(2009) 12 MAD CK 0173

Madras High Court

Case No: C.M.A. No. 2364 of 2007 and M.P. No. 1 of 2007

The New India Assurance Co. Ltd.		APPELLANT
	Vs	
Selvaraj, Subramaniam and Krishnamoorthy		RESPONDENT

Date of Decision: Dec. 18, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 338
- Workmens Compensation Act, 1923 - Section 30, 4, 4(1)

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

Bench: Single Bench

Advocate: K. Padmanabhan, for the Appellant; J.C. Vasudevan, for R1 and V. Bharathidasan, for R3, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.

The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree, dated 29.03.2007, made in M.C.O.P. No. 46 of 2007, on the file of the Motor Vehicles Accident Claims Tribunal, Fast Track Court No. II-cum-Additional District Judge, Gobichettipalayam, awarding a compensation of Rs. 3,27,870/- with 7.5% interest per annum from the date of filing the petition till the date of payment of the compensation.

2. Aggrieved by the said Order, the appellant/second respondent, The New India Assurance Co., Ltd., has preferred the above appeal praying to set aside the above award and decree passed by the Tribunal.

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

On 02.08.2004, at about 19.30 hrs, the petitioner was riding his motorcycle bearing registration No. TN28 Y6708, on Sathy to Goby Road near Avasur Town, from west to east at a moderate speed. At that time, the driver of the motorcycle bearing registration No. TDE322 and driven by its rider, on Krishnamoorthy, in a rash and negligent manner at high speed from west to east, turned towards south, without giving any signal or horn and dashed against the petitioner''s vehicle. Due to the accident, the petitioner fell down on the road, his head was fractured and his left clavicle was fractured. Immediately, the petitioner was admitted at Ramakrishna Hospital, Coimbatore. His motorcycle was also fully damaged. The accident happened only due to the rash and negligent driving of the motorcycle bearing registration No. TDE322.

4. Immediately after the accident, the Kadathur Police has registered a case in Kadathur Police Station as Crime No.382/2004, under Sections 279 and 338 I.P.C.

5. At the time of the accident, the age of the petitioner was 22 years. He was hale and healthy. He was working as a labourer in Rokini Mill at Indiyampalayam and earned a sum of Rs. 3,000/- per month and was also having land from which he earned a profit of Rs. 50,000/- per year. He was also doing milk business from which he earned a sum of Rs. 5,000/- per month. He is the only earning member in his family. He has sustained permanent disability in the accident and so has claimed a compensation of Rs. 6,00,000/- from the first respondent, the owner of the motorcycle bearing registration No. TDE322 and its insurer, the second respondent, with interest at the rate of 12% per annum from the date of filing the claim petition till the date of payment.

6. The second respondent, the New India Assurance Co., Ltd., in its Counter, has resisted the claim stating that the number of injuries, nature of injuries, the nature of treatment, the duration of treatment and the various disabilities alleged to have been caused as a result of the injuries are not admitted. As the petitioner had taken treatment in the private Hospital at Coimbatore for a short period only, it is evident that he had only sustained minor injuries. Further, the vehicle bearing registration No. TDE322 had not been insured with the second respondent at the time of the accident. The first respondent had already sold his vehicle to one Mr.Krishnamurthy, the driver of the said vehicle bearing registration No. TDE322, before the accident. But, the insurance policy was not transferred to the subsequent owner. Further, the age, income and monthly occupation of the petitioner was not admitted. Further, the compensation claimed under various heads in the claim petition are not true and hence has prayed for dismissal of the claim petition.

7. Based on evidence on record, the Tribunal had held that the third respondent, the driver of the said vehicle bearing registration No. TDE322, who was impleaded as a necessary party, was negligent and that only his rash and negligent driving was the cause for the accident. In the appeal preferred by the appellant, the only dispute is on the quantum of the compensation and the findings of the Tribunal regarding

negligence was not disputed. Hence, this Court confirms the finding of the Tribunal on negligence.

