

Nagaraj Vs. the Director,

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SooperKanoon Citation : sooperkanoon.com/964389

Court : Chennai

Decided On : Jan-02-2013

Judge : C.S.Karnan

Appellant : Nagaraj

Respondent : The Director,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 01/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD)No.602 of 2009 and C.M.A(MD)No.692 of 2008 Nagaraj .. Appellant in C.M.A.No.602 of 2009 and 1st respondent in C.M.A.No.692 of 2008 The Divisional Manager, United India Insurance Company Limited, Railway Feeder Road, Swathi Complex, Virudhunagar .. Appellant in C.M.A.No.692 of 2008 and 2nd respondent in C.M.A.No.602 of 2009 vs The Director, M/s.Single Widow Securities Limited, 1680/31, Ramani Regency, Trichy Road, S.N.Puram, Coimbatore - 45. .. Both Respondents in C.M.A.No.602 of 2009 and C.M.A.No.692 of 2008 COMMAN PRAYER Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the order and degree in M.A.C.T.O.P.No.52 of 2006 before the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Virudhunagar, dated 12.02.2007. !For Appellant ... Mr.A.Sivaj C.M.A.No.602 of 2008 and C.M.A.No.692 of 2009 ^For Respondent ... Mr.N.M.Murugesan in C.M.A.No.602 of 2008 and C.M.A.No.692 of 2009 :JUDGMENT The appellant/2nd respondent has preferred the present appeals in C.M.A.Nos.602 of 2009 and 692

of 2008, against the judgment and decree passed in M.C.O.P.No.52 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Virudhunagar.

2. The petitioner has filed the claim in M.C.O.P.No.52 of 2006, claiming compensation of a sum of Rs.2,50,000/- from the respondents for the injuries sustained by him in a motor vehicle accident. It was submitted that the petitioner was working as a driver and earning Rs.135/- per day. On 07.08.2005, at about 01.30 p.m., when the petitioner had stopped his mini door load auto bearing registration not TN-67E-4172 at the Thulukkapatti Junction in order to cross the road, the 1st respondents car bearing registration not TN- 32AD-6575, coming from west towards south and driven by its driver at a high speed and in a rash and negligent manner had dashed against the stationery mini door auto. In the impact, the petitioner and the cleaner of the mini door auto as well as two other persons who were standing near the bus stand were severally injured. The petitioner and the other persons who were injured were admitted initially at Virudhunagar Government Hospital and were later admitted at Jawahar Hospital, Madurai for further treatment. The petitioner sustained fractures of bones in different parts of his body and received treatment at the hospital from 07.08.2005 to 24.08.2005 as an inpatient. After the accident, the petitioner is not able to walk properly and is not able to do any work without the support of others. He is also not able to pursue his profession as a driver. Hence, the petitioner has claimed compensation from the 1st and 2nd respondents, who are the owner and insurer of the car bearing registration not TN-32AD-6575.

3. The 2nd respondent in his counter had submitted that the accident was caused only due to the negligence of the petitioner, who had driven the mini door auto at a high speed and in a rash and negligent manner in a drunken mood and that the driver of the 1st respondents car had not been negligent as alleged. It was submitted that the other persons who had been injured in the accident had only sustained simple injuries. The averments regarding the age, income and occupation of the petitioner was also not admitted. It was stated that the claim was excessive.

4. Three other injured persons, who had sustained injuries in the said accident had also filed claims against the respondents. The petitioner, Nagaraj in M.C.O.P.No.52 of 2006 was examined as PW.1; the petitioner Manickam in M.C.O.P.No.53 of 2006 was examined as PW.4. One Muthuraj was examined as PW.5, Dr.Rajendran, was examined as PW.6 and one Madhusudhanan was examined as PW.7 and twenty six documents were marked namely: Ex.P1-F.I.R; Ex.P2-observation register dated 07.08.2005; Ex.P3-charge sheet dated 31.08.2005; Ex.P4-judgment of Criminal Court dated 10.03.2006; Exs.P5 and P6-Motor Vehicle Inspector's reports; Ex.P7-wound certificate; Ex.P8-Medical bills(series); Ex.P9-CT scan report at 08.08.2005 and Ex.P10-CT scan photo; Ex.P11-discharge slip; Ex.P12-discharge summary; Ex.P13-extract of accident register; Ex.P14-O.P.Chit; Ex.P15-CT scan; Ex.P16-scan receipt dated 11.08.2005; Ex.P17-copy of extract of accident register; Ex.P18-OP chit; Ex.P19-accident register; Ex.P20-OP Chit; Ex.P21-power of attorney letter dated 29.11.2006; Ex.P22-salary certificate dated 29.11.2006; Ex.P23-disability certificate dated 12.12.2006; Ex.P24-x rays; Ex.P25-case sheet; Ex.P26-x ray (5) and CT scan photo. On the respondent's side, no witness, no documents.

