
(2010) 04 MAD CK 0214
In the Madras High Court
Case No : C.M.A. No. 627 of 2000

Y. Sekar

APPELLANT

Vs

Moulana and New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0214

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

Bench : Single Bench

Advocate : P. Mani, for the Appellant; P. Chandrasekaran, for R1 and P. Chandran, for R2, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated 03.01.2000, made in M.C.O.P. No. 43 of 1997, on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur, awarding a compensation of Rs. 35,000/- with 12% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/petitioner has filed the above appeal praying for additional compensation of Rs. 65,000/- together with interest.

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

On 30.12.1996, at about 06.00 p.m. the claimant was walking along with one Thimmarayappa (a) Krishnappa on the Royakottai - Selamangalam National Highways Road, when they were nearing railway gate, a Tempo van bearing registration No. TN29 W1838 came with high speed in a negligent manner and dashed against the claimant. In the result, the claimant sustained injury in his head, left side of shoulder, left side of ear, left leg knee, fracture in left side rib bone and also sustained injuries all over his body. Immediately, he was taken to the Thenkanikottai Government Hospital for preliminary treatment. Thereafter, he was taken to St. John's Hospital, Bangalore, for better treatment. Further, he

was taken to Nimmons Hospital, Bangalore and Victoria Hospital, Bangalore. The claimant had taken treatment for two days as inpatient in Victoria Hospital, Bangalore and for three days as inpatient in Government Hospital. After the said accident, the claimant is unable to do his normal work. Before the said accident, he was a Carpenter and he was earning a sum of Rs. 3,000/- per month. The said accident had happened only due to the rash and negligent driving of the driver of the first respondent's van. The said van bearing registration No. TN29 W1838 insured with the second respondent namely The New India Assurance Co., Ltd., as such, the owner of the vehicle and the New India Assurance Co., Ltd., are jointly and severally to pay the compensation to the claimant.

4. The first respondent, in his counter statement, opposed the claim of claimant stating that he denied the rash and negligent driving of the driver of the van. The driver of the van had observed all traffic rules while driving the vehicle. The claimant was driving his scooter with high speed in a negligent manner, came in the middle of the road and lost his control near by railway speed breaker and dashed against the van. As such, the said accident happened. So, due to the rash and negligent driving of the driver of the scooter, the accident had happened. As such, the respondents are not liable to pay any compensation to the claimant. The second respondent has also filed a counter statement and resisted the claim of the petitioner. The second respondent, the New India Assurance Co., Ltd., has stated that at the time of accident, the driver of the van had no valid driving licence, as such the driver of the vehicle breached the policy conditions. Hence, the second respondent, Insurance Company is not liable to pay any compensation to the claimant. The driver of the van had driven his vehicle without valid driving licence and caused the said accident. So, the second respondent is not liable to pay any compensation to the claimant. The owner of the vehicle is liable to pay compensation to the claimant.

5. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Was the accident caused due to the negligence of the driver of the Tempo van?

(ii) Whether the petitioner is entitled to get compensation as claimed in his claim petition? If so, what is the quantum of compensation, which he is entitled to get?

6. The petitioner was examined as PW1 and he deposed in his evidence that he was proceeding with his friend Thimmaroyappa, towards Kelamangalam from Royakottai, when they were nearing railway gate, a Tempo van came from the opposite direction and dashed against the claimant. He had fallen down. In the result he sustained injury on his head, ear, left shoulder, left knee and all over the body. Immediately, he was rushed to Thenkanikottai Government Hospital for preliminary treatment. Thereafter, he was rushed to St. John's Hospital, Nimmons Hospital and Victoria Hospital at Bangalore, for treatment. Subsequently, he had taken treatment as inpatient for a period of five days in Thenkanikottai Government Hospital. Further, he adduced that at the time of

