**(2011) 04 MAD CK 0220**

**In the Madras High Court**

**Case No :** C.M.A. No. 2781 of 2010 and M.P. No''s. 1 of 2010 and 1 of 2011

United India Insurance Co. Ltd. APPELLANT

Vs

S. Perumal and R. Nathuram RESPONDENT

**Date of Decision :** 29-04-2011

**Acts Referred:**

**Citation :** (2011) 04 MAD CK 0220

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

**Bench :** Single Bench

**Advocate :** Arun Kumar, for the Appellant; S. Haridoss, for R-1, for the Respondent

# Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / United India Insurance Co. Ltd., against the award and decree dated 06.08.2009 made in M.C.O.P. No. 4482 of 2005 on the file of the Motor Accident Claims Tribunal, v. Court of Small Causes, Chennai.

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

On 14.06.2005, at about 16.00 hours, while the Petitioner, S. Perumal was travelling as a passenger in the share auto-rickshaw bearing Registration No. TN-05-L-3975 from Manali to Pudu Nagar and when the auto was near Lakshmi-Saraswathi Thirumana Mandapam, Manali, the driver of the said auto-rickshaw drove the vehicle in a rash and negligent manner, as a result of which the auto capsized. Due to the above accident, the Petitioner sustained grievous injuries. Hence, the Petitioner has claimed a compensation of Rs. 2,00,000/- from the first and second Respondents being the owner and insurer of the share auto bearing Registration No. TN-05-L-3975.

3. The 2nd Respondent, the United India Insurance Company Limited, in his counter has resisted the claim and denied the averments in the claim regarding manner of accident, age, occupation, nature of injuries sustained and medical treatment undergone by Petitioner and loss of income sustained. It was stated

that the Petitioner and some others who had suddenly stepped down from the moving auto, due to which the driver of the auto had applied sudden brake resulting in the accident. It was also stated that the auto bearing Registration No. TN-05-L-3975 had not been insured with the second Respondent; it was also denied that the vehicle was covered under a valid permit, F.C. It was also denied that the driver of the vehicle had a valid driving licence at the time of accident. It was stated that the claim was excessive.

4. On the averments of both parties, the tribunal had framed four issues for consideration namely;

(i) Whether the accident had happened due to the rash and negligent driving of the driver of the share auto-rickshaw bearing Regn. No. TN-05-L 3975 ?

(ii) Whether the Respondents are liable to pay compensation ?

(iii) Whether the Petitioner is entitled for compensation ?

(iv) To what relief is the Petitioner entitled to get ?

5. In the said accident, two other persons who had sustained injuries had also filed claim petitions in M.C.O.P. Nos. 4481 and 4483 of 2005. Based on the Memo filed for joint trial, all the petitions were taken together and common evidence recorded. On behalf of the Petitioner four witnesses were examined and Exs. P1 to P13 were marked. On the Respondents side no witness, no documents.

6. From the evidences of the injured Petitioners PW1, Mr. Srinivasan in M.C.O.P. No. 4481 of 2005, PW2, Mr. Perumal in M.C.O.P. No. 4482 of 2005 and PW3 Mrs. Kosalai Devi in M.C.O.P. No. 4483 of 2005, it is seen that on 14.06.2005, at about 16.00 hrs, while the above Petitioners were travelling as passengers in a share auto-rickshaw bearing Regn. No. TN-05-L-3975 from Manali to Manali Pudunagar and when the auto was near Lakshmi Saraswathi Thirumana Mandapam, Manali, the driver of the said auto-rickshaw drove the auto in a rash and negligent manner, as a result of which the auto capsized. Thereby the Petitioners sustained grievous injuries. To corroborate the oral evidence of PW1 to PW3, Ex.P1 attested copy of FIR, had been marked. On perusal of Ex.P1, it is seen that one E. Ellamuthu, who is the father of the Petitioner Srinivasan in M.C.O.P. No. 4481 of 2005 had lodged the complaint on the date of occurrence itself. Pursuant to the complaint, a case had been registered against the driver of the share auto-rickshaw. No Contra evidence had been let in by the Respondents side to disprove the contentions of the Petitioner. Hence, the tribunal held that the accident had been caused by the rash and negligent driving of the driver of the 1st Respondent''s vehicle. Hence, the Respondents were held liable to compensate the Petitioner.

