

(2013) 09 MAD CK 0267
In the Madras High Court
Case No : C.M.A. No. 2910 of 2009

V. Vinaithirthan

APPELLANT

Vs

M. Sanjiv Kumar and M/s. Iffco Tokio General Insurance
Company Limited

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0267

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

Bench : Single Bench

Advocate : T.G. Balachandran, for the Appellant; N. Vijayaraghavan for R2 and
Ex parte--R1, 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 18.04.2009, made in M.C.O.P. No. 3851 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai. The short facts of the case are as follows:--

The appellant herein/claimant had filed a claim petition in M.C.O.P. No. 3851 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, against the respondents herein, who are the owner and insurer of the offending vehicle, stating that on 31.03.2005, at about 10.00 p.m., when he was proceeding on the motorcycle bearing registration No. TN09 Y4533, on K.B. Dasan Road, the first respondents's vehicle bearing registration No. TN07 AX4201, driven by it's driver in a rash and negligent manner had dashed against him. As a result, he had sustained grievous injuries. Therefore, he had filed the claim petition claiming a sum of Rs. 20,00,000/- as compensation for the injuries sustained by him in the said accident.

2. The second respondent Insurance Company had filed a counter statement and resisted the claim petition. They had denied that the accident had been caused

by the rash and negligent driving of the driver of the car. They had stated that the rider of the motorcycle also was responsible for the occurrence of the accident and as such contributory negligence had to be attributed in the instant case. The averments made in the claim petition regarding age, income and nature of injuries were also not admitted.

3. On considering the averments of both sides, the Tribunal had framed four issues namely:

i. Whether the accident was due to rash and negligent driving on the part of the driver of the Qualis Car bearing registration No. TN07 AX4201?

ii. Whether the first respondent's Qualis car insured with second respondent and the respondents are liable to pay compensation?

iii. Whether the petitioner is entitled for compensation? If so, what is the quantum? and

iv. To what other relief if any?

4. On the petitioners' side three witnesses were examined as P.Ws.1 to 3 and 19 documents were marked as Exs.P1 to P19 namely FIR, sketch, charge sheet, discharge summaries, St. Isabel's Hospital bills, medical bills, pharmacy bills, Apollo Hospital bills, copy of income tax returns, copy of partnership deed, case summary, MRI report, disability certificates, X-ray, C.T. Scan, Central Government Guide line and copy of the driving licence. On the respondents' side no witness was examined and no document was marked.

5. On behalf of the injured claimant, his next friend and guardian Sevugan Chetty had been examined as P.W.1. He had adduced evidence that when the claimant was proceeding on the motorcycle bearing registration No. TN09 Y4533, on K.B. Dasan Road, on 31.05.2005, at 10.00 p.m., the first respondent's driver had driven the car bearing registration No. TN07 AX4201, in a rash and negligent manner and dashed it against the claimant.

6. P.W.1 had further adduced evidence that the injured claimant had sustained grievous bone fracture injuries on his skull, left eye brow and left knee and that he had been hospitalized at Isabel Hospital and Apollo Hospital as an inpatient from 31.03.2005 to 30.06.2005 and from 30.06.2005 to 18.07.2005 respectively. The injured was aged about 55 years and he was a partner of Chettinad Steel Scrap Traders and earning Rs. 25,000/- per month.

7. P.W.2 Dr. R. Rajappa, Ophthalmologist, had adduced evidence that the claimant had sustained 50% disability since he had sustained injuries on his right eye.

8. P.W.3 Dr. M.M. Shankar, Neuro Surgeon, had adduced evidence that the claimant had sustained skull injuries and that he had been mentally impaired and his speech had become slurred. He had also deposed that the claimant was also unable to walk and he had assessed the disability at 185%.

9. On considering the evidences of the witnesses and on scrutinizing the documents marked by the claimant, the Tribunal had awarded a sum of Rs. 10,55,565/- as compensation, with interest at the rate of 9.5% per annum.

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

11. The highly competent counsel has submitted that the Tribunal had awarded a sum of Rs. 6,40,032/- towards loss of earning, which is on the lower side, since the claimant had sustained multiple bone fracture injuries and he was earning a sum of Rs. 25,000/- per month. Further, the Tribunal had deducted 1/3rd of the income of the claimant for his personal expenses, which is not appropriate in an injury claim. The claimant had been hospitalized for a period of 92 days at Isabel Hospital and 19 days at Apollo Hospital as an inpatient. The medical expenses alone amounts to a sum of Rs. 3,29,533/- and adequate compensation had not been granted under the relevant heads. Now, the claimant is in a vegetative condition. The learned counsel has produced the claimant before the Open Court and showed his physical condition.

12. The very competent counsel for the Insurance Company has submitted that the Ortho Doctor had assessed the disability at 185%, which is absurd. Further, the Ophthalmologist had assessed the disability at 50%, which is excessive as the claimant's vision is normal. The Tribunal had assessed the compensation under the head of loss of earning by adopting multiplier method, which is not pertinent in the instant case.

13. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel 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 awarded by the Tribunal has to be enhanced on the following heads. This Court awards additional compensation of a sum of Rs. 2,00,000/- towards attender charges, since the claimant requires the services of an attender all through his life. This Court awards another additional compensation amount of Rs. 1,00,000/- under the head of loss of amenities, loss of comfort, which is permanent in nature. Further, this Court awards a sum of Rs. 20,000/- as additional compensation under the head of transport expenses. In total, this Court awards Rs. 3,20,000/- as additional compensation to the claimant. The award granted by the Tribunal under the other heads remains unchanged. The additional compensation 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.

14. Therefore, this Court directs the second respondent Insurance Company to comply with this Court's findings, within a period of four weeks from the date of receipt of a copy of this order, by way of depositing the compensation amount to the credit of M.C.O.P. No. 3851 of 2005, on the file of the Motor Accident Claims

Tribunal, Small Causes Court No. II, Chennai.

15. After such a deposit having been made, it is open to the appellant/claimant to withdraw the compensation amount with accrued interest thereon, lying in the credit of M.C.O.P. No. 3851 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, after filing a memo along with a copy of this Order. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 18.04.2009, made in M.C.O.P. No. 3851 of 2005, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.