5. The Motor Accident Claims Tribunal framed three issues for consideration in the case namely: (1) Was the accident caused due to the negligence of the 1st respondent's car bearing registration not TN-32AD-6575?; (2) Are the petitioners in the various claim petitions entitled to receive compensation?(3) What is the quantum of compensation which the petitioner is entitled to get? 6. PW.1, the petitioner had adduced evidence that on 07.08.2005 at about 01.30 p.m., when he and the cleaner Kalimuthu (Petitioner in M.C.O.P.No.55 of 2006) were returning from Thulukkapatti Village in their mini door auto bearing registration not TN-67E-4172 from east to north and when they had halted at the Thulakapatti junction, in order to turn towards west, the 1st respondent's car bearing registration not TN-37AD-6575, coming on the same road from west towards south and driven by its driver at a high speed and in a rash and negligent manner had dashed against their mini door auto and caused the accident. He deposed that he and the cleaner sustained severe injuries and that due to the collusion of the two vehicles, and two other persons who were standing in the bus stop namely Manickam and Nagaraj and one Saththurappan had also sustained injuries. On cross examination, PW.1,

had not admitted the suggestion made by the respondents side that he was driving the auto in a drunken mood and that he had turned the auto towards west without seeing on coming car coming from west towards east. The evidence of PW.2, PW.3 and PW.4 were consonance with that of the evidence of PW.1 regarding the manner of accident.

7. The Tribunal, on scrutiny of Ex.P1-F.I.R, Ex.P2-observation mahazar; Exs.P5 and P6-motor vehicle Inspector's reports of the two vehicles, wherein it had been stated that the accident had not occurred due to any mechanism failure in the two vehicles and on scrutiny of Ex.P4, the Criminal Court Judgment, wherein it is seen that the driver of the car had been found guilty and paid the fine and on observing that the respondents had not examined any witness to rebut the evidence of the petitioner held that the accident had been caused by the rash and negligent driving of the 1st respondents car driver and hence held both the 1st and 2nd respondent liable to pay compensation to the petitioner.

8. It is seen on scrutiny of the claim that the petitioner was employed by one Subbulakshmi, who is the owner of the said mini door auto and that he was paid a daily wage of Rs.135/-. PW.5, Muthuraj, the husband of Subbulakshmi had adduced evidence that the petitioner was employed as a driver of the auto bearing registration not TN-67E-4172 and that he was paid a daily wage of Rs.100/- and a batta of Rs.35/-. He had marked Ex.P21, the Power of Attorney given to him by his wife to adduce evidence and Ex.P22, the salary certificate given by his wife regarding salary paid to the petitioner. However, the Tribunal, on considering that no documentary evidence like salary register or vouchers showing payment made to the petitioner had been marked, held that the daily income of the petitioner could be taken only as Rs.105/- as per the Government Order passed in (2D, No.10) dated 28.03.2005. On observing that the petitioner had stated that he would take leave for three days in a month, the Tribunal held that the monthly income of the petitioner is Rs.2.835/-.

9. PW.6, Dr.Rajendran, had adduced evidence that he had examined the petitioner on 12.12.2006 and that he had found that the right pelvic bone in his hip and the joint, which connects this bone with the other pelvic bones had been

