

Selvakumar Vs. V.Sridhar

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Court : Chennai

Decided On : Jun-17-2013

Judge : C.S.Karnan

Appellant : Selvakumar

Respondent : V.Sridhar

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.2166 of 2009 Selvakumar ... Appellant Vs. 1.V.Sridhar 2.M/s.The
Oriental Insurance Company Limited, 6A, Lawsons Road, Ganesh Complex, II
Floor, Cantonment, Tiruchy-1. ... Respondents PRAYER: Civil Miscellaneous
Appeal is filed under Section 173 of the Motor Vehicles Act, against the award
made in M.C.O.P.No.157 of 2006, on the file of the Motor Accidents Claims
Tribunal, Chief Judicial Magistrate, Perambalur, dated 30.04.2009. For Appellant :
Mrs.C.Sangamithirai For Respondents : R-1 (dispensed with)
Mr.S.K.Krishnamurthy for R-2 - - -

JUDGMENT

The brief facts of the case are as follows:- On 14.02.2006, at about 08.30 a.m., the claimant was travelling in the bus bearing registration No.TN-28-D-6503, on the

Perambalur Main Road and the bus was stopped to facilitate alighting of passengers. While the claimant was in the process of alighting the bus, the driver of the bus had suddenly started the bus and as a result, the claimant had lost his balance and fallen down on the floor and sustained injuries. Hence, the claim had been levelled against the owner and insurer of the bus.

2. The Oriental Insurance Company had filed a counter statement and resisted the claim. The respondent submits that the driver of the bus did not possess a valid driving licence and the bus had not been insured with this respondent. Actually, when the bus was stopped at a junction and when the driver of the bus was waiting for the signal, the claimant had attempted to alight from the bus and invited the said accident. As such, the negligence has to be attributed on the side of the claimant also 3. On considering the averments of both parties, the Tribunal had framed two issues, viz., "(i) Whether the accident took place due to the rash and negligent driving of the bus driver?. (ii) Whether the petitioner is entitled for compensation?. If so, to what extent?".

4. On the side of the claimant, two witnesses were examined and 11 documents were marked as Exs.P1 to P11, viz., Ex.P1-copy of F.I.R., Ex.P2-copy of wound certificate, Ex.P3-discharge summary, Ex.P4-medical prescriptions, Ex.P5-medical expenses, Ex.P6-transport charges, Ex.P7-copy of R.C.book, Ex.P8-copy of policy, Ex.P9-pay slip, Ex.P10-X-ray and Ex.P11-disability certificate. On the side of the respondents, no witness, no documents.

5. P.W.1 had adduced evidence that on 14.02.2006, at about 08.30 a.m, when the bus was stopped at Perambalur bus stop and when he was in the process of alighting the bus, the driver of the bus started the bus suddenly in a rash manner and as a result, he had fallen down on the floor. He stated that he had sustained injuries on his left hand, left leg and stomach. Further, he had been hospitalized for about 22 days at two different hospitals and received medical treatment.

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 44% disability.

7. On recording the evidence of the witnesses and on perusing the documents marked by the claimant, the Tribunal had awarded a sum of Rs.53,150/- as compensation with interest at the rate of 7.5% per annum.

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

9. The highly competent counsel, Mrs.C.Sangamithirai, for the claimant submits that the claimant had sustained 44% disability since he had sustained multiple bone fracture injuries on his left hand and left leg. Besides, he had undergone treatment at three different hospitals and had spent a sum of Rs.26,000/- towards medical expenses. A criminal case had been levelled against the driver of the bus for his negligent driving and the offending bus had been insured with the insurance company. As such, the claim had been proved beyond doubt. However, the Tribunal had not granted adequate compensation to the injured claimant.

10. The very competent counsel, Mr.S.K.Krishnamurthy submits that while the driver of the bus had stopped it on the Perambalur Main Road and waiting for signal, the claimant had attempted to alight from the bus and invited the accident. Therefore, contributory negligence have to be attributed in the instant case. Further, the claimant had sustained simple injuries, but the doctor had certified that the claimant had sustained 44% disability, which is not appropriate in the instant case. Further, the rough sketch had not been marked and the investigation officer had not been examined. However, an adequate compensation had been granted to the claimant.

11. On considering the factual position 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 sustained 44% disability as per medical evidence and he had undergone medical treatment at three different hospitals. Hence, this Court reassesses the compensation as follows:- Rs.44,000/- is awarded for disability; Rs.15,000/- for pain and suffering; Rs.5,000/- for transport; Rs.10,000/- towards nutrition; Rs.10,000/- towards attender charges; Rs.10,000/-

towards loss of earning during medical treatment period; Rs.7,650/- towards medical expenses. In total, this Court awards Rs.1,01,650/- as compensation. After subtracting initial compensation of a sum of Rs.53,150/-, this Court awards Rs.48,500/- as additional compensation, as it is found to be appropriate in the instant case. The additional 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.

12. This Court directs the Oriental Insurance Company Limited, to execute this Court's additional award, 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.157 of 2006, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur, 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.157 of 2006, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur, dated 30.04.2009 is modified. There is no order as to costs. 17.06.2013 Index : Yes. Internet : Yes. r n s To The Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Perambalur. C.S.KARNAN, J.

r n s C.M.A.No.2166 of 2009 17.06.2013

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