

Kumar Vs. K.M.Maheswaran

Kumar Vs. K.M.Maheswaran

SooperKanoon Citation : sooperkanoon.com/1167548

Court : Chennai

Decided On : Jun-17-2013

Judge : C.S.Karnan

Appellant : Kumar

Respondent : K.M.Maheswaran

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

17. 06.2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.No.2750 of 2009 Kumar ... Appellant Vs. 1.K.M.Maheswaran 2.Natarajan 3.The New India Assurance Company , Coimbatore-18. ... Respondents (R-1, driver of van remained exparte before the Tribunal. Hence, notice to R-1 may be dispensed with) PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and award of the Motor Accidents Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Erode in M.C.O.P.No.82 of 2007, dated 24.04.2009. For Appellant : Mr.S.Kaithamalai Kumaran For Respondents : Mr.S.Manohar for R-3 R-1 and R-2 (exparte) - - -

JUDGMENT

The appellant / claimant has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.82 of 2007, on the file of Motor Accidents

Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Erode.

2. The short facts of the case are as follows:- The petitioner, viz., Kumar, has filed the claim in M.C.O.P.No.82 of 2007, claiming compensation of a sum of Rs.5,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident. It was submitted that on 01.11.2006, at 6 p.m., when the petitioner was riding the moped bearing registration No.TN-33-AA-2507, along with one Sathyamoorthi as the pillion rider, on the Perundurai-Kovai National Highway, from North to South, on the extreme left of the road and when the vehicle was near Saralai Kannathalpalayam Pirivu, Arikarupparayankoil, the second respondent's van bearing registration No.TN-37-J-1166, coming from east to west and driven in a rash and negligent manner dashed against the moped. As a result, both the rider and pillion rider of the moped sustained injuries. Hence, the petitioner has filed the claim against the respondents 1 to 3, who are the driver, owner and insurer of the van.

3. The third respondent, in his counter has submitted that the first respondent drove the van in a careful and cautious manner and that the accident was caused only due to the negligence of the rider of the moped. It was submitted that the petitioner has to prove his age, income, occupation, nature of injuries sustained, medical treatment taken and disability sustained through documentary evidence. It was submitted that the claim was excessive.

4. The Motor Accidents Claims Tribunal had framed three issues for consideration in the case, viz., "(i) Due to whose negligence was the accident caused?. (ii) Who is liable to pay compensation to the petitioner?. (ii) What is the quantum of compensation which the petitioner is entitled to get?."

5. In the same accident, another claim has been filed by Sathyamoorthi, the pillion rider of the moped in M.C.O.P.No.81 of 2007, claiming compensation from the same respondents for the injuries sustained by him. Hence, a joint trial was conducted and common evidence was recorded and common judgment was passed. On the petitioner's side, four witnesses were examined and 24 documents were marked as Exs.P1 to P24, viz., Ex.P1-copy of F.I.R., Ex.P2-copy of rough sketch, Ex.P3-copy of observation mahazar, Exs.P4 and P5-Motor Vehicle

Inspector's Report, Ex.P6-copy of wound certificate, Ex.P7-copy of charge sheet, Ex.P8-medical report, Ex.P9-medical and hospital bills, Ex.P10-discharge summary, Ex.P11-copy of criminal Court judgment, Ex.P12-driving licence, Ex.P13-scan report, Ex.P14-wound certificate, Ex.P15-hospital bills, Ex.P16-medical bills, Ex.P17-scan report, Ex.P18-X-rays, Ex.P19-X-rays, Ex.P20-X-rays, Ex.P21-disability certificate issued to P.W.1, Ex.P22-X-rays, Ex.P23-disability certificate to P.W.2, Ex.P24-X-rays. On the respondent's side, no witness, no documents.

6. P.W.1, the petitioner in M.C.O.P.No.81 of 2007 and P.W.2, the petitioner in M.C.O.P.No.82 of 2007 have adduced evidence that the accident had been caused by the rash and negligent driving by the driver of the second respondent's van and in support of their evidence, they had marked Exs.P1 to P24. The Tribunal, on scrutiny of oral and documentary evidence opined that if the drivers of the vehicles involved in the accident had driven it in a moderate speed, the accident could have been averted. Hence, the Tribunal held that the accident had been caused by the contributory negligence of both the drivers and apportioned the negligence in the ratio of 50% :

50. amongst them and held the third respondent, being the insurer of the second respondent's vehicle liable to pay 50% of the compensation assessed to the petitioner.

