

Santhoshkumar Vs. R.Vasudevan

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Court : Chennai

Decided On : Jul-01-2013

Judge : C.S.Karnan

Appellant : Santhoshkumar

Respondent : R.Vasudevan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

01. 07.2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
C.M.A.No.2479 of 2009 & M.P.No.1 of 2012 Santhoshkumar ... Appellant Vs.
1.R.Vasudevan 2.M/s.United India Insurance Company Limited, BOB Building, IV
Floor, State Bank Road, Coimbatore - 641 018. 3.P.Sathishkumar 4.P.Moorthy ...
Respondents PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act, against the fair and decreetal order of the Motor Accident
Claims Tribunal, Additional District Judge, Fast Track Court No.III, at Coimbatore
in M.C.O.P.No.1263 of 2004, dated 16.11.2006. For Appellant : Mr.S.Mukunth For
Respondents : Not ready notice for R1 and R4 Mr.K.S.Narasimhan for R-2
Mr.J.Ashok for R-3 - - -

JUDGMENT

The synopsis of the case are as follows:- On 18.04.2004, at about 10 p.m., when the claimant was travelling as a pillion rider on the motorcycle bearing registration No.TN-37-W-2407, on the Coimbatore Main road, another motorcycle bearing registration No.TN-36-B-4469, ridden at a high speed and in a negligent manner, dashed against him. As a result, he had sustained injuries. Hence, the claim has been levelled against the owner and insurer of the motorcycle bearing registration No.TN-37-W-2407.

2. The United India Insurance Company in his counter has submitted that the motorcycle bearing registration No.TN-37-W-2407 had not been insured with their company. It was submitted that the other motorcycle bearing registration No.TN-36-B-4469 had been ridden by its rider in a negligent manner and that it had dashed against the claimant. Further, the respondent denied the averments in the claim regarding age, income, nature of injuries and disability. It was submitted that in the said accident, two vehicles had been involved and as such, contributory negligence has to be attributed on both the drivers of the vehicles involved in the accident.

3. On considering the averments of both parties, the Tribunal had framed four issues, viz., ".(i) Whether the petitioner received severe injuries on account of rash and negligent driving of yamaha or splendor motorcycle?. (ii) Whether the petitioner is entitled to any compensation?. (iii) If so, to what amount and from whom?. (iv) To what other relief?."

4. On the side of the claimant, two witnesses were examined and 21 documents were marked as Exs.P1 to P21, viz., Ex.P1-copy of F.I.R., Ex.P2-copy of rough sketch, Ex.P3-copy of Motor Vehicle Inspector's Report, Ex.P4-certified copy of wound certificate, Ex.P5-copy of charge sheet, Ex.P6-copy of judgment, Ex.P7-discharge summary, Exs.P8 to P10-medical bills, Ex.P11-certificate, Ex.P12-C.T.scan report, Ex.P13-ECG report, Ex.P14-O.P.record, Exs.P15 & 16-medical bills, Ex.P17-medical bills assessment sheet, Ex.P18-X-ray series, Ex.P19-scan films series, Ex.P20-X-ray series, Ex.P21-disability certificate. On the respondents side, no witness, no documents.

5. P.W.1 had adduced evidence that on 18.04.2004, when he was travelling as a pillion rider on the motorcycle bearing registration No.TN-37-W-2407, on the Coimbatore Main Road, the rider of the motorcycle rode it in a negligent manner and at a high speed and dashed against another motorcycle bearing registration No.TN-36-B-4469 and caused the accident. He further stated that he had sustained injuries on his facial bones, left collar bone, right wrist and sustained grievous injuries on his legs. He deposed that he had been hospitalized for about two months as an inpatient.

6. P.W.2, doctor had spoken on the same lines of P.W.1 regarding nature of injuries and mode of treatment and had certified that the claimant had sustained 75% disability.

7. On recording the evidence of the witnesses and on scrutiny of documentary exhibits marked by the claimant, the Tribunal had awarded a sum of Rs.3,50,000/- as compensation with interest at the rate of 7.5% per annum.

8. Not being satisfied with the award passed by the Tribunal, the claimant has filed the above appeal for additional compensation.

9. The highly competent counsel, Mr.S.Mukunth submits that the claimant had sustained 75% disability since he had sustained multiple bone fracture injuries and he had been hospitalized for about 2 months as an inpatient and he had spent a sum of Rs.1,79,270/- for medical expenses. The Tribunal had not granted an adequate compensation under the relevant heads.

10. The very competent counsel, Mr.K.S.Narasimhan, for the Insurance Company submits that in the said accident, two vehicles had been involved and as such, contributory negligence has to be attributed in the instant case. Further, the Tribunal had adopted multiplier method to grant compensation under the head of disability, which is not appropriate. Further, the Tribunal had granted an adequate compensation to the claimant.

11. Mr.J.Ashok, learned counsel for the third respondent submits that the all the relevant issues had been framed by the Tribunal and it had been decided in an

appropriate manner and as such, the above appeal is not maintainable.

12. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides 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 is on the lower side, as the claimant had spent a sum of Rs.1,79,270/- for medical expenses and he had sustained 75% disability as per medical practitioner's certificate. Hence, this Court reassesses the compensation as follows:- Rs.75,000/- is awarded for disability; Rs.1,80,000/- towards medical expenses; Rs.15,000/- towards pain and suffering; Rs.10,000/- towards transport; Rs.10,000/- towards nutrition; Rs.30,000/- towards attender charges; Rs.30,000/- towards loss of earning during medical treatment period and Rs.1,00,000/- for loss of amenities and loss of comfort. In total, this Court assesses a sum of Rs.4,50,000/- as compensation. After subtracting the initial compensation of a sum of Rs.3,50,000/- this Court awards Rs.1,00,000/- as additional compensation as it is found to be appropriate in the instant case. 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.

13. Therefore, this Court directs the respondents 1 to 4 to jointly and severally pay the said amount, within a period of four weeks from the date of receipt of a copy of this order. After such deposit having been made, it is open to the claimant, to withdraw the additional compensation amount, with interest, lying in the credit of M.C.O.P.No.1263 of 2004, on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Coimbatore, after filing a Memo, along with a copy of this order.

14. In the result, the above appeal is allowed. Consequently, the order and decree passed in M.C.O.P.No.1263 of 2004, on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Coimbatore, dated 16.11.2006 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed. 01.07.2013 Index : Yes. Internet : Yes. r n s C.S.KARNAN, J.

r n s To The Fast Track Court No.III, Motor Accident Claims Tribunal, Coimbatore.
C.M.A.No.2479 of 2009 & M.P.No.1 of 2012 01.07.2013

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