

(2008) 08 MAD CK 0038
In the Madras High Court
Case No : C.M.A. (MD) No. 369 of 2004

United India Insurance Company Ltd.	APPELLANT
Vs	
Rosammal and Govindaraj	RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2009) 1 MLJ 519

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Ramachandran, for the Appellant; M.J. Anandkumar, for R1, for the Respondent

Judgement

M. Venugopal, J.—This Civil Miscellaneous Appeal is preferred by the appellant/second respondent as against the award dated

17.08.2004 passed in M.C.O.P. No. 555 of 2002 by the Motor Accidents Claims Tribunal - Principal Sub Court, Dindigul, awarding a total

compensation of Rs. 1,00,000/- (Rupees One Lakh only) with interest at 9% p.a. from the date of filing of the petition till date of payment.

2. Aggrieved by the award passed by the Tribunal, the appellant/second respondent Insurance Company has focussed this appeal before this Court.

3. The necessary facts of the claim are as follows:

The first respondent/claimant sustained fractures on his left hand, left leg thigh, right leg below knee, loss of two teeth and multiple injuries all over

the body on account of the motor vehicle accident that took place on 18.05.2002 at about 07.15 p.m on Dindigul - Veda sandur main road near

Bharath Petrol Bunk. At the time of the occurrence, the first respondent/claimant

was walking from north to south keeping left side of the mud part of the road and the vehicle bearing Registration No. TN-57-E-3544 was driven by its driver from north to south in a highly rash and negligent manner without sounding horn and not following the traffic rules of the road and hit behind her. Consequently, she was thrown out and sustained multiple fractures, losing two teeth and multiple injuries all over the body. She was immediately taken to and admitted into the Government Hospital, Dindigul, where she received treatment as an inpatient for forty two days. A criminal case has been filed against the driver by the Vedasandur Police in Cr. No. 249 of 2002 under Sections 279 and 337 I.P.C. The second respondent/first respondent, was vicariously liable to pay compensation to the claimant for the negligent act of the driver who was in the course of the employment under him. The appellant/second respondent Insurance Company was the insurer of the said vehicle. Hence, the first respondent/claimant had claimed a restricted sum of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand only) as compensation from the second respondent/first respondent and the appellant/second respondent Insurance Company with interest and costs.

4. In the counter filed by the appellant/second respondent United India Insurance Company Limited, and adopted by the second respondent/first respondent (owner of the vehicle), it is inter alia stated that the accident had not occurred as narrated in the claim petition and it was learnt that a criminal case was foisted against the driver of the second respondent/first respondent by Vedasandur Police Station even though it was a hit and run case and that the driver of the second respondent/first respondent had not caused any bodily injury to the claimant and therefore, the respondents were not liable to pay any compensation and that the claimant had to prove that the vehicle bearing Registration No. TN-57-E-3544 which is said to have involved in the accident on 18.05.2002, was duly insured with the appellant/second respondent Insurance Company and its driver had a valid driving licence at the time of accident and therefore, prays for dismissal of the claim petition with costs.

5. Before the Tribunal, on the side of the first respondent/claimant, witnesses P.W.1 and P.W.2 were examined and Exs.P.1 to P.4 were marked and on the side of the respondents, no witness was examined and no documents

were marked.

6. On an appreciation of oral and documentary evidence, after contest, the Tribunal has awarded a total compensation of Rs. 1,00,000/- (Rupees

One Lakh only) together with interest at 9% p.a from the date of petition.

7. To establish the plea of negligence, the first respondent/claimant has examined herself as P.W.1. In her evidence, she has deposed that on

18.05.2002, at about 07.15 p.m, at the time of the accident, she was walking along the left side of Dindigul - Veda sandur main road in the

direction of north to south and at that time, the two wheeler bearing Registration No. TN-57-E-3544 which came behind her, was driven by its

driver in a fast speed and negligently and dashed against her, as a result of which, she sustained bone fracture on left hand, bone fracture below the

right leg knee, fracture on the left thigh and the injuries all over the body and that immediately, she was taken to Dindigul Government Hospital

where she remained as an inpatient for forty two days and thereafter, she remained as an inpatient at the Madurai Government Rajaji Hospital and

that the accident took place because of the negligence of the driver of the two wheeler bearing Registration No. TN-57-E-3544.

