

(2010) 09 MAD CK 0214

In the Madras High Court

Case No : C.M.A. No. 2539 of 2007 and M.P. No. 2 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

S. Arumugam, R. Karthikeyan and R. Vasantha

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0214

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; N. Manokaran, for R1, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/third respondent against the Award and Decree, dated 02.03.2006, made in M.C.O.P. No. 290 of 2004, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Gobichettipalayam, awarding a compensation of Rs. 3,27,800/- together with 7.5% interest per annum, from the date of filing the claim petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/third respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

3. The short facts of the case are as follows:

On 10.03.2004, at about 11.30 a.m. the petitioner was cleaning a lorry bearing registration No. KA01 AB3377 along with a lorry cleaner Duraisamy on the southern side of the east-west Gobi-Sathy main road, in front of T.K.M. Tyre Retrading Company. At that time, the first respondent was driving the Ambassador Car bearing registration No. TDB9707, from west to east on the same road in a rash and negligent manner of wrong side and dashed against the petitioner, the said lorry cleaner Duraisamy a pedestrian lady and a lorry bearing registration No. KA01 AB3377 was standing on the southern side of the said road

due to the accident the said Duraisamy (lorry cleaner) died on the way to hospital and the said pedestrian lady died on the spot. The petitioner sustained grievous injury in the right fore head, right elbow, right hip and all over the body. The petitioner also sustained fracture in the skull, right upper leg and right hip. Immediately, after the said accident, the petitioner was taken to the Government Hospital, Gobi and again referred to the Coimbatore Medical College Hospital for further treatment, since the condition of the petitioner was critical. He was admitted in Kovai Medical Center and Hospital for best treatment. The petitioner's skull was operated and permanent pit on the right fore head and the right upper leg was broken into two pieces and steel plate was fixed in the right upper leg by operation and an operation conducted in the right hip and a permanent scar in the hip. The first respondent is whole response for the said accident. He was working under the second respondent at the time of accident. The second respondent is the owner of the Ambassador Car bearing registration No. TDB9707 and the same has been insured with the third respondent. Hence, the respondents are jointly and severally liable to pay compensation. As such, the petitioner claimed a compensation of Rs. 6,00,000/- before the Tribunal.

4.The 3rd respondent, in their Counter has resisted the claim petition, which reads as follows:

It is false to state that on 10.03.2004, at 11.30 a.m. the petitioner was cleaning a lorry bearing registration No. KA01 AB3377 along with a lorry cleaner Duraisamy on the southern side of the east-west Gobi-Sathy main road, in front of T.K.M. Tyre Retrading Company, Gobi Town, Gobi Taluk, at the same time, the first respondent was driving the Ambassador Car bearing registration No. TDB9707 from west to east on the same road in a rash and negligent manner on wrong side and dashed against the petitioner, the said lorry cleaner Duraisamy a pedestrian lady and a lorry KA01 AB3377 was standing on the southern side of the said road due to the accident the said Duraisamy (lorry Cleaner) died on the spot and the petitioner sustained grievous injury in the right fore head, right elbow, right hip and all over the body. It is also false to state that the petitioner sustained grievous injury in the right fore head, right elbow, right hip and all over the body and the petitioner also sustained fracture in the skull, right upper leg and right hip and the said accident took place due to the rash and negligent driving of the first respondent.

It is false to state that immediately after the said accident, the petitioner was taken to the Government Hospital, Gobi and again referred to the Coimbatore Medical College Hospital for further treatment, since the condition of the petitioner was critical. It is also false to state that the petitioner was admitted in the Kovai Medical Centre and Hospital for best treatment and the petitioner's skull was operated and permanent pit on the right fore head. It is false to state that the right upper leg was broken into two pieces and steel plate fixed in the right upper leg by operation and an operation conducted in the right hip and a permanent scar in the hip and the petitioner was escaped from the edge of the

dead. It is false to state that the petitioner spent more than two lakhs for medical treatment and the petitioner took the treatment for 1 = months in KMCH Hospital as an inpatient and he is going on taking the treatment till the filing of this petition and the petitioner spent the huge amount for medicine, transport, nutrition meal, etc., and the petitioner was suffering from continuous pain and mental torture at the time of filing of the petition and the petitioner has suffered a lot due to the said accident.

