

The Managing Director. Vs. Sekar

The Managing Director. Vs. Sekar

SooperKanoon Citation : sooperkanoon.com/928276

Court : Chennai

Decided On : Jul-18-2012

Judge : P.Devadass, J.

Appeal No. : C.M.A.No.3735 of 2005

Appellant : The Managing Director

Respondent : Sekar

Advocate for Def. : Mr.P.Mani, Adv

Advocate for Pet/Ap. : Ms.S.Geetha, Adv.

Judgement :

PRAYER:- Appeal against the judgment and decree dated 16.03.2005 made in M.C.O.P. No.621 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge), Cuddalore.

JUDGMENT

1. The State Transport Corporation disputes the award of the Tribunal on two grounds, namely, liability and quantum.
2. The road accident had taken place on 09.11.2002. The respondent was awarded a total compensation of Rs.2,37,500/-.

3. Learned counsel for the appellant would contend that as per the evidence on record the respondent was negligent, he alone is responsible for the accident. Further, the Tribunal had awarded him Rs.75,000/- towards 40% disability, again, he was awarded Rs.1,25,000/-. This is double compensation. It has no basis.

4. However, the learned counsel for the respondent would contend that the evidence clearly shows that the appellant's bus driver came driven the bus in a rash and negligent manner. The respondent has been a driver. Because of the disability, now, he cannot drive a car. He suffered disability to his limbs. He had sustained functional disability also. Both are different. That is how under different heads, the Tribunal had awarded him the said amounts.

5. P.W.1, Sekar, the claimant, on 09.11.2002, at about 10 a.m., from Chennai to Vadalur, came driven the Ambassador car carrying passengers. At that time, R.W.1, Govindan, came driven the bus from the opposite side. P.W.1 stated that he had carefully driven the car, however, R.W.1 came driven the bus in a rash and negligent manner and dashed against the car. There was no mechanical defect in both the vehicles. R.W.1 had stated that the car came driven in a rash and negligent manner, dashed against a check-post, dashed on the front side of the bus and damaged its bumper. The Motor Vehicle Inspector examined the vehicles. Bumper alone damaged in the bus, however, there was extensive damage to the front side of the car. A person travelled in the car lodged the FIR, wherein it is stated that the accident was due to the rash and negligent driving of the bus driver. It is pertinent to note that no complaint was lodged by R.W.1 as against the car driver immediately or afterwards at the nearest Police Station. Further, R.W.1 did not report to his Corporation that the car came driven in a rash and negligent manner and damaged the bus. After investigation, case has been registered as against R.W.1 for having caused the road accident. Analysing the evidence, oral and documentary, the Tribunal concluded that the accident was due to the rash and negligent driving of R.W.1. In the circumstances, we concur with the finding of the Tribunal.

6. Now, we will consider the quantum aspect. P.W.1. is a driver by profession. At the time of accident, he was driving the Ambassador car. Ex.P.6 is his driving

licence. P.W.2 Dr.Venugopal, examined P.W.1 and determined his disability at 40% and issued him Ex.P.7, disability Certificate. The evidence of P.Ws.1 and 2 also disclosed that hereafter P.W.1 cannot drive a car. In fact, it would be dangerous for others if he drives a car. Thus, considering the extent of his physical disability, the Tribunal had awarded him Rs.75,000/-.

7. The Tribunal also awarded him Rs.1,25,000/- towards loss of future earning capacity. This is objected to by the appellant.

8. We have already seen that P.W.1 is a driver. Now, he cannot drive a car. The connotation 'disability' cannot be restricted to physical disability alone. Functional disability is also a kind of disability. Because of the disability occasioned to him, a person might be disabled from engaging himself in the profession or trade or avocation to which he is engaged. For instance, a carpenter when he suffers amputation of his hands, besides sustaining injury in his legs, suffer physical disability with reference to his limbs, further, he cannot function as a carpenter. Here we see he undergoes two types of disability. Both the items are different. They are not one and the same. Compensation has to be given to him for both the items of disability separately.

9. In the case before us, it has been established that P.W.1 now, cannot drive a vehicle. He cannot function as a driver. So, there is functional disability. In this perspective of the matter, the Tribunal had awarded him Rs.1,25,000/- towards loss of future earning capacity. It means loss of his capacity to earn as a driver. It is compensation for his functional disability. In this view of the matter, there is no question of double compensation arises as contended by the learned counsel for the appellant.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The award of the Tribunal is upheld. The appellant is given four weeks' time from the date of receipt of a copy of this Judgment to deposit the entire compensation amount, less amount, if any already deposited. The respondent is permitted to withdraw the entire compensation amount, less amount, if any already withdrawn. No costs.