

E.Shankar Vs. K.Selvam

E.Shankar Vs. K.Selvam

SooperKanoon Citation : sooperkanoon.com/1168041

Court : Chennai

Decided On : Sep-06-2013

Judge : C.S.Karnan

Appellant : E.Shankar

Respondent : K.Selvam

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 06.09.2013
CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A.No.4016 of 2005
E.Shankar .Appellant vs 1.K.Selvam 2.The United India Insurance Co.LTD.No.38,
Anna Salai, Chennai-2.Respondents (The 1st respondent set-exparte in the lower
Court) Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle
Act, 1988, against the Judgment and Decree made in M.C.O.P.No.460 of 1999
dated 11.06.2004 on the file of the Additional District Court, Fast Track Court-V,
Chengalpattu / Motor Accident Claims Tribunal, Tiruvallur.

For Appellant : Mr.Anand For Respondents: Mr.S.Arunkumar (for R2) R1 - Exparte

JUDGMENT

The appellant / petitioner has preferred the present appeal in C.M.A.No.4016 of 2005, against the judgment and decree passed in M.C.O.P.No.460 of 1999, on the file of the Motor Accident Claims Tribunal / Additional District Court / Fast Track Court-V, Chengalpattu at Tiruvallur.

2.The short facts of the case are as follows:- The petitioner has filed the claim in M.C.O.P.No.460 of 1999, claiming compensation of a sum of Rs.1,00,000/- from the respondents for the injuries sustained by him in a Motor Vehicle Accident.

It was submitted that on 17.06.1999, at about 14.00 houRs.when the petitioner was travelling in the Autorickshaw bearing Registration No.TN-02-Z-2827 and when the Auto was proceeding on the Poonamallee High Road, from east to west, the driver of the Auto drove it in a rash and negligent manner and tried to over take a car going ahead of him.

On seeing a lorry coming in the opposite direction, the driver of the Auto, without reducing the speed, turned the auto to the left side, due to which the Auto capsized.

As a result, the petitioner sustained grievous injuries all over the body.

He sustained fracture of left femur, injury in his right leg knee and was admitted at Kilpauk Medical College Hospital, Chennai-10, as an inpatient from 17.06.1999 to 25.06.1999.

Prior to the accident, the petitioner was working as an Auto driver and earning Rs.150/- per day.

Due to disability sustained in the accident, he is not able to do his work as before.

Hence, the petitioner has filed the claim against the 1st and 2nd respondents, who are the owner and insurer of the Auto bearing Registration No.TN-02-Z-2827.

3.The 2nd respondent, in his counter has submitted that the driver of the Auto did not drive the Auto in a rash and negligent manner, as alleged in the claim.

It was submitted that the driver of the Auto did not have a valid driving licence and that the Auto was not covered under a valid policy of Insurance with the 2nd respondent at the time of accident.

It was submitted that the petitioner has to explain the reasons for the delay of 39 days in filing the F.I.R.The averments in the claim regarding age, income,

occupation of petitioner, nature of injuries sustained, medical treatment taken and disability was also not admitted.

It was submitted that the claim was excessive.

4.The Motor Accident Claims Tribunal framed two issues for consideration in the case namely: (1) Was the accident caused due to the rash and negligent driving by the driver of the 1st respondent's Auto bearing Registration No.TN-02-Z-2827?.

and (2) What is the quantum of compensation which the petitioner is entitled to get?.

5.On the petitioner's side, two witnesses were examined and 11 documents were marked as Exhibits P1 to P11 namely: Ex.P1-Discharge summary; Ex.P2-Medical chit; Ex.P3-Bone setting hospital, Puttur medical chit; Ex.P4 & Ex.P5-Medical bills; Ex.P6-Copy of F.I.R.; Ex.P7-Copy of sketch; Ex.P8-Copy of charge sheet; Ex.P9-Copy of judgment passed in STC.No.8766 of 1999 on the file of C.M.M.Court, Egmore; Ex.P10-Driving licence of Shankar; and Ex.P11-Disability Certificate.

On the respondents' side, one witness was examined and 3 documents were marked as Exhibits R1 to R3 namely: Ex.R1-Letter addressed by the Resident Medical Office, K.M.C.Hospital, Chennai; Ex.R2-Copy of Accident register; and Ex.R3-Copy of case sheet.

One Thiagarajan, who is working as a Sub-Inspector of Police in Koyambedu Police Station was examined as CW1 and through him F.I.R.Index and Case Diary have been marked as Exhibits C1 and C2 respectively.

