

The Management Vs. the Presiding officer

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Court : Chennai

Decided On : Dec-01-2014

Judge : D.Hariparanthaman

Appellant : The Management

Respondent : The Presiding officer

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

5. 10.2009 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
C.M.A.NO.1027 of 2005 & C.M.P.No.8344 of 2006 M.Ilayaraja . . Appellant Vs.
1.A.Kuppusamy 2.New India Assurance Company Limited, By its Branch
Manager, Neela South Street, Nagapattinam Taluk and Munsif. . . Respondents
Prayer:The civil miscellaneous appeal is filed against the judgment and decree
made in MACT OP No.28/2004 dated 18.01.2005 on the file of the Motor Accident
Claims Tribunal (Principal Subordinate Judge), Nagapattinam. For Appellants
:Mr.D.Rajagopal For Respondents:No appearance

JUDGMENT

The appellant/petitioner has filed the above civil miscellaneous appeal No.1027 of 2005 against the judgment and decree in MACT O.P.No.28 of 2004 passed by the Motor Accident Claims Tribunal cum Principal Subordinate Court, Nagapattinam, awarding a compensation of Rs.2,02,400/-, as against the claim of Rs.10,00,000/-.

2. The appellant/petitioner has restricted his claim to Rs.5,00,000/- in the appeal and has filed this appeal for the balance of claim i.e. Rs.2,97,600/- 3. The short facts of the case is as follows; The petitioner is permanent resident of Melvanjore, where he is working as a cable contractor along with his brother Loganathan, who is cable contractor in CPCL. The petitioner and his brother have taken the contract of cable laying work under the earth for power plant in CPCL. He is earning more than Rs.5,000/- per month from the cable contractor work. On 08.08.2003, at about 08.30 a.m. when the petitioner was travelling in TVS Moped from Melavanjore to CPCL and nearing Muttam bus stop in the Nagore Kankalanchery road, the first respondent's vehicle bearing registration No.TN-51-H-9009 coming from opposite direction from west to east, hit against the petitioner, who was travelling in east west direction. At the place of accident, there was a slight curve and due to the hectic speed, at which the first respondent's vehicle was turned, without reducing the gear, the driver lost control and hit against the petitioner. As a result, the petitioner, along with his moped was thrown out of the road and the petitioner sustained fracture in the left thigh, injury on the right knee, left shoulder, right foot etc., His moped was also completely damaged. The petitioner was taken to Government Head Quarter hospital, Nagapattinam. Due to his bad condition, the petitioner was referred to Thanjavur Medical College Hospital, Thanjavur. But, the petitioner decided to undergo treatment at Vinothagan Memorial Hospital, where he was admitted as inpatient from 08.08.2003 to 02.09.2003. The petitioner left thigh femur bone had been fractured and it was operated and a steel plate was fixed in the left thigh. Due to the fracture of femur bone, the petitioner has been crippled and is permanently disabled. He is not able to walk or work. The petitioner is an unmarried young man and due to the present condition, his prospects of marriage has been minimised. His prospects for entire life has been spoiled. The petitioner has not been able to supervise the cable laying work for CPCL. He does his day to day work with the help of an assistant for which he has spend money. The present condition of the petitioner is due to the rash and negligent driving of the first respondent's vehicle driver. Therefore, the first respondent, who is the owner of the vehicle and the second respondent being the insurer of the vehicle are both liable to pay compensation to the petitioner. Regarding the said accident, Nagore Police Station registered a criminal case in Crime No.498 of 2003. Hence,

the petitioner claimed a compensation of Rs.10,00,000/- from the respondents under various heads under Sections 140 and 166 of the Motor Vehicles Act.

4. The first respondent in his counter has stated that his vehicle has been insured with the second respondent from 06.01.2003 to 05.01.2004; that his driver had a valid licence. Further, it has been submitted that his driver had driven the vehicle slowly, carefully and correctly, but that the driver of the TVS Moped had driven his vehicle at a high speed and in a negligent manner and application of brake suddenly which had caused the petitioner to be thrown out of his vehicle. Hence the petitioner is entitled to claim compensation only from insurer of his vehicle and not from the respondents. Further, the claim of the petitioner is excessive. Further, it was submitted that the petitioner has not suffered any permanent disability. As such, the petition was sought to be dismissed.

5. The second respondent, New India Assurance Company Limited, in its counter had stated that they had not received any claim from the vehicle owner in respect of the accident. The second respondent denied that the vehicle was insured with it at the time of accident. It was further submitted that the accident was not due to any rashness or negligence on the part of the driver of the first respondent, but had happened only due to the rash and negligent riding of the petitioner. Further, the petitioner had to produce valid and effective driving licence to drive the moped at the time of accident. It is claimed that the petition is bad for non joinder of necessary party i.e. the insurer of the moped. Further, the claim amount is excessive. It is further stated that the petitioner has not suffered any kind of disability and he is in normal health and continuing his avocation. The income, occupation and age of the petitioner has not been admitted by the second respondent. Further the claim for damages to moped has to be rejected as no evidence has been given regarding details of alleged damages to the moped. As such, the second respondent has prayed for dismissal of claim petition with costs.

