

(2009) 08 MAD CK 0372

Madras High Court

Case No: C.M.A. No. 1163 of 2009 and M.P. No's. 1 and 2 of 2009

United India Insurance Company
Limited

APPELLANT

Vs

S. Srinivasan and G. Venkatesan

RESPONDENT

Date of Decision: Aug. 17, 2009

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

Bench: Single Bench

Advocate: S. Arunkumar, for the Appellant; V. Jaganathan, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

The appeal is preferred by the appellant/Insurance Company against the award dated 12.11.2008 made in MCOP No. 882 of 2005 by the Motor Accident Claims Tribunal (Sub Court) Thiruvallur.

2. Background facts in a nutshell are as follows:

The first respondent-claimant was injured in a motor vehicle accident that took place on 28.05.2005 at about 5.30a.m. The first respondent/claimant was proceeding in his motor cycle bearing registration No. TN 23 AZ 3359 from Arakonam to Kancheepuram. While he was nearing Parameshwaramangalam, a van bearing registration No. TN-20 E 7276, which was belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner and dashed against the claimant. Due to which, the claimant sustained injuries. Immediately he was admitted in the Government Hospital, Arakonam and later referred to Government General Hospital, Chennai for better treatment. He claimed a sum of Rs. 5,00,000/- as compensation. The appellant-Insurance company 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 driver of the first respondent's Van?

2. Whether the claimant is entitled to any claim? If so, how much?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of the first respondent and awarded a compensation of Rs. 2,73,000/- with interest at 7.5% per annum from the date of petition and the details of the same are as under:

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|--|----------------|
| Permanent disability | Rs. 1,40,000/- |
| Loss of income during treatment period | Rs. 15,000/- |
| Transport charges | Rs. 5,000/- |
| Extra nourishment | Rs. 3,000/- |
| Medical expenses | Rs. 5,000/- |
| Pain and suffering | Rs. 30,000/- |
| Future loss of income | Rs. 75,000/- |
| | ----- |
| Total | Rs. 2,73,000/- |
| | ----- |

Aggrieved by that award, the appellant/Insurance company has filed the present appeal.

3. The learned Counsel appearing for the appellant/Insurance Company questioned only quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and the Tribunal ought not to have awarded Rs. 75,000/- towards future loss of income when the Tribunal already awarded a sum of Rs. 1,40,000/- towards 70% disability and that therefore, the award passed by the Tribunal is not in accordance has to be set aside.

4. Learned Counsel appearing for the first respondent/claimant 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. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P17 were marked. On the side of the appellant-Insurance company no witness was examined and no document was marked to support their claim. P.W.1 is the claimant. PW2 is Doctor Saichandran. Ex.P1 is the copy of the First Information Report. Ex.P2 is the copy of the Rough sketch. Ex.P3 is the O.P chit issued by General Hospital, Arakonam. Ex.P4 is the Discharge certificate dated 6.07.2005. Ex.P5 is the Discharge certificate dated 16.09.2005. Ex.P6 is the Discharge certificate dated 24.4.2007. Exs.P7 and P8 are Medical receipts. Ex.P9 is X-ray. Ex.P10 are the series of medical bills. Ex.P11 is the record sheet. Ex.P12 is the photo of the claimant. Ex.P13 is the railway tickets. Ex.P14 is the receipt for+ payment of premium. Ex.P15 is the X-ray. Ex.P16 is the disability certificate. Ex.P17 is the X-ray. After considering the 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 first respondent's Van and the finding is based on valid materials and evidence.

6. At the time of accident, the claimant was aged about 50 years. He is working as Mason and earning Rs. 200/- per day and Rs. 5,000/- per month. PW1-claimant has deposed that while the first respondent/claimant was proceeding in his motor cycle bearing registration No. TN 23 AZ 3359 from Arakonam to Kancheepuram, a van bearing registration No. TN-20 E 7276, which was belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner and dashed against the claimant. Due to which, he sustained following injuries.

Left leg fracture, Left hand fracture, shaft of femur left fracture, left forearm both bone fracture, Grade II compound, both bones left leg fracture, metacarpal left 3rd fracture, head injury and multiple injuries all over the body.

