

Muthusamy Vs. Natarajan and Another

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Court : Chennai

Decided On : Aug-16-2012

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appeal No. : C.M.A.NO.72 OF 2004

Appellant : Muthusamy

Respondent : Natarajan and Another

Advocate for Pet/Ap. : For the Appellant: P. Mani, Advocate. For the Respondent: R2 - S. Arunkumar, Advocate.

Judgement :

(Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 27.05.2003 in M.C.O.P.No.418 of 2002 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.I, Tindivanam.)

JUDGMENT

1. The appellant/claimant has filed this appeal being aggrieved against the award passed by the Fast Track Court No.I, Tindivanam, (MACT), in MACT.O.P.No.418 of 2002 dated 27.05.2003.

2. The short facts of the case are that on 26.09.1996, while the appellant / claimant was driving his mini lorry from Tindivanam to Pondicherry, he had seen a tipper orry coming in the opposite direction driven in a rash and negligent manner and on seeing it immediately he stopped the vehicle on the left side of the small bridge and inspite of so stopping vehicle dashed against the mini lorry causing grievous injury to the claimant on his right leg and hip resulting in permanent disability. The Tribunal though awarded a total compensation of Rs.2,34,500/-, however held that the injured contributed to the accident to an extent 50% and thus awarded a sum of Rs.1,17,250/- as compensation. The claimant has challenged the findings of the Tribunal attributing contributory negligence to an extent of 50% on the part of the claimant.

3. The appellant/claimant has made clear averments in the claim petition that on seeing the tipper lorry, driven in the opposite direction in a rash and negligent manner, he immediately stopped the vehicle and inspite of it, the offending lorry dashed on the right side of the lorry. He has also let in evidence in consonance with the averments made in the claim petition by examining himself as PW1 and marked the first information report as Ex.P1. Immediately after the accident, he had lodged a report before the concerned police which resulted in a registration of case against the offending tipper lorry driver. Admittedly, there is no contra evidence on the side of the respondent that too, when evidence of P.W1 was corroborated by the contents of Ex.P1 which stood unchallenged and uncontroverted. When the evidence in such, the Tribunal erred in assuming negligence on the part of the claimant merely on the damages found on the vehicles. The very approach of the Tribunal is erroneous and there is no justification in the finding arrived at in the Tribunal attributing contributory negligence on the part of the claimant. The Tribunal has failed to scan the material evidence of the claimant in its right perspective. Whereas there is enough evidence on the file led by the claimant that the accident was outcome of rash and negligent driving of the offending vehicle .

4. For the reasons stated herein above, the learned Tribunal has fallen in error while holding that the accident occurred on account of contributory negligence on the part of the claimant. Accordingly, the impugned order of the Tribunal to the

extent indicated above is set aside and it is held that accident was outcome of rash and negligent driving of the offending tipper lorry bearing Registration No.PYT.849.

5. It is not in dispute that the offending lorry belonging to the first respondent has been insured with the second respondent. Therefore, both the respondents are jointly and severally liable to pay the compensation to the appellant/claimant.

6. The appellant has proved to have sustained grievous injuries in the accident occurred in this case. He has suffered dislocation of right hip with fracture of acetabulum and also fracture of both bones on the right leg. He has been hospitalized for nearly two months in Jipmur Hospital, Pondicherry.

7. P.W2 Dr.Sekar, who has examined him and assessed his disability. Ex.P5-disability certificate shows that there was deformity of the right leg in the upper part, due to which the claimant had difficulty in squatting and sitting cross legged and stand for long time. He has also given reasoning for assessing his disability at 48% which appears to be made on the basis of clinical examination made by him and also on resultant effect of injuries sustained by the claimant.

8. The Tribunal has determined the functional disability at 40% and awarded Rs.2,16,000/- towards loss of earning capacity. Taking into account, the nature of injuries and also the fact that the appellant has suffered physical permanent the disability assessment of functional disability made by the Tribunal at 40% does not appear to be unreasonable and therefore, I am not inclined to interfere with the said findings. The Tribunal has awarded Rs.1,000/- towards transportation and Rs.2,000/- for extra nourishment, Rs.1,000/- for damages to clothes, Rs.2,000/- towards attendant charges, Rs.10,000/- for pain and suffering, Rs.2,500/- for loss of earning at the time of treatment period which are all liable to be confirmed. In all, the Tribunal has awarded Rs. 2,34,500/- as compensation which is just and proper and is in consonance with the evidence placed on record. Accordingly, the quantum of compensation fixed by the Tribunal is hereby confirmed.

9. In the result, the appeal is partly allowed and the impugned award is modified to the extent indicated above. The respondents 1 and 2 are jointly and severally

liable to pay the compensation to the appellant/claimant. The second respondent is directed to deposit the award amount with proportionate interest from the date of petition till the date of deposit, within a period eight weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant / claimant is entitled to withdraw the entire amount after giving credit to any amount withdrawn by him.

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