

(2010) 10 MAD CK 0230

Madras High Court (Madurai Bench)

Case No: C.M.A. 1218 of 2003

T. Selvaraj

APPELLANT

Vs

Arumugham Pillai, P. Narayana
Das and National Insurance Co.
Limited

RESPONDENT

Date of Decision: Oct. 25, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 338

Hon'ble Judges: P.P.S. Janarthana Raja, J

Bench: Single Bench

Advocate: T. Selvakumaran, for G. Alex Benziger, for the Appellant; N. Vijaya Raghavan, for R 3, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

This appeal is preferred by the Appellant-claimant against the judgment and Decree dated 26.06.2001 made in M.A.C.T.O.P. No. 7 of 2001 on the file of the Motor Accidents Claim Tribunal, the Principal Sub Court, Nagercoil.

2. Background facts in a nutshell are as follows:

The injured-Selvaraj met with motor traffic accident on 21.01.1998 at about 10.00a.m. The said injured was riding his Hero Honda bike bearing Registration No. TN-74-A-2335 with a pillion rider in the Nagercoil-Tirunelveli Highways Road, from South to North direction. When he was proceeding near Asirvatham Petrol Bunk, a lorry belonging to the second Respondent bearing Registration No. KL-7-C-2975 came from the opposite direction (i.e)from North to South direction in a rash and negligent manner and also at high speed and hit the Hero Honda bike. Due to the said impact, the injured-claimant as well as the pillion rider were thrown out of the bike and sustained grievous injuries all over the body. The injured claimant claimed a compensation of Rs. 3,00,000/- before the Tribunal. The said lorry was insured with

the third Respondent/Insurance Company herein, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the rider of the Hero Honda bike or the driver of the lorry belonging to the second Respondent?
2. Whether the claimant is entitled for compensation? if so how much? from whom?
3. What is the rate of interest for the compensation entitled to the claimant?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and awarded a compensation of Rs. 87,745/-with interest at 9% per annum from the date of petition. The details of the compensation are as under:

For loss of income during the treatment period	Rs. 10,800/-
For loss due to 15% disability	Rs. 15,000/-
For pain and suffering	Rs. 20,000/-
For extra nourishment	Rs. 2,000/-
For medical expenses	Rs. 34,545/-
For transport expenses	Rs. 3,400/-

Total	Rs. 85,745/-

Aggrieved by that award, the Appellant-claimant has filed the present appeal for enhancement of the compensation awarded by the Tribunal.

3. Learned Counsel appearing for the Appellant-claimant submitted that the Tribunal has awarded a very low and meagre sum of compensation and the Tribunal ought to have awarded the amount as claimed by the claimant. The Tribunal has not considered all the relevant materials and it has not followed the principles of assessment before passing the award and it is a fit case for enhancement.

4. Learned Counsel appearing for the third Respondent-Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel and perused the materials available on record. On the side of the Appellant-claimant, P.W.1 and P.W.2 were examined and documents Exs.P.1 to P.19 were marked. P.W.1 is the injured claimant and P.W.2 is Dr. Mohandass. Ex.P.1 is the certified copy of the First Information Report. Ex.P.2 is the certified copy of the Rough Sketch. Ex.P.3 is the copy of Charge Sheet. Ex.P.4 is the copy of Motor Vehicle

Inspector's Report. Ex.P.5 is the copy of Observation Mahazar. Ex.P.6 is the Wound Certificate. Ex.P.7 is the certificate for the treatment taken in Sushrusha Hospital. Ex.P.8 are the Taxi receipts. Ex.P.9 is the Employment Certificate for having worked in Annai Arul Timber shop. Ex.P.10 is the Salary Certificate. Ex.P.11 are the consultation bills. Ex.P.12 are the X-ray bills. Ex.P.13 and Ex.P.14 are the Medical bills. Ex.P.15 is the receipt for Treatment charges. Ex.P.16 are the bills for purchasing equipments. Ex.P.17 are the Prescription bills. Ex.P.18 is the Medical bill. Ex.P.19 is the Disability Certificate. On the side of the third Respondent-Insurance Company, no one was examined and no document was marked to support their case. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. It is a question of fact and therefore the same is confirmed.