Immediately he was admitted in Government Hospital, Arakonam and later at Government General Hospital, Chennai. He deposed that due to the injuries sustained, he is unable to do the normal work. PW1 further deposed that he took treatment in Government General Hospital, Chennai from 28.05.2005 to 06.07.2005 as in patient and from 14.08.2005 to 16.09.2006 as out patient. Further he took treatment from 4.04.2007 to 24.04.2007 as inpatient. Exs.P4 to P6 are the discharge certificates issued on various dates. Ex.P10 series show that he purchased medicines for a sum of Rs. 4,191/-. PW2-Dr. Saichandran, who examined the claimant, has issued Ex.P16 disability certificate to the extent of 70% and deposed that the claimant has sustained fracture in his left hand and left leg and plate screw have been fixed and movement in his left hand was reduced. He further deposed that due to the injuries suffered, he cannot walk or run for a long time. After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs. 1,40,000/- towards 70% permanent disability. Normally the Courts used to award Rs. 1000/- to 2000/- per percentage of disability. In this case, Rs. 2000/- was awarded per percentage of disability and for 70% Rs. 1,40,000/- was awarded under this head. There is no dispute regarding the same. Hence, I feel that the amount awarded under this head is very reasonable and the same is confirmed. Though the claimant deposed that he was earning Rs. 5,000/- per month, no document was marked to substantiate the same. Hence, the Tribunal has fixed the monthly income at Rs. 3,000/- p.m. It is seen from Exs.P4 to P6-discharge certificates that the claimant undergone surgery thrice and took treatment from 28.05.2005 to 24.04.2007. The period of treatment is long one. Considering the same the Tribunal has awarded only a sum of Rs. 15,000/- towards loss of income during treatment period, which I feel is very low and the same is modified to Rs. 25,000/- as against Rs. 15,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5000/- towards transport charges, which is very low. The claimant took initial treatment at

Government Hospital, Arakonam and later took treatment thrice at Government General Hospital, Chennai on various dates. Hence, it would be very reasonable to award a sum of Rs. 7,500/- under this head as against Rs. 5,000/-. The Tribunal has awarded a sum of Rs. 3000/- towards extra nourishment. Considering the period of treatment, it would be reasonable to award a sum of Rs. 5,000/- as against Rs. 3,000/-. The Tribunal has awarded a sum of Rs. 5000/- towards medical expenses, which is an actual expenditure incurred by the claimant. Ex.P10 series are medical bills. Hence the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 30,000/- towards pain and suffering. Considering the nature of injuries sustained, I feel that the amount awarded under this head is very reasonable and the same is confirmed. Further, the Tribunal has awarded a sum of Rs. 75,000/- towards future loss of income. The learned Counsel appearing for the appellant submitted that apart from awarding Rs. 1,40,000/- towards permanent disability, the Tribunal ought not to have awarded a sum of Rs. 75,000/- towards future loss of income. A Full Bench of this Court in the case of [Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others,](#) held that whenever compensation towards permanent disability is awarded, further amount towards loss of income should not be awarded. Applying the principle enunciated in the above Full Bench decision of this Court, the award of the Tribunal in respect of future loss of income at Rs. 75,000/- is not in accordance with law and is, therefore, set aside. The details of the modified compensation as per the above discussion are as under:

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|--|----------------|
| Permanent disability | Rs. 1,40,000/- |
| Loss of income during treatment period | Rs. 25,000/- |
| Transport charges | Rs. 7,500/- |
| Extra nourishment | Rs. 5,000/- |
| Medical expenses | Rs. 5,000/- |
| Pain and suffering | Rs. 30,000/- |
| | ----- |
| Total | Rs. 2,12,500/- |
| | ----- |

Therefore, the claimant is entitled to the modified compensation of Rs. 2,12,500/- as against the compensation of Rs. 2,73,000/- awarded by the Tribunal. The Tribunal has fixed the rate of interest at 7.5% p.a from the date of petition, which I feel is very reasonable and the same is confirmed.

7. The learned Counsel appearing for the appellant-Insurance company has submitted that already entire award amount has been deposited as per order of this Court dated 30.04.2009. The claimant is permitted to withdraw the modified award amount of Rs. 2,12,500/- with interest at 7.5% p.a. from the date of petition, after adjusting the amount, if any, already withdrawn. The appellant-Insurance company is also permitted to withdraw the balance amount on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently connected miscellaneous petitions are closed.