

A.Kotteswaran Vs. S.Punitha

A.Kotteswaran Vs. S.Punitha

SooperKanoon Citation : sooperkanoon.com/1167432

Court : Chennai

Decided On : Jun-20-2013

Judge : C.S.Karnan

Appellant : A.Kotteswaran

Respondent : S.Punitha

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 20.06.2013
CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A.No.2715 of 2004
A.Kotteswaran .Appellant vs 1.S.Punitha 2.M/s.New India Assurance Co.Ltd.,
No.514-515, Gandhi Road, Kancheepuram.Respondents Civil Miscellaneous
Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the
Judgment and Decree dated 03.12.2003 made in M.A.C.T.O.P.No.318 of 1999, on
the file of the Motor Accident Claims Tribunal, Kancheepuram, (Fast Track Court-
II) at Kancheepuram (Additional District Judge, Kancheepuram).For Appellant :
Mr.N.Veerasamy For Respondents:Mr.K.S.Narasimhan (for R2) R1 Ex-parte

JUDGMENT

The claimant had initiated a claim in M.C.O.P.No.318 of 1999, against the owner and insurer of the Auto bearing Registration No.TN-07-Z-7705 stating that on 30.12.1998, at about 6.30 p.m., when he was proceeding on his bicycle on the Kancheepuram main road, the driver of the Auto had driven it in a negligent manner and dashed it behind him.

As a result, he had sustained grievous injuries.

2.The Insurance Company had filed a counter statement and resisted the claim petition.

The respondent submits that the said auto had not been covered under a valid permit, Fitness Certificate and Insurance at the time of accident and that the driver of the auto did not have a valid driving licence at the time of accident.

The averments in the claim regarding age, income and nature of injuries sustained was not admitted.

3.On considering the averments of both parties, the Tribunal had framed 3 issues namely (1) Due to whose negligence was the accident caused?.

Who is liable to pay the compensation?.

(2) Is the claimant entitled to get compensation?.

and (3) To what other relief the claimant is entitled to receive.

4.On the side of the claimant, two witnesses were examined and 60 documents were marked namely F.I.R., Accident report, Medical particulars.Medical bills, Disability certificate and X-rays.

PW1 had adduced evidence that on 30.12.1998, at about 6.30 p.m., when he was riding his bicycle on the Kancheepuram main road, the auto bearing Registration No.TN-07-Z-7705, driven at a high speed, dashed against him.

He further stated that he had sustained injuries on both his legs and he had been hospitalised at K.V.T.Hospital and Bone & Joint Hospital, wherein a surgical operation was conducted and he had been hospitalised for more than one month, as an inpatient.

He deposed that he had spent a sum of Rs.40,000/- towards medical expenses.

5.PW2, Doctor had assessed the disability at 50% and he had adduced evidence that the claimant's right leg had been fractured at 3 places and that the 2nd and

3rd fingers of his right hand had been fractured and bent and that the claimant's left sole had been fractured and the bone bent.

He deposed that the claimant's right leg had been shortened by 2 cMs. He deposed that fluid is oozing from the fractured right leg.

6. RW1 had adduced evidence that he is attached to the R.T.O. office and that the driver of the auto did not possess a valid driving licence.

7. On considering the evidence of the witnesses and on perusing the documents marked by the claimant, the Tribunal had awarded a sum of Rs.1,10,000/- as compensation with interest at the rate of 9% per annum.

Not being satisfied with the quantum of compensation, the claimant has filed the above appeal.

8. The highly competent counsel submits that the accident had been committed by the driver of the auto and the said auto has been insured with the Insurance Company and as such negligence and liability has been proved.

In the said accident, the claimant's right leg had been fractured and a surgical operation has been conducted.

The claimant's right leg had been shortened by 2 cms and his left sole had been fractured and bent.

The claimant had been hospitalised for a period of more than one month at different private hospitals.

He submitted that fluid is oozing from the operated area of the claimant's leg, as per the evidence of the Doctor, who had certified the disability at 50%.

9. The very competent counsel for the Insurance Company submits that adequate compensation has been granted under the relevant heads.

The R.T.O. official had been examined as RW1 and he had adduced evidence that the driver of the auto did not possess a valid driving licence and as such pay and

recovery is applicable in this case and this was not considered by the Tribunal.

The Doctor had assessed the disability at 50% which is on the higher side.

10. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability.

However, the quantum of compensation awarded is on the lower side since the claimant had been hospitalised for more than one month, as an inpatient at private hospitals and during medical treatment period, a surgical operation was conducted and steel plate with screws had been fixed.

It is also seen that the claimant's right leg had been shortened by 2 cms and that he had spent a sum of Rs.40,000/- for medical expenses.

The Doctor had assessed the disability sustained by the claimant at 50%.

Hence, this Court reassesses the compensation as follows:- Rs.50,000/- is awarded towards disability; Rs.40,000/- for medical expenses; Rs.15,000/- towards pain and suffering; Rs.5,000/- towards transport; Rs.5,000/- towards nutrition; Rs.10,000/- towards attender charges; Rs.10,000/- towards loss of earning during medical treatment period and Rs.40,000/- towards loss of amenities and loss of comfort and disfigurement of right leg which had been shortened by 2 cms. In total, this Court awards Rs.1,75,000/- as compensation as it is found to be appropriate in the instant case.

After subtracting initial compensation of a sum of Rs.1,10,000/-, this Court awards Rs.65,000/- as additional compensation.

This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation.

As such, this Court directs the 2nd respondent herein to deposit the additional compensation amount, with added interest thereon, as per this Court's findings, within a period of 4 weeks from the date of receipt of this order.

11.After such a deposit having been made, it is open to the claimant to withdraw the said additional compensation amount, with added interest thereon, lying in the credit of M.C.O.P.No.318 of 1999, on the file of the Motor Accident Claims Tribunal, Kancheepuram, (Fast Track Court-II) at Kancheepuram (Additional District Judge, Kancheepuram).after filing a memo along with a copy of this order.

12.In the result, the above appeal is partly allowed.

Consequently, the judgment and decree passed in M.C.O.P.No.318 of 1999, on the file of the Motor Accident Claims Tribunal, Kancheepuram, (Fast Track Court-II) at Kancheepuram (Additional District Judge, Kancheepuram).dated 03.12.2003, is modified.

No costs.

20.06.2013 vs Index : Yes / No Internet: Yes / No To 1.The Motor Accident Claims Tribunal, Kancheepuram, (Fast Track Court-II) Additional District Judge, Kancheepuram.

2.The Section Officer, VR Section, High Court, Madras.

C.S.KARNAN.J.vs C.M.A.No.2715 of 2004 20.06.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com