(2013) 10 MAD CK 0040

In the Madras High Court

Case No : C.M.A. No. 2706 of 2009

V. Agoram	APPELLANT
Vs	
V. Sekar and National Insurance Company Ltd.	RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0040

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

Bench : Single Bench

Advocate : S. Natarajan, for the Appellant; J. Chandran for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 23.02.2006, made in

M.C.O.P. No. 3722 of 2001, on the file of the Motor Accident Claims Tribunal (Additional District Court), Fast Track Court No. II, Chennai.

The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 3722 of 2001, on the file of the Motor Accident Claims Tribunal (Additional District

Court), Fast Track Court No. II, Chennai, claiming a sum of Rs. 5,00,000/-as compensation from the respondents for the injuries sustained by him

in a motor vehicle accident.

2. It was submitted that on 06.11.2000, at about 15.30 hours, when the claimant was travelling along with one Mr. Muralimohan, as a passenger

in a Car bearing registration No. TN09 B6016, from Chennai to Vengaivasal, on Pallikaranai-Velacherry Road, the first respondent''s Tipper

Lorry bearing registration No. TN04 A6387, coming in the opposite direction and driven in a rash and negligent manner, dashed against the car

and caused the accident. As a result, the claimant sustained grievous head injuries and the driver of the car died in the accident, the claimant was

admitted at Government General Hospital, wherein primary suturing was done and he was shifted to Apollo Speciality Hospital, for further

treatment and received treatment as an inpatient till 25.11.2000. Subsequently, the claimant took treatment from 05.03.2001 at Ramarau Polyclinic

Chennai, wherein plastic surgery was done for correction of ectropion of the right lower eye lid and he was discharged on 08.03.2001. Due to the

disability sustained in the accident, he is not able to do his work as before. Hence, he had filed the claim petition against the respondents, who are

the owner and insurer of the Lorry bearing registration No. TN04 A6387.

3. The second respondent Insurance Company had filed their counter affidavit and denied the averments made in the claim petition regarding age,

income and occupation of the claimant, place, date and time of the accident, nature of injuries, medical treatment taken, medical expenses incurred

and disability. It was submitted that the claimant had to prove that the first respondent''s lorry driver had a valid licence to drive it and that it was

covered under a valid permit and policy of insurance through documentary evidence. The averments made in the claim petition that the accident

was caused due to the rash and negligent driving of the driver of the first respondent''s lorry was also not admitted. Further, it was submitted that

the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed three issues namely:

i. Whether the accident was caused by the rash and negligent driving by the driver of the first respondent''s lorry?

ii. Whether the accident was caused by the rash and negligent driving by the driver of the car bearing registration No. TN09 B6016? and

iii. What is the quantum of compensation which the claimant is entitled to get?

5. On the claimant''s side two witnesses were examined as P.Ws. 1 and 2 and ten documents were marked as Exs. P1 to P10 namely copy of

FIR, discharge summaries, doctor certificates, discharge intimation, leave certificate, salary certificate, disability certificate and X ray. On the respondents'' side no witness was let in and no document was marked.

6. P.W. 1 had adduced evidence that on 06.11.2000, at about 03.30 p.m., when he was travelling in a car bearing registration No. TN09 B6016,

near Pallikaranai Police Station, the first respondent''s Tipper Lorry bearing registration No. TN04 A6387, coming in the opposite direction and

driven in a high speed and in a rash and negligent manner, had dashed against the car. Further, he deposed that he had sustained injuries on his

right cheek, right side of head, right side of mouth and right eye and that he was admitted at Government General Hospital, Chennai and that he

was shifted to Apollo Speciality Hospital for further treatment, wherein he received treatment as an inpatient for 18 days.

7. He deposed further that at the time of accident, he was working as an Executive in Ashok Leyland and earning Rs. 20,000/- per month. In

support of his evidence, he had marked Exs. P1 to P10. The Tribunal, on scrutiny of evidence of P.W. 1 and Ex. P1, held that the accident had

been caused by the rash and negligent driving by the driver of the first respondent''s lorry and hence held that the second respondent, being the

insurer of the first respondent''s lorry, liable to pay compensation to the claimant.

8. P.W. 2 Doctor had adduced evidence that he had examined the claimant on 11.04.2005 and observed that the claimant had memory deficit and

that his face had been disfigured due to wound scar and that his upper lip was cut and that there was loss of cover eye lid. He certified that the

claimant had sustained 70% disability and in support of his evidence, he had marked Exs. P9 and 10.

9. However, the Tribunal observed from Ex. P19 that the accident had taken place on 06.11.2000 and that P.W. 2 had examined him only on

11.04.2005. The Tribunal was also at a loss to understand as to why the doctors, who treated the claimant at Government General Hospital,

Chennai and Apollo Speciality Hospital, Chennai, were not examined to prove the disability. Hence, the Tribunal opined that the evidence of P.W.

