

Thangavel Vs. 1. Ponraj

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Court : Chennai

Decided On : Mar-08-2013

Judge : C.S.Karnan

Appellant : Thangavel

Respondent : 1. Ponraj

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)Nos.614 of 2008 and C.M.A(MD)No.61 of 2009 C.M.A.(MD)Nos.614 of 2008 Thangavel ... Appellant Vs.

1. Ponraj 2. National Insurance Company Limited, Through its Branch Manager, 2A, Thirumakkulam North Street, Thallakulam, Madurai

002. ... Respondents (First respondent remained Ex-parte in the trial Court, hence dispense with) PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the order passed in M.C.O.P.No.1129 of 2005, on the file of Motor Accidents Claims Tribunal, Principal District Judge, Tirunelveli, dated 01.08.2007. !For Appellant ... Mr.T.Selvakumaran ^For Respondents... Mr.S.Srinivasa Raghavan for R-2 - - - C.M.A(MD)No.61 of 2009 National Insurance Company Limited, Through its Branch Manager, 2A, Thirumakkulam North Street, Thallakulam, Madurai

002. ... Appellant Vs.

1. Thangavel 2. Ponraj ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set-aside the order dated 01.08.2007 made in M.C.O.P.No.1129 of 2005, on the file of Motor Accidents Claims Tribunal, Principal District Judge, Tirunelveli. For Appellant ... Mr.S.Srinivasa Raghavan For Respondents ... Mr.T.Selvakumaran for R-1 Mr.K.Sekar for R-2 :COMMON JUDGMENT The appellant / claimant has preferred the present appeal in C.M.A.No.614 of 2008, against the judgment and decree passed in M.C.O.P.No.1129 of 2005, on the file of Motor Accidents Claims Tribunal, Principal District Judge, Tirunelveli.

2. The short facts of the case are as follows:- The petitioner has filed the claim in M.C.O.P.No.1129 of 2005, claiming compensation of a sum of Rs.7,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident. It was submitted that on 23.06.2005 when the (deceased) Arockiaraj was driving the Tata India Car bearing registration not TN-69-W-2678, along with the (deceased) Narayanaswamy and the petitioner herein, viz., Thangavel, travelling as passengers, from Tirunelveli to Kovilpatti and about 1.30 p.m., when the said car was proceeding just north of petrol bunk at Gangaikondan, on Tirunelveli-Madurai Main Road, and driven by its driver, viz., the (deceased) Arockiaraj at a slow speed from south towards north, the first respondent's lorry bearing registration not TN-51-7815, coming from the opposite direction and driven by its driver at a high speed and in a rash and negligent manner, all of a sudden, came to wrong side beyond the median. The driver of the Tata Indica Car, tried to stop the car on the left side of the road, but in spite of this, the lorry dashed against the car due to which, the car was pushed back to a few yards and smashed into pieces. In the accident, the driver of the car, viz., Arockiaraj and the (deceased) passenger Narayanaswamy died on the spot itself. The petitioner, viz., Thangavel sustained severe injuries. The petitioner sustained multiple fractures over the right leg, right leg femur, right hand wrist, left leg knee cap, right hand shoulder and right side hip. Immediately, thereafter, the petitioner was taken to Tirunelveli Medical College Hospital, Tirunelveli and received treatment as an inpatient from 23.06.2005, during which period a surgery was conducted and steel plates and screws were

fixed in the affected area. He has incurred medical expenses of a sum of Rs.1,00,000/-. Due to the fractures sustained in the accident, the petitioner has been permanently disabled. At the time of accident, the petitioner was an cloth sales business and earning not less than Rs.5,000/- per month. Hence, the petitioner has filed the claim against the first and second respondents, who are the owner and insurer of the lorry bearing registration not TN-51-7815.

3. The second respondent, in his counter has denied the averments in the claim regarding the age, income, occupation of the petitioner and nature of injuries sustained by the petitioner / claimant. It was submitted that the driver of the Tata Indica Car bearing registration not TN-69-W-2678 had driven the car in a rash and negligent manner and dashed it against the lorry and as such, the accident had occurred due to composite negligence on the part of both the drivers. It was submitted that as the petitioner has not impleaded the owner and insurer of the Tata Indica Car, the claim is bad for non-joinder of necessary parties. It was submitted that the claim was excessive.

4. The Motor Accidents Claims Tribunal had framed three issues for consideration in the case, viz., "(i) Whether the accident was caused by the rash and negligent driving by the driver of the first respondent's lorry? (ii) Whether the petition is bad for non-joinder of necessary parties? and (iii) Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation and who is liable to pay the compensation?" 5. In the same accident, two other claims have been filed in M.C.O.P.No.945 of 2005 and M.C.O.P.No.1133 of 2005. viz., In M.C.O.P.No.945 of 2005, the legal-heirs of the (deceased) Narayanaswamy have filed the compensation for the death of the said Narayanaswamy and the petitioners in M.C.O.P.No.1133 of 2005, who are the legal-heirs of the (deceased) Arockiaraj have claimed compensation for the death of the said Arockiaraj in the accident.

