the rate of 9% per annum, into the credit of the M.C.O.P. No. 1041 of 1999, on the file of the Motor Accident Claims Tribunal

(Principal Sub-Judge), Tindivanam. After such deposit was made, the award was to be invested in a nationalised bank, as fixed deposit for a period of three years and the petitioner was permitted to receive interest on such deposit once in six months directly from the bank. The excess Court fee of Rs. 200/- paid by the petitioner was to be refunded to her. The Advocate fees was fixed at Rs. 2,500/-. The respondents were directed to pay the cost of Rs. 2,708/- to the petitioner.

18. The learned Counsel appearing for the appellant has contended in his appeal that the Tribunal failed to see that the disability assessed at 45% was very high considering the nature of injury sustained by the claimant. It has also been pointed out that the Tribunal committed error in fixing the income of the injured at Rs. 3,000/- per month without any tangible proof whatsoever. It was also contended that the Tribunal committed an error in not determining the multiplier to be adopted in this case. It was also pointed out that the Tribunal committed a grave error in not working out the compensation under various heads as required by law. It has also been contended that the Tribunal failed to see that in the absence of any proof, the income of the injured claimant should not have been fixed at more than Rs. 1,500/- per month. It was also pointed out that the Tribunal committed an error in not indicating the manner of assessment of the quantum. As such, the learned Counsel appearing for the appellant has contended that an excess amount of Rs. 45,000/- has been granted by the Tribunal and that the other reasons assigned by the Tribunal to pass the award was also neither sound nor correct. Hence, it has been prayed by the learned Counsel for the appellant to set aside the award and decree passed by the Tribunal.

19. The learned Counsel appearing for the first respondent argued that the claimant is a tailor. After the said accident, she is unable to her tailoring work. She is the only breadwinner of her family. She sustained grievous injuries for which the Doctor issued Disability Certificate after examining the claimant and had certified that she had sustained 45% disability. The Tribunal awarded only Rs. 60,000/- as against the award claimed of a sum of Rs. 1,00,000/-. As such, the award granted is on the lower side and the said award amount has been granted as a lumpsum. If the Tribunal had awarded the compensation under the proper heads, the claimant would get Rs. 1,00,000/- as claimed by her. The learned Counsel appearing for the first respondent further argued that the no excess compensation has been granted as highlighted by the appellant. Hence, the learned Counsel appearing for the first respondent has prayed for dismissal of appeal.

20. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal and arguments advanced by the learned Counsels on either side, this Court is of the view that the claimant has sustained fracture in her left leg, left shoulder, hip and also sustained injury on her neck. The claimant is a tailor by profession. So after sustaining injuries on her left leg and hip. She would not be able to do her tailoring work. On the other aspect of disability, it is seen that

the claimant had sustained 45% disability. Considering these two aspects, this Court confirms the Award and Decree, dated 23.11.2001, in M.C.O.P. No. 1041 of 1999, passed by the Principal Sub-Judge, Motor Accident Claims Tribunal, Tindivanam, as it is found to be fair and equitable.

21. On 08.08.2005, this Court imposed a condition on the appellant to deposit the entire compensation amount, into the credit of the M.C.O.P. No. 1041 of 1999, on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge), Tindivanam.

22. As the accident happened in the year 1998, it is open to the claimant to withdraw the compensation amount together with interest, lying in the credit of the M.C.O.P. No. 1041 of 1999, on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge), Tindivanam, after filing necessary payment out application in accordance with law, subject to deduction of withdrawal of any earlier payments, as per the order of the Court.

23. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 23.11.2001, in M.C.O.P. No. 1041 of 1999, passed by the Principal Sub-Judge, Motor Accident Claims Tribunal, Tindivanam is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.