2, who had not treated the claimant, cannot be relied upon and hence held that the Exs. P9 and P10 cannot be acted upon.

10. On scrutiny of Ex. P2, it is seen that the claimant had sustained the following injuries:

i. Head injury-concussion of brain,

ii. Facio-Maxillary injuries,

iii. Fracture of right greater wing of sphenoid,

iv. Fracture of right foramen transversarium of C1, and

v. Cervical spondylosis.

11. The Tribunal, on scrutiny of evidence of P.W. 1 that his Company had paid medical expenses of Rs. 95,414/- to Apollo Hospital, was not

inclined to grant any award for medical expenses marked as Ex. P6. The Tribunal, on scrutiny of Ex. P7 leave certificate, observed that the

claimant had been on leave for 168 days, but no mention had been made by the said company that the claimant had not been paid leave salary.

Hence, the Tribunal held that the claimant is not entitled to receive any leave salary for the said leave period. The Tribunal, on scrutiny of Ex. P5

certificate issued by Dr. Siddhartha Ghose, observed that the claimant had sustained permanent partial disability in his face.

12. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 5,000/- for transport expenses, Rs. 10,000/- for pain and

suffering, Rs. 25,000/- for loss of comfort due to disfigurement of face, Rs. 25,000/- for grievous injuries. In total, the Tribunal awarded a sum of

Rs. 65,000/- as compensation to the claimants and directed the second respondent to deposit the said sum together with interest at the rate of

7.5% per annum from the date of filing the claim till the date of payment of compensation, within a period of two months from the date of it''s

order.

13. Not being satisfied with the quantum of compensation, the claimant has preferred the present civil miscellaneous appeal for additional

compensation of a sum of Rs. 2,50,000/-.

14. The highly competent counsel for the claimant has contended in the appeal that the Tribunal erred in determining the compensation payable to

the claimant in a peremptory manner, without considering the permanent disability sustained by him on account of the injuries, which had been

certified at 70% and as such the Tribunal ought to have awarded compensation with reference to the extent of disability suffered. It is contended

that the Tribunal failed to award compensation towards loss of earnings for 165 days during which time the appellant/claimant was on medical leave, earned leave and leave without pay. Even assuming but not admitting that the appellant/claimant received a part of the salary during the said

period, the Tribunal failed to consider that the claimant was prevented from encashing the leave or taking it for any other purpose. It is also

contended that the Tribunal failed to award compensation loss of earning of loss of amenities of life, nutrition and loss of future prospects. Hence, it

was prayed for grant of additional compensation of Rs. 2,50,000/-.

15. The learned counsel for the Insurance Company has submitted that the entire medical bills had been paid by the employer of the claimant.

Further, adequate compensation had been granted by the Tribunal under the head of disability, pain and suffering, nutrition etc. Therefore, the

appeal is not maintainable.

16. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned

award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the

quantum of compensation is on the lower side, since the claimant had sustained 70% disability, as per Doctor''s evidence and he had been

hospitalized on two occasions. It is also seen that a surgical operation had also been conducted on his eye lid. Hence, this Court reassesses the

compensation as follows:

i. Rs. 70,000/- is awarded for disability,

ii. Rs. 5,000/- is awarded for medical expenses,

iii. Rs. 15,000/- is awarded towards pain and suffering,

iv. Rs. 10,000/- is awarded towards nutrition,

v. Rs. 10,000/- is awarded towards attender charges,

vi. Rs. 20,000/- is awarded for loss of earning during medical treatment period,

vii. Rs. 10,000/- is awarded for transport expenses, and

viii. Rs. 50,000/- is awarded for loss of amenities, loss of comfort and for disfigurement.

In total, this Court awards a sum of Rs. 1,90,000/- as compensation. After deducting the initial compensation of a sum of Rs. 65,000/-, this Court

awards a sum of Rs. 1,25,000/- as additional compensation to the claimant, as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

17. This Court directs the second respondent herein/Insurance Company to execute the said award by way of depositing to the credit of

M.C.O.P. No. 3722 of 2001, on the file of the Motor Accident Claims Tribunal (Additional District Court), Fast Track Court No. II, Chennai,

within a period of four weeks from the date of receipt of a copy of this Judgment.

18. After such a deposit having been made, it is open to the claimant to withdraw the said compensation amount, Tying in the credit of M.C.O.P.

No. 3722 of 2001, on the file of the Motor Accident Claims Tribunal (Additional District Court), Fast Track Court No. II, Chennai, with accrued

interest thereon, after filing a memo, along with a copy of this Judgment. In the result, this civil miscellaneous appeal is partly allowed and the

Judgment and decree dated 23.02.2006, made in M.C.O.P. No. 3722 of 2001, on the file of the Motor Accident Claims Tribunal (Additional

District Court), Fast Track Court No. II, Chennai, is modified. No costs.