

(2011) 02 MAD CK 0282
In the Madras High Court
Case No : C.M.A. No. 1980 of 2010

Thimmarayan

APPELLANT

Vs

Chandran and Reliance General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2011) 02 MAD CK 0282

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

Bench : Single Bench

Advocate : M. Selvam, for the Appellant; N. Vijayaraghavan, for R2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimant against the award dated 22.12.2008, made in M.C.O.P. No. 899 of 2007, by the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

2. By consent, the main appeal itself is taken up for final disposal at the admission stage.

3. Background facts in a nutshell are as follows:

The Appellant/claimant met with motor vehicle accident that took place on 16.01.2007, at about 17.15 hours. He was riding his bicycle, towards Ariyakulam direction, on the left side of the Thirupattur to Dharmapuri main road. When he was nearing Periyerimottupatti Pillaiyar temple, a motorcycle bearing registration No. TN24 0637, belonging to the first Respondent and insured with the second Respondent-Insurance Company, came in a rash and negligent manner and also at high speed and hit the cyclist. Due to the same, the claimant sustained multiple injuries and fracture injuries. Immediately, he was admitted in Government Head Quarters Hospital, Dharmapuri and later he referred to St. John's Medical College Hospital, Bangalore. He claimed a sum of Rs. 7,50,000/- as compensation. The second Respondent-Insurance Company resisted the

claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had happened due to the rash and negligent driving of the rider of the motorcycle bearing registration No. TN24 0637, which belongs to the first Respondent and is insured with the second Respondent at the time of accident?
2. Whether the Petitioner is entitled to get compensation as claimed in the petition?
3. To what any other relief the Petitioner is entitled to?

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. 1,28,974/- with interest at 7.5% per annum from the date of petition and the details of the same are as under:

Loss of income due to 45% disability Rs. 90,000/- Pain and suffering Rs. 5,000/- Loss of income during treatment period Rs. 3,000/- Transport expenses Rs. 2,000/- Extra-nourishment Rs. 2,000/- Medical expenses Rs. 21,974/- Attender charges Rs. 5,000/- Total... Rs. 1,28,974/-

Aggrieved by that award, the Appellant-claimant has filed the present appeal for enhancement.

4. The learned Counsel appearing for the claimant-Appellant submitted that the Tribunal awarded low and meagre compensation and ought to have awarded a compensation as claimed by the Appellant. The Tribunal has not considered the principles of assessment while awarding compensation. Therefore, the order passed by the Tribunal is a fit case for enhancement.

5. The Learned Counsel appearing for the second Respondent-Insurance Company 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.

6. Heard the counsel and perused the documents available on record. On the side of the claimant, the claimant himself was examined as PW1 and Dr. Gandhi was examined as PW2 and documents Exs.P1 to P8 were marked. On the side of the Respondents, no one was examined and no documents were marked to substantiate their claim. Ex.P1 is the First Information Report. Ex.P2 Wound Certificate (Government Hospital, Dharmapuri). Ex.P3 is the Discharge Summary. Ex.P4 is the Wound Certificate (St. John's Medical College and Hospital, Bangalore). Ex.P5 is the Insurance Policy. Ex.P6 is the Medical Bills series. Ex.P7 is the Disability Certificate. Ex.P8 is the X-ray. 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 and hence the second Respondent-Insurance Company is liable to pay compensation to the claimant. It is the question of fact and the findings is based on valid materials and evidence and hence the same is confirmed.

7. At the time of the accident, the claimant was aged about 45 years. In his evidence, it is stated that he is an agriculturist and doing cattle business and earning a sum of Rs. 6,000/- per month. Further in his evidence, it is stated that it is only the rider of the motorcycle caused the accident and he was also charge sheeted by Krishnapuram Police Station in Crime No. 16 of 2007, under Sections 279 and 337 I.P.C. Further, in his evidence, it is stated that he sustained closed communitated fracture BB right leg 1/3, closed fracture medial malleolus (R) and closed fracture (R) mandible and injuries all over his body. Immediately, he was admitted in Government Head Quarters Hospital, Dharmapuri. Later he was admitted in St. John's Medical College Hospital, Bangalore for better treatment and surgery was also done and he took treatment as inpatient from 16.01.2007 to 23.01.2007. Further, he stated that due to this injury, he is unable to move, walk and to work as before. PW2 is the Doctor, who examined the claimant. He determined the disability at 45%. In his evidence, he stated that the claimant sustained fracture injuries on his right leg, medial malleolus and on mandible portion. Exs.P3 and P4 also shows that he was admitted in the hospital and took treatment from 16.01.2007 till 23.01.2007 and plate was also fixed. Due to the same, he is unable to move, walk and to work as before. Ex.P7 is the disability certificate and Ex.P8 is the X-ray. After considering the oral and documentary evidence, the Tribunal awarded a sum of Rs. 90,000/- towards loss of income due to 45% disability. Normally, the Courts award Rs. 1,000/- to Rs. 2,000/- per percentage of disability. In the present case, the Tribunal correctly awarded a sum of Rs. 2,000/- per percentage. It is very reasonable. Therefore, the same is confirmed. Further, the Tribunal also awarded a sum of Rs. 5,000/- towards pain and suffering. The learned Counsel appearing for the Appellant vehemently contended that there was three fracture injuries and also he was admitted in hospital and surgery was also done. Therefore, the award amount is very low and meagre. Considering the facts and circumstance of the case, it is reasonable to award Rs. 20,000/- as against Rs. 5,000/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 3,000/- towards loss of income during the treatment period. He was hospitalised in various hospital and took treatment for a period of eight days. Therefore, it is reasonable to award a sum of Rs. 7,500/- as against Rs. 3,000/- awarded by the Tribunal. Further, the Tribunal also awarded a sum of Rs. 2,000/- towards transport expenses and another Rs. 2,000/- towards extra-nourishment. These are all very low and meagre. Therefore, it is reasonable to award Rs. 5,000/- each as against Rs. 2,000/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 21,974/- towards medical expenses. Ex.6 is the series of medical bills. He was admitted in Government Head Quarters Hospital, Dharmapuri, immediately after the accident. Later, he was referred to St. John's Hsopital, Bangalore for better treatment. Therefore, it is an actual expenses incurred and hence the same is

confirmed. Further, the Tribunal also awarded a sum of Rs. 5,000/- towards attended charges. After taking into consideration of the facts and circumstances of the case, the amount awarded by the Tribunal is very reasonable and the same is confirmed. The Tribunal has not awarded any amount towards loss of amenities and future medical expenses. Considering the facts and circumstances of the case, it is reasonable to award Rs. 5,000/- each towards loss of amenities and future medical expenses. The Tribunal has fixed the rate of interest at 7.5% p.a. from the date of petition. The accident occurred on 16.01.2007.

Keeping in view the prevailing rate of interest during that period, the rate of interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income due to 45% disability Rs. 90,000/- Loss of income during the treatment period Rs. 7,500/- Pain and suffering Rs. 20,000/- Transport expenses Rs. 5,000/- Extra-nourishment Rs. 5,000/- Medical expenses Rs. 21,974/- Attended charges Rs. 5,000/- Loss of amenities Rs. 5,000/- Future medical expenses Rs. 5,000/- Total... Rs. 1,64,474/- Less: Already awarded amount Rs. 1,28,974/- Enhanced amount Rs. 35,500/-

Therefore, the claimant is entitled to the enhanced compensation of Rs. 35,500/- with interest at 7.5% per annum from the date of petition.

8. The second Respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 35,500/- with interest at 7.5% from the date of petition within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Appellant-claimant is permitted to withdraw the same, on making proper application.

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