6. The Motor Accident Claims Tribunal framed two issues namely 1) Whether the petitioner is entitled to get compensation as per his claim and 2) If so, what is the quantum of compensation; who is liable to give the compensation?.

7. When the Tribunal considered the reasons as to how the accident occurred, the respondents though they had pointed out that the accident occurred only due to the carelessness of the driver of the moped, have not produced any witness to prove their claim. From the scrutiny of Ex.P1, the first information report, it can be seen that a case has been registered against the driver of the van for negligence. In the accident register Ex.P2, it has been registered as case No.STC4652 of 2003. From their final report, it is understood that the police had also considered that the accident took place only due to the negligence of the van driver. Further, it was alleged that the petitioner had no valid driving licence, but the same was produced by the petitioner as Ex.P23. From a consideration of the above facts, the Tribunal held that it was only due to negligence of the driver of the Van that the accident took place. From the Motor Vehicle Inspector's report Ex.P3, it was proved that the van of the first respondent was insured with the second respondent till 05.01.2004 and policy particulars were furnished. Further, the driver of the van also had a valid driving licence. Hence, it was decided by the Tribunal that the respondents are individually and jointly liable to pay compensation to the petitioner.

8. For deciding on the quantum of compensation to the petitioner, Ex.P4, which contains medical bills issued by Doctor S.Joseph (Ortho) and also the discharge summary given by Vinothagan Memorial hospital were examined. These reports disclose that the petitioner had fracture on his left leg femur bone and mid shaft bone and that surgical operations were carried out to set this right. Other than this, the report mentions that Dr.V.Sundar M.Ch(Neuro) had also given medical treatment to the petitioner. But in the Doctor's note, it has been mentioned that No active Neurosurgical intervention necessary at present Further notes on the report mentions that the patient has also been examined by Dr.Chandra Joseph M.D and Doctor Dhanapalan M.D. On examination of the entire discharge summary, the Tribunal has come to a conclusion that other than the Bone fracture, there is no evidence to suggest that the petitioner has been affected in a major way in any other manner. Further, the petitioner has submitted that he had been hospitalised, from 08.08.2003 to 02.09.2003, in Vinothagan Memorial Hospital, Thanjavur for treatment and that surgical operation were carried out on his thigh and a steel rod was fitted. Doctor Rajagopal, who was examined as PW3, during examination and

in his evidence had submitted that the petitioner underwent surgical operations on the central part of his femur bone and a steel rod was fixed there and due to this the petitioner had incurred 51% disability. In his disability certificate the doctor had mentioned that due to fracture in left thigh bone, surgical operation was carried out. In his evidence, the Doctor had mentioned that the said bone has been dislocated and his leg appears to be bent.

9. Further, on examination of notes in the discharge summary issued by Vinothagan Memorial Hospital, it was established that X-rays were taken on 12.09.2003, 03.10.2003 and 29.10.2003. From an inspection of these, the condition of leg has been mentioned as Good condition. The Tribunal on considering above facts and circumstances came to a conclusion that the present averments that the petitioner's thigh bones are not located in proper place and that his legs have become bent, cannot be taken into consideration for assessment of disability. Further it is relevant to note that PW3, the Doctor, has also not given any treatment to the petitioner. Further the petitioner has not made any efforts to get the doctors concerned in this case to be examined by the Tribunal and establish his case regarding medical treatment. Therefore, the Tribunal has come to a conclusion that the disability awarded by the Doctor has been exaggerated. However, the Tribunal, after taking into consideration the fracture sustained by him in his thigh bone, took the disability percentage as 30%.

10. Further regarding the income of the petitioner, PW2, the brother of the petitioner, adduced evidence. PW2 has stated that he is a sub contractor for CPCL and that the petitioner was working under him and getting a monthly salary of Rs.3,500/-. PW2 furnished Ex.P22 salary certificate, in support of his claim. This salary certificate was not accepted by the Tribunal as there were no particulars regarding income and expenditure incurred for contract work. Further, as PW2 was a close relative of the petitioner, i.e. his brother, Ex.P22 was not considered as the Tribunal felt it may be biased and may not reflect the correct state of things. Any how on considering the age of the petitioner and nominal salary which was prevalent at the concerned time, the Tribunal took the petitioner's salary as Rs.2,000/-. On inspection of Ex.P3, driving licence of petitioner, it was established that the age of the petitioner was 22 at the time of accident. Applying a multiplier of

17 as per Motor Vehicles Act, loss of income for future was taken as Rs.1,22,400/-

11. Further the medical expenses, P-6, Medical bills were furnished, wherein total expenses of Rs.19,400 was claimed. But in some of these bills there were no dates. Further, the Tribunal was not convinced about the veracity of the bills allegedly given by the doctors, who had treated the petitioner while he was taking treatment at Vinothagan memorial hospital. The doctors who had given the above bills have not come forward to give evidence in the said case. Ex.P8 to Ex.P11 are bills given by Vinothagan Memorial Hospital. Further Ex.P18 is the discharge bill given by the above hospital, wherein it has been mentioned that bills were issued for "Room rent, Nursing charge, operation medicines and Theater care" Considering that there are no other evidence to prove otherwise, the Tribunal decided that the bills issued here has to be taken as bills for entire medical treatment of petitioner and decided that Rs.50,000/- can be awarded for medical expenses. For Transport expenses Rs.5,000/- was granted and for pain, suffering, nutrition, attender Rs.25,000/- was granted. In total a sum of Rs.2,02,400/- was awarded as compensation.

