
(2010) 09 MAD CK 0279

Madras High Court

Case No: C.M.A. No. 3624 of 2005

G. Maheswari

APPELLANT

Vs

M. Arunagiri and United
India Insurance Co. Ltd.

RESPONDENT

Date of Decision: Sept. 14, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170

Citation: (2010) 09 MAD CK 0279

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

Bench: Single Bench

Advocate: N.M.C. Babu, for the Appellant; K. Ramamurthy, for R2, for the Respondent

Final Decision: Allowed

Judgement

C.S. Karnan, J.

The above appeal has been filed by the Appellant/claimant against the award and decree passed by the learned Motor Accident Claims Tribunal/Additional District and Session Court (IV Judge, Fast Track Court), in MCOP No. 3567/2000, dated 31.08.2004 awarding a compensation of Rs. 75,000/- with interest at the rate of 9% per annum, from the date of filing the claim petition till the date of payment of compensation.

2. Having not been satisfied with the award and decree passed by the Motor Accident Claims Tribunal, the claimant has filed the above appeal for additional compensation of Rs. 1,25,000/- with interest.

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

On 17.07.2000, at about 12.40. p.m. the Petitioner was walking on Ennore Express Road, Chennai-19, from South to North when the Tractor lorry bearing Registration No. TDS 6804 was coming behind the Petitioner at a high speed and in a rash and negligent

manner and dashed against the Petitioner, causing her grievous injuries. The first Respondent is the owner of the vehicle and the second Respondent is the insurer of the lorry, are jointly and severally liable to compensate the Petitioner. As such, she claimed a compensation of Rs. 2,00,000/-.

4. The second Respondent/United India Insurance Company has filed counter statement and resisted the claim petition as follows:

2. The II Respondent totally denied the accident alleged to have occurred to the pedestrian Petitioner herein by the offending Trailer Lorry bearing Regn. No. TDS 6804 on 17.7.2000 at about 12.40. p.m. on Ennore Express Road, Chennai 600019.

3. The II Respondent herein totally denied the Insurance Policy of the offending Trailer Lorry and moreover other vehicular particulars of the Trailer-Lorry is also denied.

4. The II Respondent totally denies the driving licence of the driver in charge of offending Trailer lorry at the time of the alleged accident.

5. The II Respondent submits that even assuming that the accident had occurred the contributory negligence on the part of the pedestrian Petitioner should be taken into account while computing the Award.

6. The II Respondent humbly submits that the II Respondent may be permitted to file a petition u/s 170 of the Motor Vehicles Act 1988 and an additional counter as and when the need arises.

7. The II Respondent thus submits that the II Respondent is not liable to compensate the Petitioner pedestrian herein and if at all any compensation is to be paid it should be only by the I Respondent herein and not by the II Respondent herein.

8. Hence for the above stated reasons the Hon"ble Court may be pleased to dismiss the above Original petition as against the II Respondent herein with costs and thus render justice.

5. The learned Motor Accident Claims Tribunal after considering the claims petition and counter statement of the Respondent had framed two issues for consideration, namely,

(i) Who has caused the said accident?

(ii) Whether the claimant is entitled to get compensation? If so what is the quantum of compensation?

6. On the side of the claimant four witnesses were examined, namely, P.W.1-claimant, P.W.2-Amaladhoss eye witness, P.W.3-Dr.Thyagarajan and P.W.4-Dr.Rasappa and six documents were marked, namely, Ex.P.1 Medical bill issued by the Subam Hospital, Ex.P.2 First Information Report, Ex.P.3 Rough sketch, Ex.P.4 Case sheet, Exs.P.5 and

P.6 Disability Certificate. On the side of the Respondents" no witness examined and no document was marked.

7. P.W.1 the claimant, had adduced evidence stating that on 17.07.2000, at about 12.40 p.m. she was walking from South to North, on the Ennore Express Road. At that time, the Trailer Lorry bearing Registration No. TDS/6804, belonging to the first Respondent and insured with the second Respondent was coming behind the claimant in a rash and negligent manner, at high speed and dashed against the Petitioner. In the result she sustained grievous injuries on her head and eyes. Immediately, she was taken to the Subham Private Hospital, wherein she was treated as out-patient. For further treatment, she was referred to the Stanley Hospital for four days as in-patient.

8. P.W.2, Amaladhoss had also adduced evidence stating that at the time of accident, he was a witness to the said accident. The said accident case was registered by the Investigation Officer in Crime No. 153/H-3/2000.

9. P.W.3, Dr. Thyagarajan had adduced evidence stating that on 04.04.2004, he examined the claimant and verified the medical records and assessed the disability stating that the claimant sustained 25% disability in the said accident. He also marked disability certificate as Ex.P.5.