8. For determining the quantum of compensation payable to the petitioner, the Tribunal considered the evidence given by the PW1 and PW2, the petitioner and the Doctor, who certified disability and relied on exhibits marked by them as P1 to P16. On the respondents side, no oral or documentary evidence was furnished.

9. PW1, in his claim petition and also in evidence adduced before the Tribunal has stated that in the said accident, he had sustained fractures in his head and that he has severe pain in the centre of his head; that his right shoulder bone had been fractured and that he had sustained blood injuries on the right side of his head. He had stated that he had taken treatment at Ramakrishna Hospital, Coimbatore and that his motorcycle had also been totally damaged. He had stated that his age at the time of the accident was 24, and that he was working at Indiampalayam Rohini Mills as a Coolie and earning a sum of Rs. 3,000/- per month; that he was also a agriculturist and was earning a sum of Rs. 50,000/- per year; that he was a milk vendor and earning a sum of Rs. 5,000/- per month and that after the accident he has not been able to work and has claimed a compensation of Rs. 6,00,000/- towards loss of earning capacity, pain and suffering due to disability, loss of income during hospitalisation, medical expenses and for damages to his motorcycle. In support of his claim, he has marked Ex.P2 &#65533; Wound Certificate and Ex.P9 &#65533; Discharge Summary given by Hospital. The Tribunal, on inspection of these documents, decided that the petitioner had sustained fractures in the left forehead and right shoulder and considering that these were grievous injuries awarded a sum of Rs. 25,000/- for pain and suffering undergone by the petitioner.

10. For assessment of disability suffered by the petitioner in the accident, the Tribunal considered the evidence adduced by Dr.Nambiraj, PW2, who had medically inspected the petitioner as to the nature of the injuries, sustained by him. In PW2''s evidence, it has been stated that the petitioner''s right shoulder bones, which had been fractured, had joined in a different way and that the petitioner has reduced shoulder movement of only 75 Degrees as against a normal shoulder movement of 90 Degrees and that he also has reduced bending movement of his arm as only 70 Degrees as against a normal bending of 90 Degrees and that his sideways movement of arm will cause him pain and further adduced that the frontal bone in the skull of the petitioners left head is missing. As such, he had stated that the petitioner had sustained 38% permanent disability and in support of this had marked Ex.P15 &#65533; Permanent Disability Certificate and Ex.P16 &#65533; X'' rays. The Tribunal on scrutiny of Ex.P15, concluded that assessment of PW2 as regards disability was slightly higher decided that the petitioner had sustained only 36% disability. Though, the petitioner has stated that he was working as a Coolie in Rohini Mills and was also a milk vendor, has not produced any documentary evidence to back this claim. But, on examination of Ex.P12, the Tribunal concluded

that the petitioner owns agricultural lands. But, no evidence has been furnished by the petitioner to establish that he was earning income from these lands. As such, the Tribunal considered that the notional income of the petitioner could be taken as only Rs. 3,000/- per month and accordingly, fixed has annual earnings at Rs. 36,000/-. Considering that the petitioner had sustained 36% disability, the yearly loss of income suffered by the petitioner was taken as Rs. 36,000/- X 36/100 = Rs. 12,960/-. Considering the age of the petitioner as 22 years at the time of the accident, the Tribunal adopting a multiplier of 17 as per Schedule 2 of Motor Vehicles Act, 1988, awarded a sum of Rs. 12,960/- X 17 = Rs. 2,20,320/- as compensation towards loss of earning capacity due to the disability.