accident, he was a Carpenter and earned a sum of Rs. 3,000/- per month. At the time of accident, the petitioner was walking with his friend towards Kelamangalam from Royakottai. On the other hand, the first respondent has stated in his counter statement that when the petitioner and his friend were travelling in a scooter, the accident had happened. Difference of opinion arising from the claimant's side as well as the first respondent's side. Further, the first respondent disclosed in his counter statement that at the time of accident, the claimant was not having valid driving licence, hence, he wantedly made a false representation stating that himself and his friend were walking on the Royakottai - Kelamangalam Highways road. Considering the claimant's statements and the first respondent's counter statement, the Tribunal has come to the conclusion that the driver of the van had driven the vehicle in a rash and negligent manner and dashed against the claimant, as such, the accident had happened. So, the owner of the vehicle is liable to pay compensation. The said vehicle insured with the second respondent and as such both the respondents are to pay the compensation to the claimant jointly and severally. At the time of adducing evidence, on the side of the claimant exhibits P1 to P8 were marked namely Ex.P1, the FIR; Ex.P2, the Wound Certificate; Ex.P3, copy of the Insurance Policy; Ex.P4, the History of medical treatment; Ex.P5, Letter given by St.John Hospital, Bangalore to the claimant; Ex.P6, Medical Bills; Ex.P7, Medical records issued by Nimmons Hospital, Bangalore and Ex.P8, Disability Certificate dated 20.11.1999. On the respondents' side no witness was examined and no documents were marked to prove their case.

7. The claimant, in his evidence, has stated that initially he had taken treatment at Thenkanikottai Government Hospital for which Ex.P2, Wound Certificate was marked. As per Ex.P2, the claimant sustained grievous injuries and one simple injury. Further, the claimant adduced evidence that he took treatment at Nimmons Hospital, Bangalore, thereafter he took treatment at St.John's Hospital at Bangalore. The said St.John's Hospital referred the claimant to take treatment in another hospital, as such, he took treatment in Nimmons Hospital at Bangalore. To prove the same, Ex.P7 was marked. As per Exs.P2 and P7, Wound Certificates, the Tribunal decided to give compensation to the claimant. Ex.P6, Disability Certificate issued by Doctor, who stating that the claimant sustained 35% disability in the said accident. But Ex.P6 issued by the Doctor, who did not treat the claimant at the time of accident. The Wound Certificate was issued by the PW2 after three years. The claimant has also submitted medical bills, which were also for a lesser amount. But, the claimant claimed more compensation on various grounds, for which, he has not produced valid documents to prove his claim. However, on the strength of Exs.P2 and P7, the Tribunal decided to give compensation as follows:

1. For pain and suffering, a sum of Rs. 12,000/-,
2. For permanent disability, a sum of Rs. 15,000/-,
3. For medical expenses, a sum of Rs. 5,000/-,

4. For nutrition, damages and attendant charges, a sum of Rs. 3,000/-,

In total, the Tribunal awarded a sum of Rs. 35,000/- as compensation to the claimant, together with interest at the rate of 12% per annum, from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 43 of 1997, on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

8. The Tribunal further directed the respondents to deposit the award amount within a period of two months from the date of receipt of its Order. After depositing the said award amount, into the credit of the M.C.O.P. No. 43 of 1997, on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur, in turn, the said amount to be deposited in a nationalised bank, for a period of three years initially. Further, the Tribunal fixed the Advocate fees at Rs. 15,000/- and awarded costs to the respondents.

9. Aggrieved by the said Award and Decree, dated 03.01.2000, in M.C.O.P. No. 43 of 1997, passed by the Motor Accident Claims Tribunal, Sub Court, Hosur, the claimant has filed the above Civil Miscellaneous Appeal for enhancement of compensation.

10. Supporting to this appeal, the claimant raised the grounds stating that the Tribunal awarded a compensation without considering the evidence and all probabilities of the case; that as per claim petition, the Tribunal ought to have awarded the compensation to the claimant; that the Tribunal has not properly considered the injuries, which were sustained by the claimant on his shoulder bone; that on the strength of the PW2 evidence and Disability Certificates stating that the claimant sustained 35% permanent disability, on the strength of Ex.P2, the Tribunal ought to have granted atleast Rs. 35,000/- to the claimant; that the sum of Rs. 1,00,000/- is reasonable and fair, hence he prayed the Hon"ble Court by way of this petition for additional compensation of Rs. 65,000/- together with interest.