6. The injured claimant was 26 years old at the time of accident. In the evidence of P.W.1, it is stated that the injured claimant was a Carpenter and was earning a sum of Rs. 3,600/-p.m. Further in his evidence, it is stated that it was only the driver of the lorry has caused the accident and the driver was charge-sheeted by Kottar Traffic Police Station in Cr. No. 1 of 1998 under Sections 279 and 338 of I.P.C. Due to the accident, the injured-claimant sustained the following injuries:

1. A continuation 6cm x 4cm on the right leg 6cm below the right knee joint.
2. a lacerated wound 3cm x 1/2x1/2cm on the right forehead horizontal in.
3. Abrasion 1cmx1cm on the right knee joint.
4. Abrasion 1cmx1cm on the dorsen of right foot on the spot of the right great toe.

Immediately after the accident, the injured was treated by Dr. Mohan Dass, Nagercoil. P.W.2 is the doctor and he examined the claimant and determined the disability at 15%. Ex.P.19 is the Disability Certificate. Ex.P.6 is the Wound Certificate. Further in the evidence of P.W.2, it is stated that a surgery was done in the Sushrushah Hospital, Nagercoil. The injured was in the hospital from 21.01.1998 to 01.02.1998 as inpatient and plates were also inserted. Further in his evidence, it is stated that he cannot do any strenuous work and he is unable to do his day to day work as before, but there is no categorical statement made by the doctor that the injured cannot do the carpentry work as before. Therefore, the Tribunal has awarded a sum of Rs. 15,000/- for loss due to 15% disability. Normally the Courts award a sum of Rs. 1,000/- to Rs. 2,000/- per percentage of disability. In this case, in the evidence of the doctor, it is stated that the injured claimant cannot do his work as before. Taking into consideration that two surgeries were made and plates were also inserted, it is reasonable to award a sum of Rs. 25,000/- towards loss due to 15% disability as against a sum of Rs. 15,000/- as awarded by the Tribunal. The injured claimant was in the hospital for a period of three months. Therefore, the Tribunal has awarded a sum of Rs. 10,800/- towards loss of income during the

treatment period, which is very reasonable and hence, the same is confirmed. The Tribunal has also awarded a sum of Rs. 20,000/- towards pain and suffering. In this case, the injured was in the hospital for a period of three months and he suffered two fractures due to the accident. Therefore the amount awarded by the Tribunal towards this head is very reasonable and hence, the same is confirmed. The Tribunal has also awarded a sum of Rs. 2,000/- towards extra nourishment, which is very low. The injured claimant was in the hospital for period of three months and after discharge, certainly he would have taken nutritious and healthy food for speedy recovery. Therefore, it is reasonable to award a sum of Rs. 7,000/- towards extra nourishment as against a sum of Rs. 2,000/- awarded by the Tribunal. The Tribunal has also awarded a sum of Rs. 34,545/- towards medical bills. Exs.P.11 to P.16 and P.18 are the series of medical bills. It is an actual expenditure. Therefore, the amount awarded towards this head is very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 3,400/- towards transport charges. Ex.P.8 is the Taxi Receipt. Taking into consideration the same, the amount awarded by the Tribunal towards this head is very reasonable and hence, the same is confirmed. Further, the Tribunal has not awarded any amount towards attendant's charges. There is no dispute that the injured claimant was in the hospital for a period of three months. Therefore, it is reasonable to award a sum of Rs. 5,000/- towards attendant's charges. The Tribunal has also awarded 9% interest p.a. from the date of petition. After taking note of the date of accident, the date of award and also the prevailing interest during the period, the interest rate awarded by the Tribunal is very reasonable and hence, the same is confirmed.

7. The details of the modified compensation as per the above discussion are as under:

For loss of income during the treatment period	Rs. 10,800/-
For loss due to 15% disability	Rs. 25,000/-
For pain and suffering	Rs. 20,000/-
For extra nourishment	Rs. 7,000/-
For medical expenses	Rs. 34,545/-
For transport expenses	Rs. 3,400/-
For attendant's charges	Rs. 5,000/-

Total	Rs.1,05,745/-
Less the amount awarded by the Tribunal	Rs. 85,745/-

Enhanced amount	Rs. 20,000/-

For the enhanced compensation of Rs. 20,000/- the claimant is entitled to interest at 7.5%p.a. from the date of petition.

8. Under these circumstances, the second Respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 20,000/-with 7.5% interest p.a. from the date of claim petition within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same on making proper application.

9. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.