6.PW1, the petitioner had adduced evidence, which is corroborative of the statements made in the claim regarding manner of accident and in support of his evidence, he had marked Exhibits P1 to P11.

On scrutiny of Ex.P1, it is seen that the petitioner had taken treatment as an inpatient at KMC Hospital from 17.06.1999 to 25.06.1999.

On scrutiny of Ex.P6, it is seen that the petitioner lodged the complaint before the Sub-Inspector of Police, Traffic and Investigation Wing, Koyambedu Police Station

on 26.07.1999 at about 19.30 hours. On scrutiny of Ex.P8, it is seen that the Investigation Officer, after investigation had lodged the charge sheet against the driver of the 1st respondent's Auto bearing Registration No.TN-02-Z-2827, had admitted his guilt and paid the fine of Rs.1,900/- before the Criminal Court on 01.11.1999.

7.The Tribunal, on scrutiny of Ex.R2, copy of accident register observed that the petitioner has mentioned the Registration Number of the Auto in which he had travelled as TN-01-B-6570, to the Doctor, when he was admitted in the hospital.

The Tribunal opined that if the petitioner had lodged the complaint either at the time of treatment or immediately after the discharge from the hospital, his complaint could be accepted as true and genuine and that he had given wrong Registration Number of the offending vehicle at the time of admission for treatment.

The Tribunal on observing that the petitioner had lodged the complaint after a considerable delay of 39 days and not explained the reasons for the said delay in a proper manner and also observing that the petitioner had given another Registration Number for the Auto in which he had travelled, at the time of admission for medical treatment, opined that the petitioner had lodged the complaint against the driver of the 1st respondent's Auto, only as an after thought.

8.RW1 G.Rama, Record Assistant, K.M.C.Hospital had adduced evidence that the petitioner had received treatment at their hospital and he had stated that the Registration Number of Auto in which the petitioner had travelled as TN-01-B-6570 and in support of her evidence, she had marked Ex.R2-Accident Register.

9.On directions issued by the Tribunal to the concerned police officials, Thiru.Thiagarajan, Sub-Inspector of Police, Koyambedu Police Station had furnished case diary and F.I.R.Index register which had been marked as Exhibits-C1 and C2.

On scrutiny of C2-Case diary, it is seen that the Investigation Officer had examined Dr.Sathyavathy of Kilpauk Medical College Hospital, who had given

fiRs.aid treatment to the petitioner and recorded her Sec.161 statement and also received the copy of accident register from her.

However, the Tribunal observed that no copy of accident register had been filed along with the charge sheet by the Investigation Officer.

The Tribunal observed that if the Investigation Officer had filed the copy of accident register along with the charge sheet, the concerned Magistrate would not have taken cognizance of the officer as against the driver of the 1st respondent's Auto.

On scrutiny of Ex.C2-Case diary, it is seen that the driver of the 1st respondent's Auto had given an undertaking before the Sub-Inspector of Police, wherever required and also to produce his Autorickshaw on 26.07.1999.

The Tribunal was at a loss to understand as to why the driver of the 1st respondent's Auto had given such an undertaking even prior to the lodging of the complaint by the petitioner.

The Tribunal opined that the petitioner and the driver of the 1st respondent's Auto had colluded with each other to lodge the complaint in order to claim compensation from the 2nd respondent.

The Tribunal opined that mere admission of guilt by the driver of the 1st respondent's Auto, would not be in any way helpful to the case of the petitioner.

Hence, the Tribunal on scrutiny of documentary evidence held that the Auto bearing Registration No.TN-02-Z-2827 was not involved in the accident and hence held that the 2nd respondent is not liable to pay compensation and therefore dismissed the claim petition.

10.Aggrieved by the dismissal of the claim petition, the petitioner has preferred the present appeal.

The learned counsel for the appellant has contended in his appeal that the Tribunal erred in coming to the conclusion that the appellant has given another Registration Number of Auto to the Doctor when he was admitted in the hospital.

In fact, Ex.P2, reveals that number as TN0 136570 and not as TN-01-B-6570 as concluded by the lower Court.

It was contended that the lower Court erred in failing to summon the Doctor who made the A.R.Entry when there was doubt over the same.

It was also contended that the R.T.O.was not summoned to verify whether the number given in the A.R.Copy belongs to an Auto.

It was also contended that there was absolutely no need for the appellant to furnish a false number.

