
(2010) 11 MAD CK 0276
In the Madras High Court
Case No : C.M.A. (MD) No. 1537 of 2010

The Oriental Insurance Company

APPELLANT

Vs

G. Paulraj and Balamurugan

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Citation : (2010) 11 MAD CK 0276

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

Bench : Single Bench

Advocate : P. Ramani, for the Appellant; G. Marimuthu, for R1, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Insurance Company against the award and decrrial award dated 05.02.2008made in MCOP No. 9 of 2007 on the file of the Motor Accidents Claims Tribunal/ Sub Court, Arupukottai.

2. Background facts in a nutshell are as follows:

The injured-Paulraj met with motor traffic accident that took place on 03.06.2006 at about 4.00 p.m. The injured was riding the two-wheeler bearing Registration No. TN-67-E-4438 from Aruppukottai to Madurai along with his friend, who was the pillion rider. When the injured was nearing Parapathi, near NH-45B National Highway, a Tata Sumo bearing RegistrationNo.TN-59-AB-2826 came in a rash and negligent manner and hit the two-wheeler which the injured was riding. Due to the said impact, the pillion rider died and theinjured-Paulraj sustained fractures and grievous injuries all over the body. He claimed a compensationof Rs. 4, 00,000/-before the Tribunal. The Tata-Sum vehicle was insured with the Appellant-Insurance Company resisted the claim. On pleadings, the Tribunal framed the following issues :

1. Who is responsible for the accident?

2. Whether the claimant is entitled to compensation? If so from whom and to what extent?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of the Tata Sumo and awarded a sum of Rs. 3,27,050/- with interest at 7.5% p.a. from the date of petition. The details of the compensation are as under :

Rupees	Loss due to 49.53% disability	1,00,000/-	Medical expenses and transport	2,07,048/-	Pain and suffering	15,000/-	Extra nourishment	5,000/-
-----	Total...	3,27,048/-	=====	(Rounded off to Rs.3,27,050/-)				

3. Learned Counsel for the Appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and submitted that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal is not in accordance with law and the same should be set aside.

4. Learned Counsel appearing for the first Respondent / claimant has submitted that the Tribunal had considered all the materials and evidence available on record and awarded the compensation which is just, fair and reasonable. Hence the order of the Tribunal in accordance with law and the same has to be confirmed.

5. Heard the learned Counsel on either side and perused the materials available on record. On the side of the claimant, P.W.3 and P.W.4 were examined and documents Exs.P6 to P14 were marked. On the side of the Insurance Company, no witness was examined and no document was marked. Witness Exhibits Ex.W1 to Ex.W6 was also marked. After considering the above oral and documentary evidence, the Tribunal has given a categorical finding that the accident had occurred due to the rash and negligent driving of the driver of the Tata Sumo vehicle. It is a question of fact and also it is based on valid materials and evidence. Hence the same is confirmed.

6. The injured was 50 years old at the time of accident. P.W.3 is the injured-claimant. In his evidence, P.W.3 has stated that he is a Botany Teacher in the Government Higher Secondary School, Mallanginaru, Virudhunagar District and earning a sum of Rs. 23,000/- per month. Further it is stated that due to the accident, he sustained a fracture in the right thigh, a fracture in the right leg and also a fracture in the foot. Immediately, he was admitted in the Meenakshi Mission Hospital, Madurai and he was in-patient for a period of 10 days. Due to the injuries he is unable to walk properly and also unable to climb and squat. He is not able to do the work as before. Ex.P 9 is the Wound Certificate. Ex.W4 is the Accident Register. Taking into consideration of the same, P.W.4-Doctor, who is an Orthopaedician in the Government Hospital, Virudhunagar, in his evidence, has stated that the claimant sustained fractures in the right leg and foot and also there was malunion of the bones and due to the same, the movement of the

right leg knee of the claimant has been restricted. Taking into consideration of the above, he determined the disability at 49.53%. Ex.W2 is the Disability Certificate. Ex.W5 and Ex.W6 are the series of X-rays. After considering the above oral and documentary evidence, the Tribunal has awarded a sum of Rs.1,00,000/-towards 49.53% disability. Normally the Courts award a sum of Rs. 1,000/-to Rs. 2,000/-perpercentage of disability. In this case, the Tribunal has correctly awarded a sum of Rs. 2,000/-towards each percentage of disability, after taking into consideration of the evidence of the injured, the Doctor as well as documentary evidence. The amount awarded towards this head is also very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 2, 07,048/-towards medical expenses and transport. Ex.P10 is the series of medical bills and Ex.P11 is the transport bills. There is no dispute that he took treatment in the Meenakshi Mission Hospital, Madurai. It is an actual expenditure. The amount awarded towards medical expenses and transport, is also very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs.15, 000/-towards pain and suffering. After taking into consideration of the nature of injuries, this Court is of the view that the amount awarded towards this head is very reasonable and hence it is confirmed. The Tribunal has also awarded a sum of Rs. 5,000/-towards extra nourishment. After discharge from the hospital, certainly the claimant would have taken healthy and nutritious food for speedy recovery. Therefore, this Court is of the view that the amount awarded towards this head is very reasonable and hence it is confirmed. The Tribunal has awarded interest rate at 7.5% p.a. from the date of petition. After taking into consideration, the date of accident, the date of award and the prevailing rate of interest during the relevant time, this Court is of the view that the interest rate fixed by the Tribunal at 7.5% p.a. is reasonable and hence the same is confirmed. I do not find any error or illegality in the order of the Tribunal warranting interference. The order passed by the Tribunal is based on valid materials and evidence. It is a question of fact and it is not a perverse order. Therefore, the award passed by the Tribunal in accordance with law and hence, the same is confirmed. Under the circumstances, this is not a fit case for admission.

7. The Appellant-Insurance Company is directed to deposit the compensation of Rs. 3,27,050/-with interest at 7.5% p.a.from the date of petition, less the amount, if any, already deposited, within a period of eight 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.

8. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, M.P. (MD) No. 1 of 2010 is closed. No costs.