fractured and the joint connecting this bone to the other bones had also been fractured. He deposed that the muscles in his hip had been weakened and its strength had been reduced by 20% and that the petitioners movements of hip have become restricted. He deposed that on taking x rays, he had seen that a surgery had been conducted and plates and screws had been fixed in the fractured area. He deposed that the petitioner had sustained 45% disability due to the injuries sustained in the accident and in support of his evidence had marked Ex.P23, disability certificate and Ex.P24- x rays. The Tribunal on scrutiny of the medical records, nature of injuries sustained held that the disability sustained by the petitioner could only be taken as 40%. The Tribunal, on considering that the petitioner had sustained fracture of his bone and pelvic bone in his hip and opining that the petitioner would not be able to pursue his profession as an auto driver adopted the multiplier method to award compensation to the petitioner. The Tribunal, on adopting a multiplier of '17', as was relevant to the age of the petitioner and holding his monthly income Rs.2,835/- awarded a sum of Rs.2,31,336/-($\text{Rs.2,835} \times 12 \times 17 \times 40 / 100$) as compensation to the petitioner under the head of loss of income due to disability of 40%. The Tribunal further awarded a sum of Rs.250/- towards transport expenses; Rs.1,000/- towards nutrition and Rs.5,000/- towards pain and suffering; Rs.93,508.60/- towards medical expenses. In total, the Tribunal awarded a sum of Rs.3,31,094.60/- as compensation to the petitioner. However, the Tribunal, on observing that the petitioner had restricted his claim to Rs.2,50,000/- awarded a sum of Rs.2,50,000/- as compensation to the petitioner and directed the respondents to jointly or severally deposit the said sum together with interest at the rate of 7.5% per annum from the date of filing the petition till date of payment of compensation together with interest and costs, within one month from the date of its order.

10. Aggrieved by the award passed by the Tribunal, the 2nd respondent has preferred the present appeal. The learned counsel for the appellant has contended in his appeal that the Tribunal erred in adopting the minimum wages act in working out the loss of earning capacity under the workmen compensation act for 40% disability. It was pointed out that the Tribunal ought to have taken the notional income alone, when there is no documentary proof relating to income of the claimant and that the Tribunal erred in adopting the multiplier method without any

basis whatsoever. It was contended that the Tribunal erred in awarding the compensation under the head of loss of income by assuming that the claimant has sustained total loss of earning capacity and working the compensation for loss of income as per the Workmen Compensation Act.

11. Not being satisfied with the award granted by the Tribunal, the claimant has also filed an appeal in CMA.No.602 of 2009, praying for additional compensation of Rs.81,094/-. The learned counsel for the appellant/claimant has contended that the tribunal after having found that the claimant is entitled to receive a sum of Rs.3,31,094/- as compensation erred in awarding only Rs.2,50,000/- merely on the ground that the claimant has prayed for the awarded amount. It was pointed out that the claimant have been awarded the amount of Rs.3,31,094/- holding that the restriction of the claim will not bar the Court from awarding the just and reasonable compensation. It was pointed out that as per the law laid down by the Supreme Court of India (2003 ACJ 1.SC) as well as this Courts judgment made in 2005 ACJ 1483.the tribunal has got ample power to grant more than what was claimed if the materials warrant the grant of higher compensation. Hence, it was prayed by the counsel for the appellant to grant additional compensation Rs.81,094/-.

12. On hearing the arguments of the learned counsels on either side and on perusing the impugned award of the Tribunal passed in M.C.O.P.No.52 of 2006, on the file of Motor Accident Claims Tribunal, Virudhunagar, dated 12.02.2007, this Court is of the view that the adoption of multiplier method to award compensation of a sum of Rs.2,31,336/- under the head of disability is not appropriate. Therefore, this Court restructures the compensation as follows: Rs.90,000/- is awarded under the head of disability taking disability at 45%; Rs.93,500 is awarded towards medical expenses; Rs.10,000/- is awarded under the head of nutrition; Rs.10,000/- under the head of attender charges; Rs.10,000/- is awarded under the head of transport; Rs.15,000/- under the head of pain and suffering; Rs.15,000/- is awarded under the head of loss of income during medical treatment period and convalescence period. In total, this Court awards Rs.2,43,500/- as compensation to the claimant as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the petition till date of deposit. On 29.04.2008, this Court imposed

a condition on the insurance company to deposit the entire compensation amount with interest and costs.

13. Now, it is open to the claimant to withdraw the compensation, as per this Courts order, with proportionate interests and costs lying in the credit of M.C.O.P.No.52 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar, after filing a memo along with a copy of this order, subject to deduction of withdrawals made, if any. Like wise, the insurance company is at liberty to withdraw the excess compensation deposited, with accrued interest thereon, after filing a memo.

14. In the result, the C.M.A.No.602 of 2009 is filed by the claimant dismissed and C.M.A.No.692 of 2008 filed by the United India Insurance Company is partly allowed. Consequently, the Award and Decree, passed in M.C.O.P.No.52 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar, dated 12.02.200, is modified. No costs. ub To 1.The Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar. 2.The Section Officer, VR Section, High Court, Madras.

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