It was contended that the written complaint was lodged by the claimant after taking treatment for injuries sustained to him even prior to 26.07.1999 but the same was registered in the F.I.R.on 26.07.1999 by the police .

The police would have enquired the driver prior to registration of F.I.R.and because of this it cannot be stated that the claimant colluded with the driver.

It was also contended that the A.R.copy can be relied only for the purpose of the date of accident and the occurrence itself and it cannot be relied on for the purpose of manner of accident, involvement of vehicle, time of accident, etc.It was also contended that the reasons for the delay of filing complaint was given in the complaint itself and hence it was prayed to set aside the order of Tribunal and to grant compensation of Rs.1,00,000/-.

11.The learned counsel for the Insurance Company argued that the Tribunal had decided that the Autorickshaw bearing Registration No.TN-02-Z-2827 was not involved in the said accident.

Further, the F.I.R.has been lodged after 29 days.

The Autorickshaw Registration number had been initially mentioned as TN-01-B-6570, subsequently, the claimant had furnished Registration Number of another Auto.

As such, the petitioner had made inconsistent statements before the Medical Authority and the Investigation Officer and as such the claim is not a bonafide one.

Therefore, the Tribunal had rightly rejected the claim petition.

12.Per contra, the learned counsel for the claimant submits that the Ex.P1 i.e.Medical discharge summary clearly reveals that the claimant had been hospitalised from 17.06.1999 to 25.06.1999, as an inpatient.

Subsequently, the claimant had undergone treatment at Puthur Hospital.

The claimant had sustained multiple bone fracture injuries and he is also an illiterate person and he was not in a good position to give the correct particulars regarding Auto involved in the accident.

On the side of the claimant, 11 documents were marked.

Out of that documents, F.I.R., Medical documents and Judgment of Criminal Court was marked which clearly shows that the offending vehicle driver was convicted of the offence.

Therefore, there is no lapse on the side of the claimant and the claimant had approached the Court with relevant documents.

The Doctor had assessed the disability at 50%.

The hospital employee had also adduced evidence that the claimant had undergone treatment at Government Hospital, Kilpauk.

It is also seen that the driver of the Auto had openly admitted his negligence and paid penalty before the Criminal Court.

13.On considering 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 is of the view that as per the Ex.P1, namely Discharge medical summary, it is seen that the claimant had undergone medical treatment from the date of accident i.e.17.06.1999 to 25.06.1999.

Further, for better treatment, he had gone to Puthur wherein he had undergone treatment for bone setting, which is evident on scrutiny of Ex.P2.

As per Ex.P9, it is seen that the offending vehicle driver had been punished by the Criminal Court.

As such, the driver of the Autorickshaw, who is the proper person to disclose the details regarding the involvement of the vehicle had admitted his guilt.

The allegation levelled by the respondent that the claimant and the driver of the Auto had colluded with each other in order to prove the same, no legal action had been initiated against them and no documentary proof had been marked hence it is only a hypothetical theory.

Therefore, this Court is inclined to grant compensation as follows:- Rs.25,000/- is awarded for disability; Rs.10,000/- for pain and suffering; Rs.3,000/- for attender charges; Rs.3,000/- for transport; Rs.3,000/- for nutrition; Rs.2,000/- towards medical expenses; Rs.3,000/- towards loss of earning during medical treatment period.

In total, this Court awards Rs.49,000/- as compensation to the claimant.

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

This Court directs the 2nd respondent herein / Insurance Company to execute this Court order within a period of four weeks from the date receipt of this order, by way of depositing the said compensation amount before the trial Court.

14.After such a deposit having been made, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon, lying in the credit of M.C.O.P.No.460 of 1999, on the file of Motor Accidents Claims Tribunal, Additional District Court / Fast Track Court-V, Chengalpattu at Tiruvallur, after filing a memo, along with a copy of this order.

15.In the result, the above Civil Miscellaneous Appeal is partly allowed.

Consequently, the Award and Decree, passed in M.C.O.P.No.460 of 1999, dated 11.06.2004, on the file of the Motor Accidents Claims Tribunal, Additional District Court Fast Track Court-V, Chengalpattu at Tiruvallur, is set aside.

No costs.

06.09.2013 vs Index : Yes / No Internet: Yes / No To 1.The Motor Accidents Claims Tribunal, Additional District Court / Fast Track Court-V, Chengalpattu at Tiruvallur.

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

C.S.KARNAN.J vs PRE-DELIVERY

ORDER

IN C.M.A.No.4016 of 2005 06.09.2013

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