It is false to state that the petitioner was hale and healthy at the time of accident and he was aged about 26 years at the time of said occurrence and he was the borewell driller in Ganga-Yamuna Borewell lorry under the ownership of one Karuppusamy, son of Marianna Gounder, Lingappa, and he was earning not less than Rs. 6,500/- per month and his monthly salary was Rs. 5,000/- and the daily batta was Rs. 50/- and he is the efficient driller and the petitioner was the only earning member and the entire family was based upon the income of the petitioner and the petitioner has lost his permanent income due to the said accident and he is suffering from starvation.

It is false to state that the petitioner is a bachelor and his bright future life is also spoiled and a permanent pit on the right fore head and the petitioner is suffering from permanent chest pain, stomach pain and headache due to the said accident and a permanent disability in the right hip and the petitioner is not able shake the hip as like an ordinary man. It is also false to state that the physical condition of the petitioner is also very week and the petitioner is unable to work physically as an ordinary man and he is unable to move from one place to another place without the support of others and the entire future of the petitioner become a darkroom and his entire scope is spoiled.

It is false to state that the first respondent is whole response for the said accident and the first respondent was working under the second respondent at the time of the incident and the second respondent is the owner of the vehicle bearing registration No. TDB9707.

The respondent humbly submits that this accident happened only due to the carelessness of the petitioner only. This respondent humbly submits that at the time of accident the lorry bearing registration No. KA01 AB3377 standing on the road and the petitioner cleaning the lorry without seeing the on coming vehicle and hence this accident happened. The vehicle bearing registration No. KA01 AB3377 parked at Sathy-Gobi main road without following the traffic rules and regulations. This respondent humbly submits that the public main road is not a place for the cleaning the lorry. Therefore contributory negligent of the petitioner also taken into consideration at the time of fixing the compensation amount.

The respondent humbly submits that the petitioner is put to prove his age, occupation, income and permanent disability through valid and effective documentary evidence. The claim amount is highly excessive and without any legal basis.

5. The learned Motor Accident Claims Tribunal had framed two issues for the consideration namely:

(i) At whose negligence the accident had happened?

(ii) Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation?

6. On the petitioner's side, the claimant was examined as PW1, one Raju Karuppusamy, who is employer, was examined as PW2 and Dr. A.K. Thambiraj was examined as PW3 and nineteen documents were marked as Exs.P1 to P19 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Xerox copy of the Observation Mahazar, Ex.P3-Xerox copy of the Rough Sketch, Ex.P4-Xerox copy of the Wound Certificate, Ex.P5-Motor Vehicle Inspector's Report of the Ambassador Car bearing registration No. TDB9707, Ex.P6-Motor Vehicle Inspector's Report of the lorry bearing registration No. KA01 AB3377, Ex.P7-Xerox copy of the Charge Sheet, Ex.P8-Receipt issued by the Blood Bank, Ex.P9-Receipt issued by the K.M.C. Hospital, Ex.P10-Receipt issued by Dr. John, Ex.P11-Receipt issued by Dr. Dhanapal, Ex.P12-Summary Bill issued by the K.M.C. Hospital, Ex.P13-Discharge Summary, Ex.P14-Scan, Ex.P15-X-ray, Ex.P16-Xerox copy of the School Transfer Certificate, Ex.P18-Disability Certificate and Ex.P19-X-ray. On the respondent's side Karthikeyan, driver of the car was examined as RW1 and one Boopathi was examined as RW2 and the Driving Licence was marked as Ex.R1.

7. PW1, the claimant had adduced evidence stating that on 10.03.2004, at about 11.30 a.m. on Gobi-Sathi Road, he and one Doraiswamy were cleaning the lorry bearing registration No. KA01 AB3377 and at that point of time, the first respondent had driven the Ambassador Car bearing registration No. TDB9707 in a rash and negligent manner and at high speed from west to east and dashed against them and also another pedestrian, who was also at that point. In the said accident the pedestrian had expired on the spot. He sustained injuries on his right hand, right hip, right fore head, skull, right leg thigh. Immediately, he was taken to the hospital for treatment. The said accident case was registered against the first respondent and an FIR and sketch was marked. In order to prove his injuries, the PW1 had marked Ex.P4-Wound Certificate, Ex.P13-Discharge Summary. Further, he had adduced evidence stating that he was an inpatient for 19 days. He was earning a sum of Rs. 6,500/- from his employer that is the PW2, who had also affirmed the same.

