

(2013) 09 MAD CK 0013
In the Madras High Court
Case No : C.M.A. No. 1727 of 2008

United India Insurance Co. Ltd.

APPELLANT

Vs

C. Sakthivel and Sivakumar

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0013

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

Bench : Single Bench

Advocate : N.V. Vijayaraghavan, for the Appellant; K. Kuppuswamy for R1 and Ex parte - R2, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 31.01.2006,

made in M.C.O.P. No. 1553 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District-cum-Special Court, Salem. The short

facts of the case are as follows:--

On 01.05.2002, at about 03.00 p.m., the claimant was proceeding on a TVS50 Motorcycle bearing registration No. TN27 Q3147, as a pillion

rider, on Kallakurichi Main Road. When he was nearing Thiyagadurgam Abrami Theatre, a Three-Wheeler pick up van, bearing registration No.

TN30 TCB1360, which was coming in the opposite direction and driven by it's driver in a negligent manner, had dashed against the claimant. As a

result, the claimant had sustained injuries. Hence, he had filed a claim petition in M.C.O.P. No. 1553 of 2002, on the file of the Motor Accident

Claims Tribunal, Additional District-cum-Special Court, Salem, against the insurer

and driver of the vehicle, claiming a sum of Rs. 3,00,000/- as compensation.

2. The second respondent Insurance Company had filed a counter statement and resisted the claim petition. The second respondent had stated that

the driver of the pickup van had not committed the said accident and that the accident had occurred only due to the rash and negligent driving of

the motorcyclist and as such the entire negligence is on the rider of the motorcycle. The averments made in the claim petition regarding age,

income, occupation, nature of injuries and mode of treatment were not admitted. In the instant case, the owner and the insurer of the TVS50

Motorcycle bearing registration No. TN27 Q3147 are necessary parties. But, they had not been impleaded as necessary parties.

3. On considering the averments of both sides, the Tribunal had framed two issues namely:

- i. Whether the respondents are liable to pay compensation to the claimant? and
- ii. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

4. On the claimant's side two witnesses were examined as P.Ws.1 and 2 and nine documents were marked as Exs.P1 to P9 namely FIR, medical

reports, M.V.I's reports, charge sheet, Judgment copy of the Criminal Court, X-ray and disability certificate. On the respondents' side no witness

was examined and one document was marked as Ex.R1 namely accident enquiry report.

5. P.W.1 had adduced evidence that on 01.05.2002, at about 03.00 p.m., he was proceeding in a TVS50 Motorcycle bearing registration No.

TN27 Q3147, as a pillion rider, on Kallakurichi Main Road. When he was nearing Thiyyagadurgam Abrami Theatre, a Three-Wheeler pick up van,

bearing registration No. TN30 TCB1360, which was coming in the opposite direction and driven by its driver in a negligent manner, had dashed

against him and he sustained injuries. Further, he had adduced evidence that he had undergone treatment at Government Hospital, Kallakurichi. He

had sustained bone fracture injuries on his right leg. Further, he underwent treatment at Government Hospital, Salem, wherein he had been

hospitalized as inpatient for 2 1/2 months and a surgical operation was conducted on his right leg and a steel plate with screws were fixed in the

operated portion.

6. P.W.2 Doctor had adduced evidence that the bones of the claimant's right leg, right thigh had been fractured in several areas and the

sensitiveness in the injured areas had been lost. Further, he deposed that the movements of right leg had been restricted and he had certified that

the claimant had sustained disability of 55%.

7. On considering the evidences of the witnesses and on scrutinizing the exhibits marked by them, the Tribunal had awarded a sum of Rs.

1,20,000/- with interest at the rate of 7.5% per annum, as compensation to the claimant.

8. Against the said Award, the Insurance Company has preferred the present civil miscellaneous appeal.

9. The learned counsel appearing for the appellant Insurance Company has argued that there is no prima facie case on the side of the claimant to

show that the first respondent's vehicle had dashed against the claimant, who was travelling as a pillion rider. There is no discussion regarding the

rider of the Motorcycle to show whether he had also sustained injuries in the accident.

10. Further, the very competent counsel has argued that the Tribunal's award amount of Rs. 1,20,000/- is erroneous as they had adopted

multiplier method, which is not pertinent in the instant case. The Doctor had assessed the disability at 55%, which is on the higher side, since the

claimant had sustained simple injuries. There is no medical records to show that he had undergone treatment for a period of 2 1/2 months as

inpatient at Salem Government Hospital. Further, in the said accident, the owner and insurer of the motorcycle are necessary parties and they had

not been impleaded as parties, which is bad as the rider of the motorcycle had also been negligent in the occurrence of the accident.

11. The highly competent counsel for the claimant has vehemently argued that FIR had been registered against the driver of the first respondent's

vehicle and he had been punished by the Criminal Court. The first respondent's vehicle had been insured with the second respondent Insurance

Company and therefore the negligence and liability have been proved through oral and documentary evidence. Regarding the quantum of

compensation, the claimant's right leg had been fractured into several pieces

and his right leg joint had also been damaged and a surgical operation had been conducted in the right leg of the claimant and a steel plate was fixed in the operated area.

12. Further, the learned counsel has argued that the claimant was aged about 24 years at the time of accident and he was doing business besides being involved in agricultural operations. The Doctor had assessed the disability at 55% after well scrutinizing the medical records. Due to multiple bone fracture injuries, the claimant had been hospitalized for a period of 2 1/2 months. Therefore, the quantum of compensation is not on the higher side.

13. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. However, the Tribunal adopted multiplier method and granted a compensation of Rs. 1,20,000/-, which is not appropriate.

Therefore, this Court restructures the compensation as follows:

- i. Rs. 55,000/- is awarded under the head of disability,
- ii. Rs. 15,000/- is awarded under the head of pain and suffering,
- iii. Rs. 5,000/- is awarded under the head of transport expenses,
- iv. Rs. 5,000/- is awarded under the head of nutrition,
- v. Rs. 5,000/- is awarded under the head of attender charges,
- vi. Rs. 5,000/- is awarded under the head of loss of earning during the medical treatment and convalescence period,
- vii. Rs. 10,000/- is awarded under the head of medical expenses and
- viii. Rs. 20,000/- is awarded under the head of loss of amenities and loss of comfort.

As such, the quantum of compensation awarded by the Tribunal is confirmed. The rate of interest fixed by the Tribunal at 7.5% per annum remains unaltered.

14. This Court directs the appellant Insurance Company to execute the award with accrued interest, by way of depositing the award amount to the credit of M.C.O.P. No. 1553 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District-cum-Special Court, Salem, within a

period of four weeks from the date of receipt of a copy of this Order.

15. After such a deposit having been made, it is open to the claimant to withdraw the compensation amount, with accrued interest, lying in the

credit of M.C.O.P. No. 1553 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District-cum-Special Court, Salem, after

filing a memo along with a copy of this Order. In the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated

31.01.2006, made in M.C.O.P. No. 1553 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District-cum-Special Court,

Salem, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.