(2013) 07 MAD CK 0147

In the Madras High Court

Case No : C.M.A. No. 2630 of 2009 and M.P. No. 1 of 2009 and Cross Objection No. 23 of 2010

United India Insurance Co. Ltd. APPELLANT

Vs

John Monohar and M/s. Sivasubramaniya Nadar College of Eng. RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:
Motor Vehicles Act, 1988 — Section 170

Citation : (2013) 07 MAD CK 0147

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

Bench : Single Bench

Advocate : J. Chandran, for the Appellant; V. Balasubramanian for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—On 09.06.2004, at about 4.00 p.m., when the appellant/ claimant was proceeding on his motorcycle bearing Registration

No. TN-07-AA-1819 on the Kelambakkam Main Road, the 1st respondent''s bus bearing Registration No. TN01-N-0389, driven by its driver

in a reckless manner, dashed against the motorcyclist. As a result, the pillion rider of the motorcycle sustained grievous injuries and died. The rider

of the motorcycle had sustained grievous injuries. Hence, the claimant has filed the claim petition against the owner and insurer of the bus and

claimed compensation of a sum of Rs. 10,00,000/- with interest. The respondent/ Insurance Company had filed counter statement and resisted the

claim petition. The respondent stated that the 1st respondent and the claimant had colluded with each other and claimed compensation against the

Insurance Company, which is a fake claim. Initially the F.I.R. had been registered by the Investigation Officer and the same has not been

proceeded with against the driver of the bus and the prosecution themselves have withdrawn the said F.I.R. The averments in the claim regarding

age, income and occupation of the claimant was not admitted. The 1st respondent has filed a counter statement and stated that the rider of the

motorcycle had committed the said accident through his negligent manner of riding. Further, the averments in the claim regarding nature of injuries

and medical expenses was also not admitted.

2. On considering the averments of the parties, the Tribunal had framed three issues namely: (1) Whether the driver of the 1st respondent is

responsible for the accident? (2) Whether the respondents are liable to pay compensation to the claimant? and (3) What is the quantum of

compensation that the petitioner is entitled to get?

3. On the side of the claimant, two witnesses have been examined and 11 documents have been marked namely, Discharge summary, Doctor fees

particulars, Medical bills, Transport expenditure bills, Lab reports, Photo, F.I.R. and X-ray. On the side of the respondents, the Investigator and

Sub-Inspector have been examined and two documents were marked namely, Investigation report and Preliminary report. The Insurance

Company has filed supplementary application u/s 170 of Motor Vehicles Act and defended the case on behalf of the owner of the bus.

4. PW1/claimant had adduced evidence that on 09.06.2004, at about 4.00 p.m., when he was proceeding on his motorcycle bearing Registration

No. TN-07-AA-1819 along with a pillion rider on the Kelambakkam Main Road, the 1st respondent''s bus bearing Registration No. TN-01-N-

0389, driven by its driver in a rash and negligent manner, on the same direction, dashed behind the motorcycle. PW1 further stated that the pillion

rider sustained grievous injuries and expired and that he had sustained grievous injuries. PW1 deposed that he had been immediately admitted at

Malar Hospital, wherein skin grafting was done and he had been hospitalised for about 17 days, as an inpatient. PW1 further stated that he had

also took Physiotherapy treatment. The case has been registered by the Kelambakkam Traffic Investigation police against the driver of the bus. In

support of his evidence, he had marked the above mentioned documents as Exhibits. PW2 Doctor had adduced evidence that the claimant had sustained 50% disability due to the said accident and he spoke on the same lines of PW1 regarding nature of injuries.

5. RW1, had adduced evidence that he has been appointed as investigator by the Insurance Company and he had conducted enquiry on the said

accident. He further stated that the Kelambakkam Traffic Investigation police had registered a case in Crime No. 233 of 2004 and subsequently,

the criminal case has been dropped. RW2, the Sub-Inspector of Police, attached to the Traffic Investigation Wing, Kelambakkam had adduced

evidence that the claimant was the rider of the motorcycle and one Kokila was the pillion rider of the motorcycle and that the driver of the bus had

dashed against the motorcycle and as a result, the pillion rider had expired and the rider had sustained injuries. The F.I.R. had been registered on

the very next day and the accused was arrested and released on bail.

6. On considering the evidence of the witnesses and on perusing the documents marked by both the parties, the Tribunal had awarded a sum of

Rs. 3,58,633/- as compensation, with interest at the rate of 9.5% per annum.

7. Aggrieved by the said award and decree, the Insurance Company has filed the above appeal in CMA. No. 2630 of 2009 and challenged the

quantum and liability. Not being satisfied with the quantum of compensation, the claimant has filed cross objection in Cross Obj. No. 23 of 2010

and claimed additional compensation of Rs. 2,91,367/- with interest. The highly competent counsel for the Insurance Company vehemently argued

that the 1st respondent i.e. owner of the bus and claimant had colluded with each other and claimed the said compensation. Therefore, the criminal

case has been dropped by the Investigation Officer. Initially the F.I.R. had been registered by the Traffic Investigation Wing and subsequently the

F.I.R. had been closed as it was found that no accident had taken place. The claimant had not proved his case beyond doubt. Therefore, the

Insurance Company had appointed an Investigator, who conducted an enquiry and had stated in his findings that the F.I.R. had been closed,

without assigning any valid reasons. The very competent counsel further argued that the negligence and liability have not been proved and as such

the Insurance Company is not liable to pay any compensation. Regarding the accident, rough sketch was not produced in order to prove the

location of the accident. Therefore, there is lacuna in the impugned award. The

Doctor had also assessed the disability at 50% but the claimant had

sustained only simple injuries. Hence, the highly competent counsel entreats the Court to set aside the impugned award.

