

(2011) 03 MAD CK 0018

In the Madras High Court

Case No : C.M.A. No. 1459 of 2008 and M.P. No. 1 of 2008

United India Insurance Company Limited

APPELLANT

Vs

T. John Robert and S. Rajamurthy

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0018

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/United India Insurance Company Limited against the judgment and

decree made in M.C.O.P. No. 1458 of 2004, dated 10.11.2006 on the file of the Motor Accidents Claims Tribunal, First Additional Subordinate

Court, Cuddalore.

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

On 24.04.2004 at about 08.30 p.m., when the Petitioner was riding his "Suzuki Samurai" motorcycle bearing Registration No. MH-06-E-2961

from Pondy to Cuddalore, with his wife and minor son at the pillion and when the motorcycle was nearing Woodlands Hotel, Barathi Road,

Cuddalore, the Ambassador car bearing Registration No. TN-01-E-5896, coming in the opposite direction and driven by its driver in a rash and

negligent manner dashed against the said motorcycle. In the impact, the Petitioner, his wife and child were thrown away. The Petitioner, his wife

and child sustained grievous injuries and multiple injuries all over their body and they were immediately taken to Krishna Hospital, Cuddalore for

first aid. Because of the injuries sustained by him, he has totally become disabled and bedridden. Hence, the Petitioner has claimed a compensation

of Rs. 10,00,000/- from the Respondents, who are the owner and insurer of the ambassador car bearing Registration No. TN-01-E-5896.

3. The second Respondent, in his counter has resisted the claim and has stated that the vehicle bearing Registration No. TN-01-E-5896 had not

been insured with them and at the time of accident did not have the valid permit, fitness and registration certificate. It was also stated that the driver

of the ambassador car did not have a valid driving licence to drive the same, at the time of accident. The averments in the claim regarding the age,

income and occupation of the Petitioner, injuries sustained, period of treatment and permanent disability as well as the manner of accident were

denied. It was stated that the accident occurred only due to the rash and negligent riding of the Petitioner. It was stated that the claim was

excessive.

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

(i) On whose negligence was the accident caused?

(ii) Is the Petitioner entitled to compensation? If so, who is liable and what is the quantum of compensation to be paid?

5. On the Petitioner side, the Petitioner was examined as PW1 and the doctor, who assessed disability was examined as PW2 and 20 documents

were marked as Exs.P1 to P20. On the Respondents side, no witness was examined and no documents were marked.

6. PW1 has adduced evidence that was in consonance with the version of accident as stated in the claim. PW1 has further adduced evidence that

due to the accident he has sustained fracture in his knee; that he took treatment at Krishna Hospital where surgery was conducted and steel rods

were fixed in the fractured area. He further stated that due to this he was not able to walk and do his normal work as he used to do before the

accident. On scrutiny of Ex.P6, Motor Vehicle Inspector's Report, it is seen that the accident had not occurred due to mechanical defects of the

vehicles involved. On scrutiny of evidence of PW1 and the F.I.R. marked as

Ex.P1, it is seen that the accident occurred due to negligence of driver of first Respondent's car bearing registration No. TN-01-E-5896. Though it has been stated on the Respondent's side that the Petitioner, while riding on his motorcycle along with two pillion riders, lost his control and fell down, no witnesses had been examined to establish this. Hence, the Tribunal held that the accident was caused due to the rash and negligent driving of the first Respondent's driver. On scrutiny of Ex.P6, Motor Vehicle Inspector's Report, Ex.P3-R.C. Book of first Respondent, Ex.P4-the insurance policy and Ex.P5-driving licence of driver of first Respondent's car, Ex.P6-the permit for the first Respondent's car, it is seen that the first Respondent's car had been insured with the second Respondent and the driver of the car had a valid driving licence at the time of accident. Hence, the Tribunal held that the first and second Respondents are jointly or severally liable to pay compensation to the Petitioner.

7. On scrutiny of Ex.P2, accident register, it is seen that the Petitioner has sustained compound fracture in his right leg, injury in right knee and has pain in his right leg and chest and that these have been mentioned as grievous injuries. From the discharge summary marked as Ex.P13, it is seen that the Petitioner had taken treatment for injuries at hospital from 29.04.2004 to 09.05.2004; Ex.P11 and Ex.P12 are the prescription and medical bills.

