

Selvam Vs. R. Pradeep Kumar and

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Court : Chennai

Decided On : Mar-26-2010

Judge : C.S. Karnan, J.

Appeal No. : C.M.A. No. 647 of 2006 and C.M.P. No. 2676 of 2006

Appellant : Selvam

Respondent : R. Pradeep Kumar And; Iffco-tokio General Insurance Co. Ltd.

Advocate for Def. : K. Poomalai, Adv. for; N. Vijayaraghavan, Adv. for R2

Advocate for Pet/Ap. : A. Sivaji, Adv.

Judgement :

C.S. Karnan, J.

1. The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated 22.08.2005, made in M.C.O.P. No. 884 of 2004, on the file of the Motor Accident Claims Tribunal, First Additional Sub Court, Coimbatore, awarding a compensation of Rs. 36,560/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation.

2. Having not been satisfied with the said Award and Decree, the appellant/petitioner has filed the above appeal praying for additional compensation

amount of Rs. 1,93,440/-.

3. The short facts of the case are as follows:

On 31.08.2004, at about 09.30 a.m., the petitioner was proceeding on his bicycle from south to north direction on Coimbatore to Pollachi main road, near Gandhi Nagar bus stop at Sundarapuram, with a box full of fishes for sale. He was selling the fishes from customers, who demanded them. He was keeping onto the western side of the road and riding the bicycle at a normal speed. However, at that time there came a motorcycle Yamaha Libero bearing registration No. TN 37 AF2049 on the road in the very same direction, so swiftly and in a rash and negligent manner, without taking due care and caution on the proceeding vehicles, and all of a sudden hit the bicycle from behind unexpectedly. As a result of that the petitioner was knocked down and sustained bodily injuries. The bicycle was also damaged extensively and unfit for riding. Immediately, the petitioner was taken to the Balaji Hospital, Sundarapuram, wherein first aid treatment was offered. Subsequently he was admitted to Coimbatore Medical College Hospital, Coimbatore-18, wherein he is undergoing medical treatment for the injuries on forehead, facial injuries, injuries on right eye with loss of vision, right cheek, right knee and multiple bodily injuries. The petitioner further submitted that the said accident had happened due to the rash and negligent driving of the rider of the motor cycle bearing registration No. TN 37 AF2049. Regarding the said accident, a case was registered by the Pothanur Police Station in Crime No. 764/2004 and initiated criminal proceedings against the rider of the motorcycle. The rider-cum-owner of the motorcycle bearing registration No. TN 37 AF2049 is the first respondent and the second respondent is the indemnifier under whom the said motorcycle has been insured at the time of accident. As such, the first and second respondent jointly and severally liable to pay compensation to the claimants.

4. The petitioner further submitted that at the time of the said accident he was aged about 35 years and he was a fish vendor using a bicycle. He is the only breadwinner of his family and after the said accident he is unable to maintain his family. Further, due to the said accident, his entire normal life has been affected. Hence, the petitioner claimed a sum of Rs. 2,50,000/- together with interest.

5. The second respondent has filed a counter statement and resisted the claim petitioner. The second respondent has admitted the accident, which had happened on 21.08.2004. Further, he admitted that the said motorcycle bearing registration No. TN 37 AF2049 was insured with the second respondent. Further stated that the petitioner, who turned a cross the road without any signal or indications, was the sole cause of the accident. As such, the rider of the motorcycle is not responsible for the said accident. Further, the respondent learnt that the petitioner had consumed alcohol and ridden the bicycle. The petitioner has to prove that he sustained injuries on the forehead, facial injuries, injuries on the right eye with loss of vision, injuries on right cheek with two sutures, injuries on right knee with sutures and multiple bodily injuries out of the accident, that he underwent first aid at Balaji Hospital and treated at C.M.C.Hospital, Coimbatore from 31.08.2004 and he has become permanently disabled. The age, occupation and income of the petitioner are denied and need to be proved. On investigation, this respondent learnt that the petitioner had no permanent or regular income. The exaggerated averments stating that the petitioner was earning Rs. 3,900/- per month are false and incorrect. The claim for Rs. 2,50,000/- for simple injuries caused by the negligence of the petitioner is excessive. As such, the claim petition is not maintainable. Accordingly, he has prayed to dismiss the claim petition with costs.

6. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

- (i) Whether the accident had happened due to the negligent act of the first respondent or of the petitioner?
- (ii) Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation?

7. On the petitioner's side two witnesses were examined as PW1 and PW2 and eleven documents were marked as Exs.P1 to P11. On the respondents' side no witnesses were examined and no documents were marked.

8. The PW1 had adduced evidence stating that the accident had happened due to the rash and negligent driving of the rider of the motorcycle bearing registration No. TN 37 AF2049. The Pothanur Police Station has also registered a case against the rider of the motorcycle in Crime No. 764/2004. The FIR was marked as Ex.P1. Following the FIR, Charge Sheet also filed against the rider. Further, he was punished by the Judicial Magistrate concerned. On the side of the second respondent counter statement has been filed. It reveals that due to the rash and negligent driving of the bicycle by the petitioner, the accident had happened. Further, the petitioner all of sudden crossed the road. Hence, the accident had happened. Even though, the second respondent narrated in his counter statement, but did not come forward and adduced oral evidence before the Tribunal. In the absence of the respondents' side oral evidence, the Tribunal only considered the evidence of the PW1 and documents namely FIR, Sketch and criminal proceedings, and came to the conclusion that the first and second respondent are jointly and severally liable to pay compensation to the petitioner.