7. P.W.3, Dr.John Gurupatham had adduced evidence that he had examined the petitioner and observed that due to the accident, the petitioner had sustained fracture of bone in his head and that a surgical operation had been carried out. He deposed that the petitioner had received treatment, as an inpatient in the hospital from 01.11.2006 to 08.11.2006 and certified that the disability sustained by the petitioner was 20%. He deposed that the medical expenses incurred by the petitioner was Rs.45,231.36/-.

8. P.W.2 had further adduced evidence that at the time of accident, he was aged 23 years and was running a power loom and earning Rs.10,000/- per month. However, the Tribunal observed that no documentary evidence had been marked to prove income of the petitioner. The Tribunal, on scrutiny of oral and

documentary evidence, assessed a sum of Rs.15,000/- for pain and suffering; Rs.5,000/- for transport and nutrition; Rs.45,200/- for medical expenses; Rs.20,000/- for disability and Rs.3,000/- for loss of income during medical treatment and convalescence period. In total, the Tribunal assessed a compensation payable to the petitioner as Rs.88,200/- and hence awarded 50% of the compensation amount assessed i.e., Rs.44,100/- as compensation to the petitioner and directed the third respondent to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the petition till date of payment of compensation, with costs, within two months from the date of its order.

9. Not being satisfied by the award passed by the Tribunal, the claimant has preferred the present appeal.

10. The learned counsel for the appellant has contended in his appeal that the Tribunal erred in fixing the negligence at 50% :

50. on the claimants and driver of the van, without considering the rough sketch (Ex.P2). observation mahazar (Ex.P3) and Motor Vehicle Inspector's Reports (Exs.P4 and P5). It was contended that the Tribunal ought to have fixed the entire liability on the driver of the van and ought to have directed the third respondent / Insurance Company to pay the entire compensation assessed to the claimant / appellant herein. It was contended that the Tribunal failed to note that the claimant had sustained head injury and his disability was assessed at 20% by P.W.3 and as such, an award of Rs.20,000/- for disability is not a just compensation. It was contended that the Tribunal ought to have fixed Rs.2,000/- for 1% disability by considering the age of the claimant and injuries sustained. It was also contended that the Tribunal failed to note that the claimant was admitted as an inpatient for nearly 7 days and could not carry out his profession and hence, a sum of Rs.3,000/- for loss of income during treatment period is meagre. It was also contended that the award granted for pain and suffering and mental agony was also on the lower side and hence, it was prayed to grant additional compensation of Rs.1,00,000/-.

11. The very competent counsel for the Insurance Company Mr.S.Manohar submits that the claimant had sustained simple injuries but the doctor had

assessed the disability at 20% which is on the higher side. Further, the accident had been committed by the rider of the motorcycle and as such, the entire negligence has to be apportioned on the side of the rider of the motorcycle. However, the Tribunal had granted an adequate compensation to the claimant. As such, the appeal is not maintainable.

12. On considering the facts and circumstances of the case and arguments advanced by the learned counsels 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 is on the lower side, since the claimant had spent a sum of Rs.45,231.36/- for medical expenses alone and he had sustained head injuries and a surgical operation had been conducted. Therefore, this Court reassesses the compensation as follows:- Rs.40,000/- is awarded for disability; Rs.45,200/- is awarded for medical expenses; Rs.10,000/- towards nutrition; Rs.10,000/- is awarded for transport expenses; Rs.10,000/- for attender charges; Rs.15,000/- towards loss of earning during medical treatment period; Rs.20,000/- for loss of amenities and loss of comfort. In total, this Court assesses a sum of Rs.1,50,200/- as compensation payable to the claimant. After deducting initial compensation of a sum of Rs.88,200/-, this Court assesses balance compensation as a sum of Rs.62,000/-. Out of this amount, the claimant is entitled to receive Rs.31,000/- as 50% contributory negligence has been fastened on the rider of the moped. Hence, this Court directs the third respondent / New India Assurance Company to deposit a sum of Rs.31,000/- with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. After such a deposit has been made, it is open to the claimant to withdraw the compensation amount with interest thereon, lying in the credit of M.C.O.P.No.82 of 2007, on the file of Motor Accidents Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Erode, after filing a Memo, along with a copy of this order.

13. In the result, the above appeal is partly allowed. Consequently, the order and decree passed in M.C.O.P.No.82 of 2007, on the file of dated 24.04.2009 is modified. There is no order as to costs. 17.06.2013 (2/2) Index : Yes. Internet : Yes. r n s To The Additional District Judge cum Fast Track Court No.I, Motor

Accidents Claims Tribunal, Erode C.S.KARNAN, J.

r n s C.M.A.No.2750 of 2009 17.06.2013 (2/2)

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