11. For assessment of medical expenses incurred by the petitioner, the Tribunal scrutinised Exs.P11 and P14, the medical bill receipts. The Tribunal did not considered Ex.P14 as the same was not supported by authentic bills. Hence, the Tribunal, only taking medical expenses incurred as per Ex.P11, awarded a sum of Rs. 82,526/- and rounded this off to Rs. 82,500/-. The Tribunal did not award any compensation for transport expenses and nutrition for lack of documentary evidence. As such, the Tribunal granted an award of Rs. 3,27,870/- to the petitioner and directed the respondents to deposit the above award with interest at the rate of 7.5% per annum from the date of petition till the date of payment, into the credit of the M.C.O.P. No. 46 of 2007, on the file of the Motor Vehicles Accident Claims Tribunal, Fast Track Court No. II-cum-Additional District Judge, Gobichettipalayam, within a period of three months from the date of its Order. Further, after such deposit, the award amount should be invested in a Nationalised Bank for a period of three years and the petitioner was directed to pay the Court fees within a period of 15 days. The Advocate fees was fixed at Rs. 9,555/-.

12. The learned Counsel appearing for the appellant has argued in his appeal that the Tribunal should not have awarded a sum of Rs. 2,20,320/- under both heads of disability and also for loss of earning power in view of full Bench Division rendered by this Hon''ble Court in the case of Cholan Roadways Corporation reported in 2006(4) CTC Page No. 433. The learned Judge of the Motor Accidents Claims Tribunal also erroneously adopted a multiplier of 17 after having found that the first respondent was aged 22 years at the time of the accident and arrived at a sum of Rs. 2,20,320/- without deducting 1/3rd share towards personal expenses in view of principles laid down by our Apex Court reported in AIR (2005) SC Page No. 2157 and also as per the decisions rendered by the Division Bench of this Hon''ble Court.

13. The learned Judge of the Motor Accident Claims Tribunal, after having found that the first respondent did not produce any documentary evidence to establish his avocation and also his income ought not to have fixed the income of the first respondent herein as Rs. 3,000/- per month. The Tribunal after having fixed the percentage of disability suffered by the first respondent herein to the extent of 36% ought to have equated the said percentage of disability with the percentage of loss

of earning power, in the absence of any certificate of percentage of loss of earning power by the Doctor (PW2).

14. As such, the award of Rs. 3,27,820/- granted by the Tribunal in favour of the first respondent herein should be scaled down. In support of the arguments, the learned Counsel for the appellants has also cited a legal ruling made in 2009(1) TN MAC 398, High Court of Madras, R. Shankaraj v. H. Rajappa and Ors., wherein it has been stated that where sufficient evidence regarding loss of earning capacity has not been produced, the multiplier method cannot be adopted for assessing the compensation for permanent disability and the only suitable method will be the lumpsum compensation method.

15. The learned Counsel, in support of his case, has cited two cases as follows:

2009(1) TNMAC 718, High Court of Madras, The Management, Tata Coffee Ltd. v. Su. Arulapandy, the relevant head notes of which are as follows:

Workmen''s Compensation Act, 1923, Sections 4 & 30 &#65533; Appeal against award of Compensation &#65533; Workman/Claimant suffered fracture of right arm and injuries to other parts of body &#65533; Disability Certificate assessing loss of earning capacity at 30.78% issued by Doctor P.W.2, who treated claimant &#65533; R.W.1/Doctor examined by Management stating that loss of earning capacity assessed at 30.78% is excessive and should be 8% - Tribunal accepted evidence of P.W.1 examined by Claimant, which is supported by Medical Record/Ex.P.4 and rejected evidence of R.W.1 &#65533; Since, injuries are non-schedule injuries, testimony of Doctor who treated claimant, taken for purpose of determining loss of earning capacity and compensation determined in terms of Section 4(1)(c)(ii) &#65533; Whether W.C. Commissioner erred in rejecting evidence of R.W.1/Doctor examined by Management &#65533; Except oral evidence of R.W.1, no material to controvert evidence of Doctor-P.W.1 &#65533; Evidence of R.W.1 not being supported by documents, evidence of Doctor who treated injured has to be accepted &#65533; Tribunal rightly rejected evidence of R.W.1. and accepted evidence of P.W.2 &#65533; Issue being purely question of fact, no substantial question of law arises for consideration &#65533; Appeal liable to be dismissed.

