

Siva Kumar Vs. the Managing Director,

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Court : Chennai

Decided On : Mar-19-2013

Judge : C.S.Karnan

Appellant : Siva Kumar

Respondent : The Managing Director,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:19/03/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.586 of 2011 Siva Kumar .. Appellant vs The Managing Director, Tamil Nadu State Transport Corporation (Madurai) Limited, Madurai. .. Respondent Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decretal order passed by the Motor Vehicle Accident Claims Tribunal, Subordinate Court, Srivilliputhur, M.A.C.O.P.No.15 of 2009, dated 23.12.2010. !For Appellant ... Mr.G.Marimuthu ^For Respondent ... Mr.K.Sekar :JUDGMENT The appellant/claimant has preferred the present appeal in CMA(MD).No.586 of 2011, against the judgment and decree passed in M.A.C.O.P.No.15 of 2009, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Srivilliputhur.

2. The petitioner has filed the claim in M.A.C.O.P.No.15 of 2009, claiming compensation of a sum of Rs.12,00,000/- from the respondent for the injuries sustained by him in a Motor Vehicle Accident. It was submitted that on 30.07.2008, at around 06.30 p.m., when the petitioner was riding his "M80" motor cycle bearing

registration not TN-57C-4204, along with his wife Radhika as the pillion rider from Rajapalayam towards Srivilliputhur and when the vehicle was near Padmavathi Mill, the respondents Tamil Nadu State Transport Corporation Bus bearing registration not TN-58N-0670 coming in the same direction and driven at a high speed and in a rash and negligent manner by its driver and without sounding horn, dashed against the motor cycle and caused the accident. In the result, the petitioner and his wife sustained injuries. The petitioner sustained fracture of his C6 bone in his neck and T1 to T7 and T8 bones in his spinal cord were also fractured. The bone in his right shoulder was broken into small pieces and he also sustained fracture bone of the lower part of his upper arm. The 2nd bone in his left chest was also torn and there was a swelling injury in his right fore arm. He was immediately admitted at Srivilliputhur Government Hospital, wherein first aid was given and he was returned to Madurai Rajaji Government Hospital. The petitioner was admitted at B.A.M.C Hospital, Madurai, as an inpatient and a surgery was done on 31.07.2008 and he was discharged on 11.08.2008. He has to undergone another surgery for removing the plate and screws fixed in his right upper arm. At the time of accident, the petitioner was an Agriculturist and owner of land and was earning Rs.1,00,000/- per year, but after the accident, due to the disability sustained by him, he is not able to look after agricultural operations. Hence, the petitioner has filed the claim against the respondent.

3. The respondent in his counter has submitted that on 30.07.2008, at about 06.30 p.m., when the driver of the respondent's bus bearing registration not TN-58N-0670 was driving the bus from Sengottai towards Dindigul and when the bus was near Padmavathi Cotton Mills, the driver of the respondent's bus had seen the petitioner travelling in his vehicle bearing registration No. not TN- 57C-4204 and that the petitioner was talking to another person namely Rajendran, who was also riding a motorcycle and that they were proceeding on the central portion of the road, on observing this, the driver of the bus had sounded horns and that the petitioner had suddenly turned his vehicle to the left of the road and dashed it against a stationery lorry carrying a load of sand and due to this the motorcycle of the petitioner had capsized and that the petitioner and his wife had sustained injuries. It was submitted that the bus had not dashed against the motorcycle, as alleged in the claim. It was submitted that as the driver of the bus had not driven

the bus rashly and negligently, as alleged in the claim, the respondent is not liable to pay compensation to the petitioner. It was submitted that the petitioner should prove his age, income, occupation, nature of injuries sustained, medical treatment taken through documentary evidence. It was submitted that the claim was excessive.

