
(2010) 08 MAD CK 0049
In the Madras High Court
Case No : C.M.A. No. 2735 of 2005

The Oriental Insurance Company Limited	APPELLANT
Vs	
M. Raj and Abdul Rahim	RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0049

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

Bench : Single Bench

Advocate : M. Rajasekar, for the Appellant; M. Malar, for D. Kamaraj, for R 1, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Appellant-Insurance company against the award dated 08.04.2005 made in

MCOP No. 4915 of 2001 by the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

2. Background facts in a nutshell are as follows:

One Raj, injured, met with motor traffic accident that took place on 12.03.2001 at about 10.30 hours. The injured was travelling as a pillion rider

in the motor cycle bearing registration No. TN 01-R-1839, which was proceeding to Tiruvellore Jawaharlal Nehru Road, from South to North

opposite to Government Hospital. At that time a car bearing Registration No. TSH 1933 came in a rash and negligent manner from opposite

direction, in a very high speed and hit against the motor cycle. Due to the same, the said injured sustained multiple injuries. He claimed

compensation of Rs. 3 lakhs. The said car was insured with the Appellant-

Insurance Company, who resisted the claim. On pleadings the Tribunal framed the following issues:

1. Who is responsible for the accident?
2. To what compensation the claimant is entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the 2nd

Respondent-driver and awarded a sum of Rs. 1,78,000/-with interest at 9% per annum from the date of petition and the details of the same are as

under:

Loss of income during the

Treatment Period (4 months) Rs. 12,000/-

Transport Charges Rs. 3,000/-

Extra Nourishment Rs. 3,000/-

Medical Expenses Rs. 75,000/-

Pain and Sufferings Rs. 10,000/-

Permanent Disability 60% Rs. 60,000/-

Loss of earning Power Rs. 45,000/-

Total... Rs. 2,08,000/-

There is a total error i.e., the Tribunal awarded only Rs. 1,78,000/- instead of Rs. 2,08,000/-. 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 quantum of compensation awarded by the Tribunal and

vehemently contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. He further submitted that

when the Tribunal awarded a compensation of Rs. 60,000/-towards 60% disability, it ought not to have awarded Rs. 45,000/-towards loss of

earning power. He further submitted that the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the Respondent/claimants 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 counsel. On the side of the claimant, P. Ws.1 and 2 were examined and documents Exs.P1 to P12 were marked. On the side of the

Appellant-Insurance company no one was examined and no document was marked to support their claim. P.W.1 is the claimant. PW2 is the

Doctor Sai Chandran. Ex.P1 is the Accident Register. Ex.P2 is O.P. Chit. Exs.P3 to P6 are the discharge summaries of the claimant issued by

Bilroth Hospital, Rudra Hospital, Anna Nagar Senthil Hospital and Government Royapettah Hospital respectively. Ex.P7 series are the Medical

Bills. Ex.P8 is photo and negative of the claimant, Ex.P9 is the salary certificate, Ex.P10 is the copy of the First Information report, Ex.P11 is

Disability Certificate and Ex.P12 is X.ray. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that

the accident occurred due to the rash and negligent driving of the driver of the car and the finding is based on valid materials and the same is

confirmed.

6. At the time of accident, the claimant was aged about 44 years. He is a clerk cum supervisor in Shanmuga Brick House, Thirumizhisai, Chennai

and was earning Rs. 4,000/-per month. Further, in his evidence P.W.1 claimant has stated that the driver of the car caused the accident and he

was also charge sheeted by the Tiruvellore Town Police Station in Crl. No. 161 of 2001. Due to the accident he got fracture in his right leg,

abrasion all over the body and deep wound in right leg. Immediately after the accident he was taken to the Government Hospital, Tiruvellore and

thereafter to the Bilroth Hospital, Rudra Hospital, Anna Nagar Senthil Hospital and Government Royapettah Hospital for treatment. Ex.P.1 is the

Accident Register, Ex.P2 is O.P. Chit, which shows that the claimant was taken treatment in the Government Hospital, Tiruvellore. Ex.P3

discharge summary shows that he was taken treatment later at Bilroth Hospital. Another discharge summary Ex.P4 shows that he was admitted in

the Rudra Selva Hospital and taken treatment as inpatient for 65 days i.e., from 13.3.2001 to 16.5.2001. Thereafter he was admitted in Anna

Nagar Senthil Nursing Home and taken treatment from 24.9.1991 to 3.10.2001, Ex.P5 is the discharge summary issued by Senthil Nursing Home.