8. Pw2, the doctor, adduced evidence that on 25.09.2006, he had scrutinized the medical treatment records of Petitioner. He had found that the Petitioner had taken treatment for the compound fracture of two bones in his left leg and that interlock nail had been fixed in the affected area. On scrutiny of X-ray taken of this portion of leg, the nails are clearly visible. Due to this, the joint of the Petitioner's right knee and the ankle of the Petitioner has been affected and hence their movements had been reduced. There is swelling in right leg and the Petitioner has difficulty in walking and doing his normal work. As such PW2 had certified that the disability sustained by Petitioner was 40% and in support of this had marked Ex.P19-disability certificate and Ex.P20-X-rays.

9. PW1, in support of his evidence that he was working in Tagros Chemicals (I) Ltd., Cuddalore as a Chemical Engineer and earning a sum of Rs. 8,000/- per month had marked Ex.P14, appointment letter, Ex.P15-Salary

certificate and Ex.P16-joining letter. He had also marked Ex.P8, R.C.

Book, Ex.P9-Insurance policy and Ex.P10-driving licence of the rider of the motorcycle, Ex.P18-Motor Vehicle Inspector's Report.

10. The Tribunal after scrutiny of oral and documentary evidence awarded a compensation of Rs. 4,26,280/- together with interest at the rate of

7.5% per annum from the date of petition till date of payment of compensation. The breakup of compensation is as follows:

Loss of income due to disability (Rs. .. Rs. 4,08,000/-

5,000 x 40/100 x 12 x 17)

For pain and suffering .. Rs. 10,000/-

For Nutrition .. Rs. 5,000/-

For Transport expenses .. Rs. 1,000/-

For medical expenses .. Rs. 2,280/-

11. Aggrieved by the said award passed by the Tribunal, the second Respondent has filed the present appeal to scale down the compensation.

12. The learned Counsel for the Appellant has argued that the disability of 40% assessed by the doctor is excessive and hence the award of Rs.

4,08,000/- granted towards "permanent disablement and loss of income" is without any justification or proof. It was stated that the compensation

granted under various heads were excessive. The learned Counsel further argued that the Tribunal had adopted multiplier method and awarded

compensation of a sum of Rs. 4,08,000/- under the head of "loss of earning due to disability" which is not pertinent in this case, since the

claimant's avocation was not affected.

13. On considering the facts and circumstances and arguments advanced by the learned Counsel for the Appellant and on perusing the impugned

award of the Tribunal, this Court is of the considered opinion that the Tribunal's adoption of multiplier method and awarding a compensation of

Rs. 4,08,000/- under the head of "disability" is not pertinent in the instant case, since the claimant's avocation as a chemical engineer has not been

affected. Therefore, this Court restructures the compensation as follows:

Rs. 80,000/- under the head of loss of earning due to disability;

Rs. 15,000/- towards pain and suffering;

Rs. 5,000/- for nutrition;

Rs. 5,000/- for transport;

Rs. 10,000/- towards attender charges;

Rs. 10,000/- for medical expenses;

Rs. 50,000/- towards loss of income during medical treatment and convalescent period;

Rs. 1,00,000/- towards loss of amenities and comfort;

Rs. 25,000/- towards future medical expenses

In total, this Court awards a sum of Rs. 3,00,000/- (Rupees Three Lakhs only) as compensation with interest at the rate of 7.5% per annum from

the date of petition till date of payment of compensation. Therefore, this Court scales down the compensation from Rs. 4,26,280/- to Rs.

3,00,000/- which is fair and justifiable in the instant case.

14. On 28.04.2008, this Court imposed a condition on the Appellant/Insurance Company to deposit a sum of Rs. 3,00,000/- with accrued interest

thereon to the credit of M.C.O.P. No. 1458 of 2004 on the file of the Motor Accidents Claims Tribunal, First Additional Subordinate Court,

Cuddalore. Now, it is open to the claimant to withdraw the modified compensation amount as fixed by this Court i.e., Rs. 3,00,000/- with accrued

interest lying in the credit of M.C.O.P. No. 1458 of 2004 on the file of the Motor Accidents Claims Tribunal, First Additional Subordinate Court,

Cuddalore, after filing a Memo along with this order.

15. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents

Claims Tribunal in M.C.O.P. No. 1458 of 2004, dated 10.11.2006 on the file of the Motor Vehicles Accident Claims Tribunal, First Additional

Subordinate Court, Cuddalore is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.