4. The Motor Accident Claims Tribunal had framed two issues for consideration in the case namely: (1)Due to whose negligence was the accident caused?;Who is liable to pay compensation to the petitioner?; (2)What is the quantum of compensation which the petitioner is entitled to get?. In the same accident, the petitioner's wife Radhika who had sustained injuries had also filed a claim in M.C.O.P.No.21 of 2009, claiming compensation from the respondent for the injuries sustained by her. On the request made by the counsel for both the petitioners in their respective M.C.O.Ps, a joint trial was conducted and common evidence recorded in M.C.O.P.No.15 of 2009. The petitioner in M.C.O.P.No.15 of 2009 was examined as PW.1, the petitioner in M.C.O.P.No.21 of 2009 was examined as PW.2 and the Doctor namely M.Chidambaram was examined as Pws.3 and 26 documents were marked as Exs.P1 to P26 namely Ex.P1-copy of F.I.R; Ex.P2-copy of rough sketch; Ex.P3-copy of observation mahazar; Ex.P4-copy of Motor Vehicle Inspector's Report for vehicle bearing registration not TN-58N-0670; Ex.P5-copy of charge sheet; Ex.P6-copy of extract of accident register pertaining to Sivakumar; Ex.P7-copy of wound certificate of Sivakumar; Ex.P8-Discharge summary issued to Sivakumar; Ex.P9-CT Scan report of Sivakumar; Ex.P10-Medical bills for Rs.78,950/- and medical expenses incurred by Sivakumar; Ex.P11-X ray and Scan bills amounting to Rs.11,020/- pertaining to treatment of Sivakumar; Ex.P12-prescriptions issued to Sivakumar; Ex.P13-medical bills for Rs.27,351/- pertaining to expenses of Sivakumar; Ex.P14-X rays pertaining to sivakumar; Ex.P15-driving licence of Sivakumar; Ex.P16-BA provisional certificate of Sivakumar; Ex.P17-copy of MA provisional certificate of Sivakumar; Ex.P18-copy of extract of accident register pertaining to Radhika; Ex.P19-wound certificate of Radhika; Ex.P20- discharge summary pertaining to Radhika; Ex.P21-medical expenses, amounting to Rs.5,400/- pertaining to that of Radhika; Ex.P22-X ray and lab bills for Rs.1,980/- pertaining to Radhika; Ex.P23-prescription chits issued to Radhika; Ex.P24-X rays of Sivakumar; Ex.P25-

disability certificate issued to Sivakumar; Ex.P26-case sheet of Sivakumar. On the respondent's side, the Conductor of the bus was examined as RW.1 and no document was marked.

5. PW.1, the petitioner had adduced evidence which is corroborative of the statements made by him in the claim regarding manner of accident and in support of his evidence, he had marked the exhibits listed as P1 to P17. He further deposed that due to the accident, he had sustained fracture of C-6 bone in his neck and also fracture of T1 to T5 and T8 bones in his spinal cord and that his right shoulder bone had been broken into pieces. He deposed that the bone in the lower part of upper arm had been fractured and that the 2nd rib bone in his left chest had also been fractured and that his left ear had been cut. He deposed that he had sustained tear injuries of muscle in his right cheek and it also swelling injuries in his right fore arms. He deposed that his wife had also sustained injuries and that the accident had occurred only due to the rash and negligent driving by the driver of the respondent's bus.

6. RW.1, the Conductor of the respondent's bus had adduced evidence that on the date of occurrence, the driver of the bus was driving the bus from Rajapalayam to Madurai and that he was driving it in a careful and cautious manner. He deposed that when the bus was near Padmavathi Cotton Mills, he had seen two persons, who were proceeding on separate motorcycles, going on the centre of the road ahead of them and that they were talking to each other and that the driver of the bus had sounded horn. He deposed that the petitioner, who was riding on his motorcycle took his motorcycle to the left of the road and dashed his vehicle against a stationery lorry loaded with mud, as a result of which the motor cycle had capsized and the petitioner had fallen down. He deposed that the accident had not occurred due to any rash or negligent driving of the driver of the bus, as alleged in the claim. However, the Tribunal, on considering that the F.I.R had been registered against the driver of the bus as per Ex.P1 and that the Police, after investigation had filed the charge sheet against the driver of the bus, as per Ex.P5 and also observing that the accident had occurred on the left side of the road, held that the accident had been caused by the rash and negligent driving by the driver of the respondent's bus and held the respondent liable to pay compensation to the

petitioner.

7. PW.2, Dr.Chidambaram, had adduced evidence that he had examined the petitioner and medical records pertaining to him and found that the petitioner experiences pain in his neck and spinal cord if he sit or walk for long periods of time and that he would not be able to do any work which involves bending and then to sit straight. He deposed that the right side movements of the petitioners neck and spinal region, the petitioner would not be able to drive any vehicles. He deposed that the movements of the petitioners right fore arm is operative only in the region of 60" to 80" and that the normal movements from 0" to 150". He further deposed that the swelling movements of his right fore arm exists only for the region of 0" to 15" and that the normal swelling movements from 0" to 90". He further deposed that movements of petitioners right shoulder extends only from 0" to 60" and that the normal movements are from 0" to 180". He further deposed that the petitioners right shoulder had been displaced inwards by 15" and that the inwards movements of his right shoulder extends from 15" to 25" only and that the petitioner is unable to move his shoulder in a outward direction. He deposed that the petitioner had sustained a disability of 67" and in support of his evidence, he had marked the disability certificate as Ex.P25, X rays as Ex.P24, and case sheet as Ex.P26. However, the Tribunal, on opining that the disability assessed was on the higher side held that the disability sustained by the petitioner could be taken only as 40%.