10. P.W.4., Dr. Rasappa had adduced evidence stating that he examined claimant on 23.04.2004 and he certified that the claimant sustained 15% disability on her eyes. Further, he adduced evidence that her eye movement is reduced and her vision is also impaired. The Doctor further adduced evidence stating that there is no possibility for cure.

11. After considering the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 and the documents marked as exhibits, the Motor Accident Claims Tribunal had come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of lorry and awarded the compensation as follows:

Rs. 5,000/- under the head Nutrition

Rs. 10,000/- under the head medical expenses

Rs. 10,000/- under the head pain and sufferings

Rs. 20,000/- under the head disability sustained in head

Rs. 20,000/- under the head disability sustained in eye

Rs. 10,000/- under the head loss of earning capacity

In total, the Tribunal awarded a sum of Rs. 75,000/- with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation. The Tribunal further directed the Insurance Company to deposit the said compensation

amount within a period of three months from the date of its order. In turn the said amount to be deposited in a Nationalised Bank for a period of three years, in fixed deposit scheme and the Tribunal fixed a sum of Rs. 3,500/- as Advocate fees. Accordingly ordered.

12. Having not been satisfied with the award and decree passed by the Motor Accident Claims Tribunal, in MCOP No. 3567/2000, dated 31.08.2004, the claimant/Appellant has filed the above appeal for an additional amount of Rs. 1,25,000/- with interest.

13. The learned Counsel for the Appellant vehemently argued that the claimant is a fish vendor. After sustaining the injury in head and eyes, she is unable to carry out her avocation as fish vendor and this head was not considered by the learned Tribunal. The learned Counsel further argued that after sustaining injury on her eye, she is unable to do her normal work. Further, her vision became impaired. The Doctor had also adduced evidence stating that her vision will not come to normal condition. The learned Counsel further argued that the award amount granted by the Tribunal is at the lower side considering the nature of injuries i.e., the claimant sustained injuries on her vital organ i.e., her head and eye. Accordingly, he seeks additional compensation of Rs. 1,25,000/-.

14. The learned Counsel for the second Respondent argued that the Tribunal considering all aspects granted the compensation. Further the Tribunal without any documentary evidence, granted Rs. 10,000/- under the head earning capacity, which is not pertinent. The learned Counsel further argued that a sum of Rs. 5,000/- under the head nutrition is also on higher side. The learned Counsel further argued that there is no discrepancies in the said award passed by the Motor Accident Claims Tribunal and hence he prays to dismiss the appeal.

15. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing on either side and award and decree passed by the Motor Accident Claims Tribunal in MCOP No. 3567/2000 dated 31.08.2004, this Court is of the view that considering the grievous injuries sustained by the claimant on her eye and on her head, this Court enhances the compensation as follows:

(i) For 40% disability, this Court awards a sum of Rs. 80,000/-. (ii) the Tribunal awarded a sum of Rs. 5,000/- under the head nutrition, and this Court enhances it to Rs. 10,000/- under the head of nutrition (iii) The Tribunal awarded a sum of Rs. 5,000/- under the head of transport charges and this Court enhances it to Rs. 10,000/-. The Tribunal awarded a sum of Rs. 10,000/- under the head medical expenses, this Court confirms the same as it is pertinent. (iv) The Tribunal awarded a sum of Rs. 10,000/- under the head pain and sufferings, this Court enhances it to Rs. 15,000/-. (v) The Tribunal awarded a sum of Rs. 20,000/- under the head of disability sustained in head and another Rs. 20,000/- under the head disability sustained in the eye, this Court confirms the same as it is pertinent. (vi) The Tribunal awarded a sum of Rs. 10,000/- under the head loss of earning capacity, this Court confirms the same as it is pertinent. Therefore, this Court awards an additional

compensation of Rs. 1,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment of compensation.

16. This Court directs the Respondent Insurance Company to pay the additional compensation amount of Rs. 1,00,000/- with interest as observed above within a period of six weeks, from the date of receipt of a copy of this order, into the credit of the Motor Accident Claims Tribunal, in MCOP No. 3567/2000. After such deposit is made, it is open to the claimant to withdraw the entire compensation amount with accrued interest, lying in the credit of the MCOP No. 3567/2000, on the file of the Motor Accident Claims Tribunal after filing necessary payment application in accordance with law.

17. In the result, the above appeal is partly allowed and the award and decree passed by the Motor Accident Claims Tribunal, in MCOP No. 3567/2000 dated 31.08.2004 is modified. No costs.