8. In Ex.P.1, xerox copy of the F.I.R, the name of the complainant is mentioned as Rosammal, who has been examined as P.W.1 in the case. The

name of the accused is mentioned as the driver of the two wheeler bearing Registration No. TN-57-E-3544 in Ex.P.1, F.I.R.

9. A perusal of Ex.P.1, F.I.R indicates that the version projected by the informant, Rosammal/claimant, in regard to the happening of the

occurrence tallies with the evidence given by her as P.W.1 before the Tribunal. In short, the first respondent/claimant as P.W.1, in her evidence,

has spoken to in a lucid manner as to the mode of happening of the occurrence. Further, it transpires from Ex.P.1, F.I.R that the Veda sandur

Police in Cr. No. 249 of 2002 has registered a case under Sections 279 and 337 I.P.C on 19.05.2002 at about 09.15 hours.

10. Ex.P.2 is the wound certificate dated 03.09.2003 in respect of the first respondent/claimant issued by the Civil Surgeon, Govt. Head Quarters

Hospital, Dindigul, wherein it is mentioned as follows:

Left Arm AP LCH # Humerus

Right Leg AP LCH # BB

Left Thigh AP LCH # femur

and that the Doctor has inter alia opined that the wounds are grievous in nature.

11. As a matter of fact, in Ex.P.2, wound certificate, it is stated that the injuries to the first respondent/claimant "said to have been caused on

18.05.2002 at 08.00 p.m, and to be due to Road Traffic Accident near Petrol Bunk, Lakshmanampatty".

12. In view of the clear cut evidence of the first respondent/claimant/P.W.1 in regard to the happening and mode of occurrence to the effect that

the rider of the two wheeler bearing Registration No. TN-57-E-3544 who came behind her in a fast speed and negligently and dashed against her,

has been responsible for causing the accident and this Court accepts the same and therefore, this Court comes to the inescapable conclusion that

the accident has taken place because of the negligent driving of the rider of the two wheeler bearing Registration No. TN-57-E-3544 and that he is

squarely responsible for causing the accident and the point is answered accordingly.

13. In regard to the quantum of compensation to be awarded in the case, it is pertinent to point out that the first respondent/claimant has made a

claim of Rs. 2,90,500/- in the claim petition and has ultimately, restricted the same to sum of Rs. 1,50,000/-. The claim made by first

respondent/claimant in the claim petition under different heads is mentioned below:

Part-I.

a. Loss of earning from 18.05.2002

to 24.06.2002 - Rs. 4,300/-

b. Partial Loss - Rs. NIL

c. Transport to Hospital - Rs. 1,000/-

d. Extra Nourishment - Rs. 10,000/-

e. Damages to Dress - Rs. 200/-

f. Others (Medical Expenses) - Rs. 25,000/-

Part-II.

g. Compensation for pain and

sufferings - Rs.1,00,000/-

i. Compensation for permanent disability - Rs.1,50,000/-

Total - Rs. 2,90,500/-

14. A perusal of the award indicates that the Tribunal has granted a sum of Rs. 1,500/- towards loss of income. Towards transport expenses, it

has awarded a sum of Rs. 500/-. Towards additional nourishment expenses, it has granted a sum of Rs. 5,000/-. For permanent disability, it has

granted a sum of Rs. 80,000/-. Towards pain and sufferings, it has awarded a sum of Rs. 8,000/-. Thus, in all, the Tribunal has awarded a total

compensation of Rs. 1,00,000/- (Rupees One Lakh only) together with interest at 9% p.a from the date of filing of the petition.