8. The very competent counsel for the claimant argued that the Traffic Investigation Wing is the competent authority and they have registered a

case in Crime No. 233 of 2004, against the driver of the offending bus. The Sub-Inspector of Police, Traffic Wing, who had been examined as

RW2 had narrated the manner of the said accident. Once the F.I.R. had been registered by the police department, the Insurance Company cannot

challenge the occurrence of accident, without any documentary proof. If the claim is a fake one, it is open to the Insurance Company to initiate

necessary action against the concerned Traffic Investigation Wing, but in the instant case, the claimant had produced relevant documents before the

Trial Court as exhibits namely, Medical discharge summary, Medical Bills, F.I.R., etc. The offending vehicle driver was arrested and subsequently

he was released on bail. The Traffic Investigation Wing had collected entire particulars from the driver, owner and Insurance Company. Those are

the documentary evidence relied upon to prove the accident. The criminal case has been dropped since the prosecution had not filed the charge

sheet within the stipulated period. Therefore, the case had not been proceeded with. However, there is a prima facie case on the side of the

claimant. Hence, the Tribunal had decided the 1st and 2nd issues against the insurer. The highly competent counsel further contended that the

claimant had spent about Rs. 2,06,000/- towards medical expenses besides transport expenses. The claimant had been hospitalised for about 81

days, as an inpatient, at a private hospital. During the medical treatment period, a skin grafting operation was conducted as the claimant had

sustained massive crush injuries. Therefore, the Doctor had assessed the disability at 50%. The claimant is an Income tax assessee. To prove the

same, he had marked Ex. P9, i.e. Income tax particulars.

9. The very competent counsel further contended that the trial Court had not granted adequate compensation under the relevant heads namely,

disability, pain and suffering, nutrition, attender charges, loss of earning during medical treatment period, loss of amenities and loss of comfort due

to disfigurement. Hence, the learned counsel prays for grant of additional compensation of a sum of Rs. 2,91,367/-.

10. Per contra, the learned counsel for the Insurance Company contended that the F.I.R. has been filed after a delay. Further, as per rough sketch,

it is seen that the rider of the motorcycle proceeded on his motorcycle in the wrong direction and caused the said accident. Once, the criminal case

has not been proved then the entire accident proceedings become infructuous. Just for the sake of formality, the Investigation Wing had registered

a case against the driver of the bus and subsequently dropped the proceedings. It is evident from scrutiny of documents marked that the

Investigation Officer, owner and driver of the bus and claimant had colluded with one another and levelled a fake claim against the Insurance

Company. As per the report filed by the Investigator of the Insurance Company, it is seen that no such accident had taken place and the

Investigator is also a competent and authorised person to determine the veracity of the case.

11. 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 discrepancy in the conclusions arrived at regarding negligence and liability. This Court

is of the further view that if the Insurance Company is really aggrieved that the claimant had colluded with the driver, owner and Investigation

Officer, Traffic Wing, the Insurance Company ought to have initiated separate legal proceedings against them in order to punish them on the

ground of fraudulent actives. However, it is seen that no such action had been taken. Therefore, the negligence had been fastened on the bus and

the Insurance Company, being the insurer of the said bus was held to pay compensation, which is appropriate. As per medical bills, the claimant

had spent a sum of Rs. 2,05,721/- and the Doctor had assessed the disability at 50% and the claimant had undergone skin grafting at a private

hospital as is evident from scrutiny of records. Hence, this Court is inclined to grant additional compensation to the claimant. Therefore, this Court

reassesses the compensation as follows: Rs. 2,05,725/- towards medical expenses; Rs. 1,00,000/- towards disability; Rs. 15,000/- towards pain

and suffering; Rs. 10,000/- under the head of Transport; Rs. 10,000/- towards Attender charges; Rs. 10,000/- towards Nutrition; Rs. 45,000/-

towards loss of earning during medical treatment and convalescence period; and Rs. 50,000/- under the head of loss of amenities, loss of comfort

and disfigurement, which is permanent in nature. In total, this Court awards Rs. 4,45,725/- as compensation. After deducting the initial

compensation of Rs. 3,58,633/-, this Court awards a sum of Rs. 87,092/- as additional compensation as it is found to be appropriate in the instant

case. The rate of interest fixed by the Tribunal at 9.5% per annum is on the higher side and hence, this Court modifies the rate of interest at 7.5%

per annum. This Court directs the Insurance Company to deposit the entire compensation consisting of original compensation i.e. Rs. 3,58,633/-

and the additional compensation of Rs. 87,092/-with interest at the rate of 7.5% per annum from the date of filing the claim petition till date of

payment of compensation, within a period of 4 weeks from the date of receipt of this order, subject to deduction of earlier deposits made by the

Insurance Company.

12. After such a deposit having been made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon,

lying in the credit of M.C.O.P. No. 3388 of 2004, on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai,

after filing a memo short notes, along with a copy of this order, subject to deduction of withdrawals, if any, made by the claimant, as per this

Court''s earlier order. In the result, the appeal in C.M.A. No. 2630 of 2009 filed by the Insurance Company is dismissed. The Cross Objection in

C.O. No. 23 of 2010 filed by the claimant is partly allowed. Consequently, the award and decree passed in M.C.O.P. No. 3388 of 2004, on the

file of Motor Accident Claims Tribunal, Small Causes Court-III, Chennai, dated 31.01.2009, is modified. No costs.

