(2011) 04 MAD CK 0030

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2392 of 2010 and M.P. No. 1 of 2010

United India Insurance Co. Ltd. APPELLANT

Vs

Subramanian and Thangavel RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0030

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

Bench : Single Bench

Advocate : M.B. Gopalan, for the Appellant; M.A.P. Thangavel, for R-1, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/United India Insurance Company Limited against

the judgment and Decree passed in M.C.O.P. No. 681 of 2005, dated 06.05.2009, on the file of the Motor Accidents Claims Tribunal,

Additional District Court, Fast Track Court No. 5, Coimbatore at Tiruppur, on awarding a compensation a sum of Rs. 2,10,260/- 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.

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

On 19.05.2005, at about 11.00 hours, the Petitioner was travelling in the van bearing Registration No. TN39-A-7398 accompanying his goods,

the driver of the vehicle drove the vehicle in a rash and negligent manner, as a result of which, the vehicle overturned and caused injuries to the

Petitioner. Hence, the Petitioner had filed the claim petition against the Respondents for compensation of a sum of Rs. 5,00,000/- with interest.

3. The second Respondent/Insurance Company had filed a counter statement and resisted the claim petition. The Respondent denied that the

vehicle had been driven by the driver in a rash and negligent manner. The injured had travelled in the vehicle as a gratuitous passenger and not as

the owner of the goods or as a load-man. As such, the Insurance Company was not liable to pay compensation to the Petitioner. The age, income

and occupation of the Petitioner was also denied. It was also stated that the claim was an excessive one.

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

(i) Whether the accident was due to the rash and negligent act of the driver of the van TN39-A-7398?

(ii) Whether the Petitioner is entitled to compensation and if so, what is the quantum?

5. On the side of the claimant three witnesses had been examined viz.,PW1/ claimant, PW2-Dr. Senthilkumar, PW3-Ponnusamy and six

documents were marked viz, Ex.P1-First Information Report, Ex.P2-Discharge Summary, Ex.P3-Medical Bills, Ex.P4-O.P.Card, Ex.P5-

Disability Certificate, Ex.P6-X-ray. On the side of the Respondents one Vasantha was examined as RW1 and copy of the insurance policy was

marked as Ex.R1.

6. PW1 had adduced evidence stating that on 19.05.2005, at around 11.00 hours, when he was travelling along with his goods in the first

Respondent''s van bearing Registration No. TN39-A-7398, the driver of the vehicle drove the vehicle in a rash and negligent manner. As a result,

the vehicle had capsized and he had sustained grievous injuries. Immediately, he was taken to the Government Hospital, Palladam wherein he had

undergone preliminary treatment, thereafter, he was referred to Sindiya Hospital, Pollachi for better treatment. He further stated that at the time of

accident, his age was 42 years and he was engaged in agricultural operations. Further, he used to carry vegetables to Tiruppur Market and sell the

same in the market. As such, he was earning a sum of Rs. 5,000/- per month.

7. PW2, Dr. Senthil Kumar had examined the claimant and assessed the disability as 40%. The claimant''s left leg was fractured and the muscles

had become constricted. The left leg had been shortened by 1 cm. PW3, one

Ponnusamy, had adduced evidence which was in consonance with

the claimant''s evidence.

8. On considering the evidence of the witnesses and documentary evidence, the Tribunal had awarded a sum of Rs. 2,10,260/- 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.

9. Aggrieved by the said award, the Insurance Company has filed the above appeal.

10. The learned Counsel for the Appellant/Insurance Company argued that the claimant was a gratuitous passenger and he had not travelled along

with any goods. As per F.I.R., there is not even a whisper regarding the goods. As per Insurance Policy, the gratuitous passenger is not entitled to

receive compensation. The learned Tribunal had awarded the compensation a sum of Rs. 1,63,800/- under the head of ''loss of earning due to

disability'', this amount was assessed after adopting multiplier method and this is not pertinent in this case.

11. The learned Counsel for the claimant argued that the claimant had travelled along with his vegetable goods to the market. As per policy, the

claimant is entitled to receive compensation from the Insurance Company. The claimant is an agricultural coolie and he was also engaged as a

vegetable vendor. When he was carrying the vegetables to the market in the said vehicle, the accident had occurred. Therefore, the claimant had

travelled along with his goods as owner. In the said accident, he had sustained 42% disability and his left leg had been shortened by 1 cm. Hence,

he is unable to perform his normal duty as an agricultural coolie as well as a vegetable vendor. Therefore, his avocation has been affected. Hence,

the Tribunal had assessed the compensation after adopting multiplier method and this is reasonable in the instant case. The Tribunal had not

awarded adequate compensation under the heads of nourishment, transport. The Tribunal had not considered compensation under the head of

''attender charges'', which is a necessary head in the said accident.

12. On considering the facts and circumstances of the case and arguments submitted by the learned Counsels on either side and on perusing the

impugned award passed by the learned Motor Accidents Claims Tribunal, this Court is of the considered opinion that the Tribunal fastening the liability on the Insurance Company is justified. Regarding assessment of the compensation, the Tribunal''s adoption of multiplier method is not

pertinent in the instant case. Hence, this Court modifies the compensation as follows:

Rs. 84,000/-, Rs. 24,000/-, Rs. 15,000/-, Rs. 5,000/-, Rs. 5,000/-, Rs. 5,000/-, Rs. 12,000/- are granted towards disability, medical expenses,

pain and suffering, transport, attender charges, nutrition and towards loss of income during medical treatment period and convalescent period. In

total, this Court awards a sum of Rs. 1,50,000/-. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim

petition till date of payment of compensation.

13. On 22.09.2010, this Court imposed a condition on the Appellant/Insurance Company to deposit entire award amount with interest and costs

to the credit of M.C.O.P. No. 681 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.

5, Coimbatore at Tiruppur. Now, it is open to the claimant to withdraw the modified compensation amount as observed above with accrued

interest thereon lying in the credit of M.C.O.P. No. 681 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Court,

Fast Track Court No. 5, Coimbatore at Tiruppur, after filing memo along with this order. Likewise, the Appellant/Insurance Company is at liberty

to withdraw the excess amount of compensation lying in the credit of M.C.O.P. No. 681 of 2005, on the file of the Motor Accidents Claims

Tribunal, Additional District Court, Fast Track Court No. 5, Coimbatore at Tiruppur after observing necessary formalities before the Court below.

14. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the award and decree passed by the Motor Accident

Claims Tribunal, Additional District Court, Fast Track Court No. 5, Coimbatore at Tiruppur made in M.C.O.P. No. 681 of 2005, dated

06.05.2009 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.