15. P.W.2, Dr. Vijayakumaran, in his evidence has deposed that on 17.02.2004, he examined P.W.1/claimant and took X-rays and found that the

first respondent/claimant has sustained bone fracture on the upper portion of the left hand, bone fracture on left thigh and two bone fractures on

right leg and totally, the first respondent/claimant has sustained four bone fractures and that her thigh bone was malunited and was in a disfigured

state and her right leg bone was malunited and her hand bone was disfigured as seen from X-rays and that her left shoulder bone movement was

reduced by 50% and left hip joint movement was reduced by 60% and the ankle movement position was shortened by 1 inch and the disability

sustained by her is a partial and permanent one and that he has given the disability certificate Ex.P.3, and the X-rays are Ex.P.4, series. In Ex.P.3,

the disability certificate, P.W.2, Dr. Vijayakumaran, has assessed the total percentage of disability of the first respondent/claimant as 53%.

16. At this stage, it is relevant to state that P.W.2, Dr. Vijayakumaran, has opined that the first respondent/claimant has difficulty in lifting heavy

objects and while walking and sitting, she has difficulties, etc. The first respondent/claimant/ P.W.1 in her evidence has stated that because of the

bone fracture, she is not able to walk speedily, not able to sit, through left hand not able to lift heavy objects and unable to stand for a long time.

17. Though on the side of the appellant/second respondent Insurance Company, a plea has been taken that the Tribunal has erred in accepting the

disability of the claimant at 53% without any acceptable scientific proof etc., it is to be borne in mind that to dislodge the testimony of P.W.2, Dr.

Vijayakumaran, who issued Ex.P.3, disability certificate, the appellant/Insurance Company has not examined any witness much less an expert, on

their side before the Tribunal and even in the cross-examination of P.W.2, Dr. Vijayakumaran, the appellant/Insurance Company has not made any

headway and therefore, as far as the present case is concerned, this Court opines that the evidence of P.W.2, Dr. Vijayakumaran, in regard to the

assessment of the disability of the first respondent/claimant at 53% remains unimpeached and this Court accepts the same.

18. The learned Counsel for the first respondent/claimant relies on the decision Sahabudeen v. V. Haridass and Ors. (2007) 7 MLJ 434, wherein

it is observed as follows:

It is well a settled proposition that while determining the compensation or while estimating the financial or pecuniary loss to the claimant, the Court

must first form an opinion from the evidence and the probabilities in the case, as to the nature and extent of the loss. While estimating the loss of

earning, the Court must first decide what the claimant would have earned if the accident had not happened, allowing for any future increase or

decrease in the rate of earnings. It is also necessary for the Court to decide how long the loss will continue, whether there is incapacity for life or

for a shorter period. The Court should also make an estimate of the amount, if any, which the claimant could still earn in future, notwithstanding

disabilities sustained by him in the accident. It is also the principle in a case of permanent disabilities, that in an accident, if the man is disabled for a

work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any

work, manual or clerical, such a man for all practical purposes, has lost all his earning capacity he possessed before and he is required to be

compensated on the basis of total loss.

19. He also cites the decision The Managing Director, Tamil Nadu State Transport Corporation, (Kumabakonam Division II) Ltd., Trichy v.

Sekar 2007 1 TN MAC 258 wherein this Court has inter alia observed that "separate amounts as damages for grievous injuries (fracture of left

frontal bone) and simple injuries not to be awarded besides awarding

compensation for Loss of Earning Capacity, Medical Expenses, Pain and Sufferings and that the Tribunal has committed mistake in awarding Rs. 15,000/- and Rs. 6,000/- respectively for fracture and simple injuries etc."

20. He also relies on yet another decision The Managing Director, Tamil Nadu State Transport Corporation, (Kumabakonam Division II) Ltd.,

Trichy v. Pattu 2007 2 TN MAC 563 wherein, this Court has inter alia held that "when separate amount awarded towards Loss of Future Earning

Capacity, it would not be proper to award any amount separately for Permanent Disability and when method of awarding Lump Sum amount for

Permanent Disability adopted, age of claimant/injured plays important role and the award may range from Rs. 1,000/- to Rs. 2,000/- per 1%

disability depending upon age of claimant and maximum rate shall be applied in case of youngsters and minimum rate in the case of aged persons."