7. From scrutiny of Ex.P3, discharge summary issued by Sugam Hospital, Chennai it is seen that the Petitioner had sustained injuries due to the accident. From a scrutiny of Ex.P3, discharge summary, it is seen that the Petitioner had taken treatment as an inpatient from 14.06.2005 to 17.06.2005. He had

 

sustained fracture of mandible and fracture of right trochantric. Wound debridment and suturing had been done and pop cast had been applied for right leg. Wiring and IMF fixation has been done. PW4, the doctor, who had examined the Petitioner had adduced evidence that the disability sustained by him was 60% and had marked Ex.P11, disability certificate. The Tribunal, holding that the disability sustained by Petitioner could be taken as only 50%, awarded a compensation of Rs. 50,000/- under the head of continuing permanent disability. Considering that income proof had not been produced by Petitioner, the Tribunal held that the notional income of Petitioner could be taken as Rs. 4,000/- per month. Hence, the Tribunal awarded a compensation of Rs. 12,000/- for loss of income sustained by Petitioner during period of treatment and convalescent period. Further, the Tribunal awarded a sum of Rs. 2,000/- for transport expenses, Rs. 2,000/- for nutrition, Rs. 8,250/- towards medical expenses (as per Ex.P4) and Rs. 10,000/- under the head of ''pain and suffering''. In total, the Tribunal awarded a sum of Rs. 84,250/- as compensation together with interest at the rate of 9.5% per annum from the date of numbering of petition till the date of payment of compensation. The Tribunal directed that both the Respondents are jointly and severally ordered to deposit the above said award with interest, within two months from the date of the order into the credit of M.C.O.P. No. 4482 of 2005, on the file of the Motor Vehicles Accident Claims Tribunal, v. Court of Small Causes, Chennai.

8. Aggrieved by the said award passed by the Tribunal, the 2nd Respondent / United India Insurance Co. Ltd., has filed the present appeal to set aside the award passed by the Tribunal in M.C.O.P. No. 4482 of 2005, on the file of Motor Accidents Claims Tribunal, Vth Court of Small Causes, Chennai.

9. The learned Counsel for the Appellant has argued in his appeal that the Tribunal had failed to note that the alleged injuries and disability will not affect the earing power and hence the award of Rs. 50,000/- granted for an exaggerated assessment of 60% disability by the doctor is inappropriate. Further, it has been argued that the award granted as compensation under other heads are also excessive. The Tribunal had fixed the rate of interest at 9.5% per annum, which is not pertinent, since the award was passed on 06.08.2009 and in the relevant period, the rate of interest was only 7.5% per annum as per Reserve Bank of India guide line. The claimant had sustained simple injury, but the doctor had assessed the disability as 60%, which is on the higher side.

10. The learned Counsel for the claimant argued that the claimant had sustained bone fracture injuries on his right hip. Besides, he had sustained injuries on his skull and all over his body. Considering the nature of injuries, the doctor had assessed the disability at 60%. The learned Counsel further argued that the claimant is entitled to receive compensation under the heads of attender charges and loss of income during medical treatment period. These heads were not considered by the Tribunal for assessing the compensation.

11. On considering 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 is of the considered opinion that the rate of interest fixed as 9.5% is on the higher side. Hence, this Court modifies the interest at 7.5% per annum. The compensation amount is reasonable. As such, the quantum of compensation is confirmed.

12. Therefore, this Court directs the Appellant / United India Insurance Company Limited to pay the entire compensation amount as fixed by the Tribunal, 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 six weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with interest at the rate of 7.5% per annum lying in the credit of M.C.O.P. No. 4482 of 2005 on the file of the Motor Accident Claims Tribunal, v. Court of Small Causes, Chennai, after filing a Memo along with this order.

13. Resultantly, the above Civil Miscellaneous Appeal is disposed of Consequently, the award and decree dated 06.08.2009, made in M.C.O.P. No. 4482 of 2005, on the file of the Motor Accident Claims Tribunal, v. Court of Small Causes, Chennai, is modified. Accordingly ordered. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

 