9. PW1 further adduced evidence stating that at the time of accident he was earning a sum of Rs. 3,900/- by way of selling fish as his occupation. After the said accident, he is unable to carry on his business as usual. Hence, he lost his income of Rs. 31,200/- he had claimed. But, the learned Tribunal without any documentary evidence stated that the claim amount as not considered. PW1 further adduced evidence that he sustained injuries on his right eye and fore head. Two injuries were grievous in nature. PW2, Dr.Jeya Kumar had adduced evidence stating that due to the injuries sustained on the right eye of the claimant, his vision has become impaired. After examining the PW1 and verifying the medical records, the PW2 issued disability certificate stating that the claimant sustained 30% disability. Supporting his disability, he issued a Disability Certificate, Ex.P11, which was marked before the Tribunal.

10. Considering the evidence of the PW1 and PW2 and exhibits marked before the Tribunal, the Tribunal awarded a compensation as follows:

1. Rs. 35,000/- under the head of permanent disability and wound,
2. Rs. 15,000/- under the head of pain and suffering,

3. Rs. 60/- under the head of X'ray expenses,
4. Rs. 1,000/- under the head of nutrition,
5. Rs. 500/- under the head of transport expenses,
6. Rs. 5,000/- under the head of loss of income,

In total, the Tribunal awarded a sum of Rs. 56,560/- as compensation to the petitioner, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the second respondent to deposit the compensation amount with accrued interest within a period of two months. In turn the said amount should be deposited in any of a nationalised bank, for a period of three years, in a fixed deposit scheme. Further, the petitioner was permitted to withdraw the interest alone once in six months from the bank.

11. Having not been satisfied with the said Award and Decree, the appellant/petitioner has filed the above appeal praying for additional compensation amount of Rs. 1,93,440/-.

12. Learned Counsel appearing for the appellant that the appellant sustained grievous injuries on his fore head and right thigh. The Doctor also properly assessed the disability of the claimant, who sustained the said accident. But, the Tribunal had not properly considered the disability certificate, which was issued by the Doctor. The learned Counsel further submitted that the quantum of compensation is on the lower side, considering the nature of injuries and period of treatment and medical expenses etc., The learned Counsel further submitted that the claimant was a fish vendor, he was earning a sum of Rs. 3,900/- per month. After the said accident, he is unable to carry on the said business. The learned Counsel further argued that the award of Rs. 1,000/- under the head of nutrition, Rs. 500/- under the head of transport expenses and Rs. 500/- under the head of loss of income are on the lower side. The learned Counsel further argued that the claimant is the only breadwinner of his family. He is a person to look after his family. After the said accident, he could not carry out his business. In support of

his contention, the learned Counsel cited the following Judgment made in 2004 ACJ 2041 Chintamani Sahu v. Jagat Singh and Ors. the relevant head notes of which are as follows:

Quantum - Injury - Eye - Injured lost vision in his left eye - Injured aged 34, autorickshaw driver suffered permanent disability - Tribunal awarded Rs. 1,20,000 - Appellate court enhanced the award to Rs. 2,40,000.

13. Learned Counsel appearing for the second respondent vehemently argued that the Tribunal after considering the PW1 and PW2 and connected records passed against the award and decree. Further, there was no documentary evidence for the income of the claimant and there is no medical record for the claimant that the claimant had underwent as in-patient in two hospitals. The learned Counsel argued that the vision was only affected. But not a total eye sight loss of his right eye. The learned Counsel further argued that the Tribunal awarded a compensation, which is a well considered one and there is no discrepancy. The learned Tribunal after well considering the nature of injuries, mode of treatment, profession of claimant and income of the claimant, awarded the compensation, which is fair and equitable.

14. Considering the facts and circumstances of the case, findings of the scrutiny of Tribunal and the arguments advanced by the learned Counsel appearing on either side, this Court is of the view that considering the nature of injuries, mode of treatment, period of treatment and evidence of the PW1 and PW2, this Court decides to enhance the compensation as follows:

1. The Tribunal awarded a sum of Rs. 35,000/- under the head of permanent disability and wound. This Court enhances the said award to Rs. 60,000/-,
2. The Tribunal awarded a sum of Rs. 15,000/- under the head of pain and suffering. This Court confirms the same under the same head,
3. The Tribunal awarded a sum of Rs. 60/- under the head of X'ray expenses. This Court confirms the same under the same head,

4. The Tribunal awarded a sum of Rs. 1,000/- under the head of nutrition. This Court enhances the same to Rs. 7,500/-,

5. The Tribunal awarded a sum of Rs. 500/- under the head of transport expenses. This Court enhances the same to Rs. 3,000/-,

6. The Tribunal awarded a sum of Rs. 5,000/- under the head of loss of income. This Court enhances the same to Rs. 15,000,

In total, this Court grants a sum of Rs. 1,00,560/-. The Tribunal awarded a sum of Rs. 36,560/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. This Court awards a sum of Rs. 64,000/- as additional compensation amount to the claimant. The additional compensation amount will carry interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 884 of 2004, on the file of the Motor Accident Claims Tribunal, First Additional Sub Court, Coimbatore, which is fair and equitable.

15. Therefore, this Court directs the second respondent to deposit the additional compensation amount of Rs. 64,000/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 884 of 2004, on the file of the Motor Accident Claims Tribunal, First Additional Sub Court, Coimbatore, within a period of four weeks from the date of receipt of a copy of this order.

16. After such deposit being made into the credit of the M.C.O.P. No. 884 of 2004, on the file of the Motor Accident Claims Tribunal, First Additional Sub Court, Coimbatore, the claimant is at liberty to withdraw the compensation amount by making proper payment out application in accordance with law.

17. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 22.08.2005, made in M.C.O.P. No. 884 of 2004, on the file of the Motor Accident Claims Tribunal, First Additional Sub Court, Coimbatore, is modified. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

