

(2013) 09 MAD CK 0109

In the Madras High Court

Case No : C.M.A.No. 947 of 2006 and C.M.P.No. 3729 of 2006

The Oriental Insurance Company Limited

APPELLANT

Vs

K.M.S. Abdul Samath and M. Anwar Shariff

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0109

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

Bench : Single Bench

Advocate : K. Anbarasan, for the Appellant; V.M. Ravichandran (for R1), for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—On 11.09.2003, at about 5.10 p.m., when the claimant was proceeding on his bicycle on the Velappadi Main Road, the

1st respondent herein, drove his motorcycle bearing Registration No. TN-23-J-1627 in a rash and negligent manner and dashed behind the cycle.

As a result, the claimant had sustained injuries. Hence, the claim has been filed against the owner and Insurance Company. The Insurance

Company had filed counter statement and opposed the claim petition. The respondent stated that the claimant had suddenly turned his bicycle and

dashed against the motorcycle. As such, the accident had been caused due to the negligence of the cyclist. The respondent denied the averments in

the claim regarding nature of injuries, income and mode of treatment.

2. On considering the averments of both the parties, the Tribunal had framed two issues namely: (1) Whether the rider of the motorcycle bearing

Registration No. TN-23-J-1627 had driven it in a rash and negligent manner and

caused the accident? (2) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation? Which he is entitled to get? and (3) To what other relief is the claimant entitled to get?

3. On the side of the claimant, two witnesses were examined and 21 documents were marked namely F.I.R.; Criminal Court Judgment; Driving licence; R.C. Book; Insurance Policy; Motor Vehicle Inspector's report; Wound certificate; Medical discharge summary; Medical bills; Transport expenses; X-ray; and Disability Certificate. PW1 had adduced evidence that on 11.09.2003, at about 05.10 p.m., when he was proceeding on his bicycle on the Vellapadi Main road, on the extreme left of road, the rider of the motorcycle bearing Registration No. TN-23-J-1627, drove his vehicle in a negligent manner and dashed against him. PW1 further stated that he had been hospitalised at C.M.C. Hospital, as an inpatient since two bones of his right leg were fractured. During the medical treatment period, two surgical operations and one skin grafting operation was conducted. PW2, Doctor had adduced evidence on the same lines of PW1 regarding nature of injuries and mode of treatment. Further, he had assessed the disability at 40% and deposed that the claimant's fractured bone is malunited.

4. On considering the evidence of the witnesses and on verifying the exhibits marked by the claimant, the Tribunal had awarded a sum of Rs. 2,63,336/- as compensation, with interest at the rate of 7.5% per annum. Against the said award and decree, the Insurance Company has filed the above appeal. The highly competent counsel for the appellant argued that the Doctor had assessed the disability at 40% which is on the higher side. Further, the claimant had suddenly turned his bicycle on the right of the road and come on to the path of the motorcycle and invited the accident. The Tribunal had granted a sum of Rs. 50,000/- under the head of pain and suffering which is on the higher side. Further, the Tribunal had awarded a sum of Rs. 1,25,000/- under the head of disability, which is also on the higher side.

5. The very competent counsel for the claimant vehemently argued that the claimant had been hospitalised on two occasions for about 20 days and 5 days respectively, as an inpatient. During medical treatment period, 5 surgical

operations had been conducted and he had spent about Rs.

1,00,000/- as medical expenses. The Tribunal had not granted compensation under the head of transport, attender charges and loss of comfort.

6. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the

impugned award of the Tribunal, this Court does not find any shortcomings in the conclusions arrived at regarding negligence and liability.

However, the quantum of compensation is slightly on the higher side. Therefore, this Court reassesses the compensation as follows:-

Rs. 80,000/- is awarded for disability; Rs. 28,000/- towards pain and suffering; Rs. 10,000/- towards transport; Rs. 10,000/- towards nutrition;

Rs. 10,000/- for attender charges; Rs. 63,336/- towards medical expenses; Rs. 40,000/- towards loss of comfort, loss of amenities since the

claimant had undergone 5 surgical operations as per evidence of PW1 and PW2. In total, this Court awards Rs. 2,41,336/- as compensation to

the claimant, as it is found to be appropriate in the instant case. The rate of interest is unaltered. This Court is of the further view that the rider of

the offending vehicle was punished before the Criminal Court for his negligent driving and the offending vehicle had been insured with the appellant

herein.

7. This Court directed the appellant to deposit the entire compensation amount with interest and the claimant was permitted to withdraw 50% of

the deposited amount. Now, the claimant is at liberty to withdraw the balance compensation amount, as per this Court's modified order, subject to

deduction of withdrawals made by the claimant, lying in the credit of M.C.O.P.No. 251 of 2004, on the file of the Motor Accidents Claims

Tribunal, Additional Sessions Judge (Fast Track Court), Vellore, after filing a memo along with a copy of this order. Likewise, the appellant herein

is at liberty to withdraw the excess compensation amount with proportionate interest thereon, after filing a memo. In the result, the above Civil

Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed in M.C.O.P.No. 251 of 2004, dated 31.08.2005, on the

file of the Motor Accidents Claims Tribunal, Additional Sessions Judge (Fast Track Court), Vellore, is modified. No costs. Consequently,

connected miscellaneous petition is closed.