11. The learned Counsel appearing for the appellant further argued that the claimant was a Carpenter, he was earning a sum of Rs. 3,000/- per month. After the said accident, he is unable to do his normal work. Further, he is the only breadwinner of his family. The entire family members depend upon his income. Supporting his claim petition for claiming a compensation of Rs. 1,00,000/- before the Tribunal, he has marked eight documents and also adduced evidence regarding his nature of injuries and mode of medical treatment. Supporting his injuries sustained by the claimant, the PW2, Dr. P.G. Elangovan adduced evidence and issued Disability Certificate, which was marked as Ex.P6. Further, the Doctor, PW2 had adduced stating that the claimant sustained bone fracture on his left shoulder, as such he is unable to move his left leg. After the accident, he is unable to carry any weight or do any hard work. The PW2, Dr. P.G. Elangovan after examining the claimant, issued a Disability Certificate for the disability of 35% sustained by the claimant. These are all not considered by the

Tribunal. Further, the learned Counsel appearing for the appellant submitted that the claimant took treatment in various hospitals namely Government Hospital at Thenkanikottai and other three hospitals at Bangalore, for which the medical expenses incurred was extensive.

12. The learned Tribunal had not properly considered the medical expenses, mode of treatment and nature of injuries. Hence, the learned Counsel appearing for the appellant prayed before this Court to grant additional compensation of Rs. 65,000/-.

13. The learned Counsel appearing for the respondents argued that the Tribunal granted award on various heads namely pain and suffering, for permanent disability, for medical expenses, nutrition and attendant charges. The award passed by the Tribunal is a well considered one after scrutiny of the documents, which were marked by the claimant and also evidence adduced by the PW1 and PW2. As such, there is no error in the Award and Decree, dated 03.01.2000, in M.C.O.P. No. 43 of 1997, passed by the Motor Accident Claims Tribunal, Sub Court, Hosur.

14. After considering the award and decree and arguments advanced on the either side, this Court is of the view that the award amount of Rs. 35,000/- granted by the Tribunal is on the lower side. Hence, this Court decides to enhance the compensation as follows:

1. For permanent disability, the Tribunal awarded a sum of Rs. 15,000/-. This Court enhances the award to Rs. 35,000/- under the head of permanent disability and loss of income.

2. For pain and suffering, the Tribunal awarded a sum of Rs. 12,000/-. This Court enhances the award to 15,000/- under this head.

3. For medical expenses, the Tribunal awarded a sum of Rs. 5,000/-. This Court confirms the award under this head.

4. For transport expenses, this Court awarded a sum of Rs. 2,000/-.

5. For nutrition, attendant charges and damages, the Tribunal awarded a sum of Rs. 3,000/-. This Court awarded a sum of Rs. 3,000/- under the head of nutrition.

6. For attendant charges, this Court awarded a sum of Rs. 2,000/-.

In total, this Court granted a sum of Rs. 62,000/- as compensation to the claimant.

15. As per the Award and Decree, dated 03.01.2000, in M.C.O.P. No. 43 of 1997, passed by the Motor Accident Claims Tribunal, Sub Court, Hosur, the award amount of Rs. 35,000/- carried 12% interest. The additional award amount of Rs. 27,000/- will carrying interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 43 of 1997, on the file of the Motor Accident Claims Tribunal,

Sub Court, Hosur, which is fair and equitable in the circumstances of the case. Therefore, this Court hereby directs the respondents to deposit the additional award amount of Rs. 27,000/- together with interest at the rate of 7.5%, into the credit of the M.C.O.P. No. 43 of 1997, on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

16. After such deposit is made by the respondents, into the credit of the M.C.O.P. No. 43 of 1997, on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur, the claimant is liberty to withdraw the said amount, by making proper application, in accordance with law.

17. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 03.01.2000, in M.C.O.P. No. 43 of 1997, passed by the Motor Accident Claims Tribunal, Sub Court, Hosur, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.