2009(1) TNMAC 398, High Court of Madras, R. Shankarraj v. H. Rajappa, V. Syed Wahid and Ors., the relevant head notes of which are as follows:

Permanent Disability &#65533; Loss of Earning Capacity &#65533; Assessment &#65533; Injured aged 38 years employed in an industrial concern, suffered fracture of both bones (Radius * ulna) of Right Hand &#65533; Disability assessed and certified at 65% found acceptable &#65533; Injured claimed that he is not in position to use his right hand to do his work, hence he suffered loss of earning &#65533; But, no evidence adduced to show that he lost his employment in Company or his wages reduced &#65533; As no evidence produced with regard to Loss of Earning Capacity and it is obvious from evidence that injured still continued to be employed in same Company, held, not a fit case in which multiplier method could be applied for assessing Permanent Disability &#65533; Only suitable

method, therefore, is lump sum compensation method • Since injured is middle aged, High Court in Appeal awarded Permanent Disability on lump sum basis at rate of Rs. 1,400 per 1% of Disability • Rs. 91,000 awarded in Appeal as against Rs. 20,000/- awarded by Tribunal.

16. The learned Counsel appearing for the respondents argued that the Tribunal awarded the compensation after considering Exs.P9, P10 and P11, P14 and P15 namely, Medical Discharge Summary, Medical Bills, Medical Tax Receipts, Doctor Certificate regarding Medical expenses and Wound Certificate, respectively. On the basis of these documents, the Tribunal awarded a sum of Rs. 82,500/- towards medical expenses. The multiplier method adopted by the Tribunal is also correct. The claimant had sustained grievous injuries on his shoulder, frontal portion of skull and these have also been certified by the Doctor, who examined the claimant.

17. For the foregoing reasons, facts and circumstances of the case, arguments advanced by the learned Counsels on either sides ,this Court is of the view that the claimant has sustained skull injuries and his frontal bone of left side of skull is also missing, as per Doctor''s findings. Further, his shoulder bone has been broken and deformed. Considering the nature of these injuries, the Court is of the view that the claimant will have difficulty in performing labour work in Rohini Mills, Indiyampalayam i.e. his employer. Further, the claimant has to be extra cautious and careful in performing his duties in day to day life due to the loss of his frontal bone in skull. As such, the Court is of the view that the multiplier method adopted by the Tribunal for calculating loss of earning capacity due to disability on the multiplier method cannot be faulted with as the injuries are grievous in nature and is justified in the circumstances of the case, particularly considering that the affected bone is a vital component of the skull, which houses the brain. His shoulder movements also had been reduced. Further, an award of Rs. 25,000/- granted by Tribunal under the head of pain and suffering is also pertinent. As such, the Tribunal findings are well reasoned and fair and so this Court does not wants to interfere with the findings. So, this Court confirms the award of Rs. 3,27,870/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, passed by the Tribunal.

18. On 05.10.2007, this Court imposed a condition on the appellant/New India Insurance Co., Ltd., to deposit the entire award amount to the credit of the M.C.O.P. No. 46 of 2007, on the file of the Motor Vehicles Accident Claims Tribunal, Fast Track Court No. II-cum-Additional District Judge, Gobichettipalayam.

19. As the accident happened in the year 2004, it is open to the respondent/claimant to withdraw the entire compensation amount with accrued interest and cost, lying in the credit of the M.C.O.P. No. 46 of 2007, on the file of the Motor Vehicles Accident Claims Tribunal, Fast Track Court No. II-cum-Additional District Judge, Gobichettipalayam, after filing necessary application, in accordance with law.

20. In the result, the above Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Vehicles Accident Claims Tribunal, Fast Track Court No. II-cum-Additional District Judge, Gobichettipalayam, in M.C.O.P. No. 46 of 2007, is confirmed. Consequently, connected miscellaneous petition is also closed. No costs.