21. The first respondent/claimant/P.W.1 has remained as an inpatient in the Dindigul Government Hospital for forty two days and later, as an

inpatient at the Madurai Government Rajaji Hospital, as spoken to by her as P.W.1 before the Tribunal. In the proof affidavit filed before the

Tribunal, the first respondent/claimant has stated that prior to accident, she was working as an agricultural coolie and getting a daily income of Rs.

100/- for which, no documentary proof has been filed before the Tribunal. However, towards loss of income, the Tribunal has awarded a sum of

Rs. 1,500/- and considering the fact that the first respondent/ claimant has remained as an inpatient at the Dindigul Government Hospital for forty

two days etc., this Court is not interfering with the said sum awarded by the Tribunal.

22. Though in the claim petition, the first respondent/claimant claimed a sum of Rs. 1,000/- towards transport expenses, the Tribunal has awarded

a sum of Rs. 500/- in this regard and the same is not disturbed by this Court. Yet the first respondent/claimant has claimed a sum of Rs. 10,000/-

towards extra nourishment expenses, this Court grants a sum of Rs. 3,000/- in this regard in the absence of necessary proof to that effect to meet

the ends of justice. Likewise, though the first respondent/claimant has claimed a sum of Rs. 25,000/- in the claim petition towards medical

expenses and the Tribunal has granted a sum of Rs. 5,000/- towards medicine and treatment expenses, in the absence of proof, this Court grants

only a sum of Rs. 3,000/- to prevent aberration of justice. Towards pain and sufferings, this Court awards a sum of Rs. 5,000/-. Considering the

fact that the first respondent/claimant has suffered a disability of 53% and bearing in mind the difficulties experienced by the claimant, this Court

grants a sum of Rs. 79,500/- (calculating at the rate of Rs. 1,500/- for 1% disability) towards disability compensation.

23. Thus, in all, the first respondent/claimant is entitled to receive a sum of Rs. 92,500/- {Rs.1,500/- + Rs. 500/- + Rs. 3,000/- + Rs. 3,000/- +

Rs. 5,000/- + Rs. 79,500/- = Rs. 92,500/-} (Rupees Ninety Two Thousand and Five Hundred only) towards total compensation. The lawyer's

fee is fixed at Rs. 4,531/- (Rupees Four Thousand Five Hundred and Thirty One only) by this Court.

24. The Tribunal has awarded interest at 9% p.a besides compensation. The learned Counsel for the appellant/Insurance Company contends that

the grant of the interest at 9% p.a by the Tribunal is on the higher side and according to him, the reasonable rate of interest would be 7.5% and in

support of his contention, he relies on the decision Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , wherein the

Honourable Supreme Court has inter alia held that "taking note of the prevailing rate of interest in bank deposits, the same is fixed at 7.5 per cent

per annum. He further cites the decision The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, , wherein the Honourable Supreme

Court has observed that "going by the applicable bank rate of interest, the interest payable in the case is fixed at 7.5 per cent per annum from the

date of application till payment, etc.".

25. Hence, this Court fixes the rate of interest at 7.5% p.a for the compensation of Rs. 92,500/- fixed by this Court from the date of petition till

date of payment in the interest of justice.

26. It is not out of place to point out that in C.M.P. No. 2688 of 2004, this Court has inter alia passed an order on 27.12.2004, permitting the first

respondent/claimant to withdraw 50% of the deposited amount without furnishing security and the remaining 50% by furnishing security to the

satisfaction of the Tribunal.

27. Hence, the appellant/second respondent Insurance Company is directed to take steps to recover the excess amount paid from the first

respondent/claimant by filing the execution proceedings straight away in the manner known to law.

28. In fine, the Civil Miscellaneous Appeal is allowed in part and resultantly, the award dated 17.08.2004 passed in M.C.O.P. No. 555 of 2002

by the Motor Accidents Claims Tribunal - Principal Sub Court, Dindigul, is modified. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs in this appeal.