Subsequently, he was admitted in the Government Royapettah Hospital and

taken treatment for 35 days. Ex.P.6 is the discharge summary of Government Royapettah Hospital. Ex.P7 medical bills for Rs. 1,36,971/-. Ex.P8 is photos and negatives of the claimants. Due to the above injuries he is unable to work as before and also unable to bend his right leg and sit. His right leg was shortened by 3 inches. He is unable to walk and ride bicycle. Considering the same, the Tribunal has fixed the salary at Rs. 3,000/-p.m., awarded a sum of Rs. 12,000/-(Rs. 3,000/-x 4) towards loss of income during treatment period of four months. P.W.2 is Dr. Sai Chandran, who examined the injured/claimant has issued disability certificate Ex.P.11 in which he assessed the disability at 65%. After considering the oral and documentary evidence, the Tribunal fixed the disability at 60% and awarded a sum of Rs. 60,000/-towards loss of disability and also awarded a further sum of Rs. 45,000/-towards loss of earning power. Learned Counsel for the Appellant submitted that the Tribunal ought not to have awarded Rs. 45,000/-towards loss of earning power, when it was awarded Rs. 60,000/-towards Permanent disability. The learned Counsel for the Appellant relied on a Full Bench decision of this Court in the case of Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , wherein it has been held that whenever compensation towards permanent disability is awarded, further amount towards loss of earning power should not be awarded. Applying the principle enunciated in the above Full Bench decision of this Court, the award of the Tribunal in respect of loss of earning capacity is unwarranted and therefore the same is deleted. Normally the Courts award Rs. 1,000/-to 2000/-per percentage of disability. In this case the disability fixed by the Tribunal was 60% and awarded at Rs. 1000/-per percentage, considering the disability sustained, I feel that it is reasonable to award Rs. 1,500/-per percentage, and if Rs. 1,500/-is awarded per percentage of disability, the award amount works out to Rs. 90,000/-(Rs. 15,00/-x 60) as against Rs. 60,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 12,000/-towards loss of income during treatment period. He was admitted in various hospitals (private as well as Government hospitals) for more than 100 days and Exs.P3 to P7 discharge summaries prove the same. Therefore, the compensation awarded by the Tribunal towards loss of income is very reasonable and the same is confirmed. The

Tribunal also awarded Rs. 3,000/-each, towards Transport charges and extra nourishment. Considering the fact that the claimant had taken

treatment in various hospital as in patient for more than 100 days, it is reasonable to award Rs. 5,000/-each towards Transport Charges and Extra

Nourishment as against Rs. 3,000/-each awarded by the Tribunal. The Tribunal has also awarded Rs. 75,000/-towards medical expenses. Ex.P.7

series are medical bills, which are actual expenses incurred by the claimant and the award made by the Tribunal under this head Rs. 75,000/-is

reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 10,000/-towards pain and sufferings. Considering the nature of

injuries and the claimant taken treatment various hospitals, it is reasonable to award Rs. 15,000/-towards pain and sufferings as against Rs.

10,000/-awarded by the Tribunal. The Tribunal has awarded interest at 9% p.a. Considering the prevailing rate of interest, date of award, the

interest awarded by the Tribunal is very reasonable and the same is also confirmed. The details of modified compensation as per the above

discussion are as under:

60% Permanent disability Rs. 90,000/-

Pain and sufferings Rs. 15,000/-

Transport charges Rs. 5,000/-

Extra nourishment Rs. 5,000/-

Loss of income during treatment period Rs. 2,000/-

Medical expenses Rs. 75,000/-

Total... Rs. 2,02,000/-

Therefore, the claimant is entitled to the modified compensation of Rs. 2,02,000/- as against the correct compensation of Rs. 2,08,000/- awarded

by the Tribunal with interest at rate of 9% p.a from the date of petition.

7. The learned Counsel appearing for the Appellant-Insurance company has submitted that already Rs. 1,78,000/-with interest 9; p.a. has been

deposited as per the order of this Court dated 30.08.2005 and the claimant was also permitted to withdraw 50% of the deposited amount. Under

this circumstances, the Appellant-insurance company is directed to deposit the balance amount of compensation of Rs. 24,000/-with interest 9%

p.a. within 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 balance amount of compensation already in deposit with interest and also the difference amount of compensation with interest on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.