12. Further the Tribunal directed that the first and second respondents should individually or jointly deposit the above said award with 9% interest from the date of filing the compensation till date of payment of compensation. Further, out of the total award amount, Rs.1,00,000/- has to be deposited in a bank as fixed deposit for three years and interest can be paid directly to the petitioner once in 3 months after informing the Court. The Tribunal also permitted the petitioner to withdraw the balance amount after remitting Court fee for the award granted.

13. Aggrieved by the said award, the appellant/petitioner has filed the above appeal and asked for enhanced compensation of Rs.5,00,000/-. The appellant has contended in his appeal that the action of the Tribunal in fixing disability of 30% was erroneous as the Doctor, PW3 who had examined his disability has given in his evidence that disability suffered is 51% and there is no contra evidence to disprove the same. The fixation of income of petitioner as Rs.2,000/- in stead of Rs.3,500/- was also erroneous as PW2, has given salary certificate Ex.P22 and

also deposed in his evidence that salary of petitioner was Rs.3,500/- per month.

14. For the foregoing reasons and on consideration of the facts and circumstances of the case, the Tribunal has framed two issues namely 1) negligence and 2) quantum and compensation. Both the issues were decided in favour of the appellant/claimant. The decision of quantum of compensation awarded was not found acceptable by the appellant/claimant. The learned Tribunal awarded a compensation of a sum of Rs.1,22,400/- as loss of income, which was arrived on the basis of disability percentage, income, age and multiplier. The income was fixed as Rs.2,000/- per month by the Tribunal, considering that the petitioner had not produced any authentic/standard document to prove his income. In the absence of such evidence, the Tribunal has come to a conclusion that the petitioner's income can be taken as only Rs.2,000/- per month. On the basis of driving licence, the Tribunal has come to a conclusion that the age of the petitioner was 22 years. Then adopting a multiplier of 17, the Tribunal had awarded Rs.1,22,400/- as loss of income. However, this Court decides that the salary of the petitioner can be taken as Rs.2,500/- instead of Rs.2,000/- considering that the year of accident was 2003.

15. Regarding disability percentage, the Tribunal has not given any valid reason as to how they had arrived at a figure of 30% instead of 51% as certified by PW3, Doctor. So, this Court considers that the disability certificate given by PW3, a competent doctor has to be considered and hence disability of 51% is accepted. Taking a disability of 51% and income of Rs.2,500/- per month, loss of income in future is computed as Rs.2,60,100/-. However, this Court confirms the award under the head of medical expenditure as Rs.50,000/- which was awarded on the basis Ex.P6, Ex.P8 to Ex.P17 which are all the relevant medical bills for treatment. This Court also confirms the award of Rs.5,000/- granted by the Tribunal under the head of Transport expenses. The Tribunal had awarded Rs.25,000/- under the head of pain and suffering and nutrition. This Court grants an award of Rs.40,000/- for pain and suffering, Rs.10,000/- for nutrition and Rs.1,000/- for damage to clothes. Therefore, this Court grants a total compensation of Rs.3,66,100/-. Already the learned Tribunal had awarded Rs.2,02,400/- with 9% interest. Now, this Court has awarded an additional compensation of Rs.1,63,700/-. This

additional amount will carry interest at the rate of 7.5% per annum from the date of filing the application till date of payment. Earlier as per order of this Court order dated 06.04.2005, directing the insurance company to deposit the award amount of Rs.2,02,400/- to the credit of MCOP NO.24 of 2004 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Nagapattiam. Now, this Court directs the Insurance Company to deposit the additional award amount of Rs.1,63,700/- together with interest at the rate of 7.5% from the date of filing the claim petition till date of payment, within a period of six weeks from the date of receipt of the copy of this order. It is open to the appellant/claimant to receive the balance compensation amount with interest lying to the credit of MCOP No.28 of 2004, Principal Sub Court, Nagapattinam by filing necessary payment out application in accordance with law.

16. In the result, the civil miscellaneous appeal is allowed in the above terms and consequently the award passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Nagapattinam in MCOP No.28 of 2004 is modified. Accordingly, the connected miscellaneous petition is closed. The parties are directed to bear their own cost. JIKR To The Principal Subordinate Judge, Motor Accidents Claims Tribunal, Nagapattinam

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