8. As no documents had been marked to prove the income of the petitioner, the Tribunal took the notional income of the petitioner as Rs.4,500/- per month. The Tribunal, on observing that the age of the petitioner was 38 years as per his driving licence marked as Ex.P15, adopted a multiplier of "16" and awarded a sum of Rs.3,45,600/- ($Rs.4,500/- \times 12 \times 40/100 \times 16$) under the head of loss of income due to disability of 40%; Rs.78,950/- was awarded towards medical expenses as per medical bills marked as Ex.P10; Rs.11,020/- was awarded towards medical expenses as per medical bills marked as Ex.P11; Rs.27,351/- was awarded towards medical expenses as per exhibit marked as Ex.P13; Rs.1,00,000/- was awarded under the head of pain and suffering and Rs.1,00,000/- was awarded towards future medical expenses; Rs.10,000/- was awarded towards attender

charges and Rs.5,000/- was awarded towards transport expenses; Rs.10,000/- was awarded under the head of nutrition; Rs.25,000/- was awarded towards loss of amenities and loss of comfort. In total, the Tribunal awarded a sum of Rs.7,12,921/- as compensation to the petitioner and directed the respondent to 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 deposit, with costs, within one month from the date of its order.

9. Not being satisfied by the award passed by the tribunal, the claimant has preferred the present appeal. The learned counsel for the appellant has contended that the tribunal erred in holding that the appellant had sustained only 40% disability, without assigning any reasons as the doctor, who is an expert had certified that the disability sustained by the appellant was 67%. It was contended that the tribunal had awarded a sum of Rs.1,00,000/- for future medical expenses and failed to note that the doctor had opined that the claimant should undergo medical examination till his life time as such the Trial Court ought to have awarded another sum of Rs.50,000/- for future medical expenses. It was also contended that the tribunal should have awarded an additional sum of Rs.15,000/- for transport expenses especially considering the fact that the appellant had taken treatment in various hospital in Madurai and that he had travelled in taxi. It was also contended that an addition sum of Rs.75,000/- should have been awarded by the Tribunal under the head of loss of amenities. Hence, it was prayed for grant of an additional sum of Rs.5,00,000/- as compensation to the appellant.

10. The learned counsel for the Insurance Company submits that the Tribunal had adopted multiplier method and had awarded compensation of a sum of Rs.3,45,600/- which is not appropriate in the instant case. Besides this, the Tribunal had awarded a sum of Rs.1,00,000/- under the head of future medical expenses which is also not appropriate in the instant case. The learned counsel further submits that adequate compensation had been granted to the claimant under the relevant heads. As such, the above appeal is not maintainable.

11. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the

Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding liability. However, the quantum of compensation is slightly on the lower side even though the multiplier method is not applicable in the instant case. Therefore, this Court considering the nature of injuries and considering the claimants avocation as an Agriculturist and on observing that he had sustained multiple bone fracture injuries on his neck, spinal cord, shoulder, right leg, left chest rib bone, cut injury in his ear, crush injuries in his lower jaw and on observing that he had undergone surgical operations on two occasions at different hospitals and that the doctor had assessed his disability at 67%. Further, it is seen that the Tribunal had not granted adequate compensation under the head of transport and attender charges and loss of earning during medical treatment period. Therefore, this Court grants Rs.15,000/- towards loss of earning during medical treatment and Rs.5,000/- as additional compensation towards transport expenses and Rs.5,000/- as additional compensation towards attender charges. In total, this Court awards Rs.25,000/- as additional compensation to the appellant/claimant. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation. This Court directs the Tamil Nadu State Transport Corporation to pay the said additional compensation amount within a period of eight weeks from the date of receipt of this order.

12. After such a deposit being made, it is open to the claimant to withdraw the above said compensation amount, with accrued interest thereon lying in the credit of M.A.C.O.P.No.15 of 2009, on the file of Motor Accident Claims Tribunal, Subordinate Court, Srivilliputhur, after filing a memo, along with a copy of this order.

13. In the result, the above appeal is partly allowed. Consequently, the award and decree passed in M.A.C.O.P.No.15 of 2009, on the file of Motor Accident Claims Tribunal, Subordinate Court, Srivilliputhur, dated 23.12.2010, is modified. No costs. ub To 1.The Motor Accident Claims Tribunal, Subordinate Court, Srivilliputhur. 2.The Section Officer, VR Section, High Court, Madras.