8. After considering the evidence of the PW1, PW2, PW3, RW1 and RW2 and the documents marked as exhibits, the Tribunal had come to the conclusion that the first respondent was the cause for the said accident. Therefore, the third respondent is liable to pay compensation to the petitioner and awarded the compensation as follows:

i. Rs. 1,83,600/- under the head of loss of income, after adopting multiplier method,

- ii. Rs. 1,29,200/- under the head of medical expenses,
- iii. Rs. 10,000/- under the head of pain and suffering,
- iv. Rs. 5,000/- under the head of nutrition,

In total, the Tribunal awarded a sum of Rs. 3,27,800/- as compensation to the petitioner, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the third respondent to deposit the compensation amount of Rs. 3,27,800/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, within a period of one month from the date of its order. In turn, the said amount to be deposited, under a fixed deposit scheme, in a nationalised bank for a period three years. Accordingly ordered.

9. Aggrieved by the said Award and Decree, the appellant/third respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

10. The learned Counsel appearing for the appellant argued that the multiplier method adopted by the Tribunal is not pertinent since the claimant sustained simple injuries. Further, due to the accident the claimant's avocation was not affected. The Tribunal had awarded the compensation in an arbitrary manner. Doctor also assessed the disability as 65% sustained by the claimant, which is on the higher side. Therefore, he submitted that the award passed by the Tribunal is an excessive and exorbitant one. Hence, he prays to scale down the compensation amount awarded by the Tribunal.

11. The learned Counsel for the first respondent/claimant argued that the claimant sustained bone fracture injuries on his right upper leg, right fore head, right hip, surgical operation was also conducted on the claimant's right leg and a steel plate affixed on the operated area. The claimant had undergone treatment for a period of 1 = months. As such, the award amount is not on the higher side. After the accident the claimant is unable to continue his usual avocation. Hence, the Tribunal adopted the multiplier method. The learned Counsel specifically argued that the medical expenses alone had cost of Rs. 1,29,200/-. The rest of the compensation is in adequate, considering the nature of injuries, mode of treatment, duration of the treatment. Therefore, he prays to dismiss the appeal filed by the appellant.

12. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel on either side and the award and decree passed by the Tribunal, this Court is of the view that the compensation amount was calculated on the basis of adopting method, which is not applicable in this case. Hence, this Court decided to restructure the compensation as follows:

- i. The Tribunal awarded a sum of Rs. 1,83,600/- under the head of loss of income due to 65% disability, after adopting multiplier method, this Court reduces it to

Rs. 1,30,000/-,

ii. The Tribunal awarded a sum of Rs. 1,29,200/- under the head of medical expenses, this Court confirms the same as it is pertinent,

iii. The Tribunal awarded a sum of Rs. 10,000/- under the head of pain and suffering, this Court enhances it Rs. 15,000/-,

iv. The Tribunal awarded a sum of Rs. 5,000/- under the head of nutrition, this Court confirms the same as it is pertinent,

v. This Court awards a sum of Rs. 10,000/- under the head of transport expenses,

In total, this Court awards a sum of Rs. 2,89,200/- as compensation to the claimant, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, which is fair and equitable. Therefore, this Court scale down the compensation from Rs. 3,27,800/- to Rs. 2,89,200/-.

13. On 02.11.2007, this Court directed the appellant/third respondent to deposit the entire award amount together with interest and costs, into the credit of the M.C.O.P. No. 290 of 2004, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Gobichettipalayam.

14. As the accident had happened in the year 2004, the claimant/first respondent is at liberty to withdraw the entire compensation amount with accrued interest thereon and costs, lying in the credit of the M.C.O.P. No. 290 of 2004, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Gobichettipalayam, by making proper payment out application, subject to the deduction of withdrawals, if any, in accordance with law. Likewise the appellant/third respondent is also at liberty to withdraw the excess compensation amount with accrued interest thereon, after observing necessary formalities in accordance with law.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 02.03.2006, in M.C.O.P. No. 290 of 2004, passed by the Motor Accident Claims Tribunal, II Additional Sub Court, Gobichettipalayam is modified. Consequently, connected miscellaneous petition is closed. No costs.