6. On a joint memo filed by the counsels for their respective parties, joint trial was conducted and common evidence recorded in M.C.O.P.No.945 of 2005. The first petitioner in M.C.O.P.No.945 of 2005, Amudha was examined as P.W.1 and the petitioner in M.C.O.P.No.1129 of 2005, Thangavel was examined as P.W.3 and

the first petitioner in M.C.O.P.No.1133 of 2005, Tmt. Reetha Mary was examined as P.W.3. Thiru.Ramaguru, Professor, Tirunelveli Medical College Hospital, Tirunelveli was examined as P.W.4 and Thiru.Solaiappan, Insurance Surveyor was examined as P.W.5 and 41 documents were marked as Exs.P1 to P41, viz., Ex.P1-certified copy of F.I.R. in Crime No.89 of 2005 of Gangaikondan Police Station, dated 23.06.2005, Ex.P2-certified copy of final report dated 27.07.2005, Ex.P3-certified copy of Motor Vehicle Inspector's report, Ex.P4-certified copy of Motor Vehicle Inspector's report dated 24.06.2006, Ex.P5-certified copy of observation mahazar dated 23.06.2005, Ex.P6- xerox copy of training certificate issued by Indian Army, Ex.P7-xerox copy of identity card, Ex.P8-xerox copy of order for payment for pension, Ex.P9-copy of state bank account, Ex.P10-account and challan particulars of U.T.I. Bank, Ex.P11-Indian Overseas Bank pass book, Ex.P12-xerox copy of pension certificate, Ex.P13-certificate issued by positive production dated 28.06.2005, Ex.P14-copy of weekly account of Ajantha company, Ex.P15-prospectus copy of Ajantha company, Ex.P16-certified copy of wound certificate, Ex.P17-discharge summary issued by Shree Sudharson Hospitals, Exs.P18 to P20-Hospital bills issued by Shree Sudharson Hospitals, Ex.P21-bill issued by Physiotherapist, Ex.P22-Hospital bill issued by Nellai Ortho Aids dated 24.06.2005, Ex.P23-Hospital bill issued by K.G.Hospital, dated 18.03.2006, Ex.P24-C.T.Scan bill dated 30.06.2005, Ex.P25-X- rays bills, Ex.P26-medical bills, Ex.P27-prescription sheet, Ex.P28-X-rays, Ex.P29-postmortem certificate dated 24.06.2005, Ex.P30-permit, Ex.P31-order regarding transfer of permit, Ex.P32-copy of policy, Ex.P33-R.C.Book, Ex.P34- sale agreement, Ex.P35-Survey Report dated 27.10.2005, Ex.P36-Photos and negatives, Ex.P37-documents relating to lorry with registration not TN69-Z-6676, Ex.P38-copy of driving licence, Ex.P39-central bank of India account, Ex.P40- disability certificate issued by P.W.4 dated 17.06.2006, Ex.P41-X-rays (5 in numbers), Ex.R2-X-ray bill. On the side of the respondents, two witnesses were examined and five documents were marked as Exs.R1 to R5, viz., Ex.R1-copy of policy, Ex.R2-xerox copy of rough sketch, Ex.R3-investigation report, dated 21.11.2005, Ex.R4-certified copy of judgment in C.C.No.147 of 2006 on the file of Judicial Magistrate-III, Tirunelveli, dated 31.07.2006, Ex.R5-Xerox copy of judgment in C.C.No.147 of 2005, on the file of Judicial Magistrate-III, Tirunelveli, dated 31.07.2006.

7. P.W.2, Thangavel, had adduced evidence that on 23.06.2005, when he and others were travelling in the Tata Indica car bearing registration not TN- 69-W-2678, when the said car was proceeding from south to north on the Tirunelveli-Madurai Amin Road, and nearing a petrol bunk at Gangaikondan, the first respondent's lorry bearing registration not TN-51-7815, coming from the opposite direction and driven in a rash and negligent manner by its driver, dashed against the car in which they were travelling and caused the accident. He deposed that three persons travelling in the said car died on the spot itself, and that he had sustained fracture of bones in his body.

8. On scrutiny of Ex.P1, F.I.R., it is seen that the complaint regarding the accident had been given by one Xavier, who is the brother of the (deceased) Arockiaraj, who died in the accident. In this complaint, it has been stated that at about 01.30 p.m., when the car, which was driven by the deceased Arockiaraj was nearing Gangaikondan on the Kanyakumar-Madurai National Highways, the first respondent's lorry bearing registration No. TN-51-7815, coming from the opposite direction, i.e., from north to south and driven by its driver rashly and negligently, dashed against the car, head on, as a result of which, the car was turned towards south and that when the said Xavier visited the accident spot, he could see his brother Arockiaraj, another passenger Narayanaswamy and yet another passenger viz., Alwar lying dead and could see one Thangavel and Rajmohan had sustained injuries.

9. R.W.2, Iyappan, the driver of the first respondent's lorry had adduced evidence that on the date of accident, he was driving his lorry on the left side of the road and that the Tata Indica Car had come from the opposite direction, and dashed against his lorry.

10. The Tribunal, observed that R.W.2 had not stated in his evidence, whether he was driving the lorry slowly and carefully and had also not stated whether he was acquitted by the Criminal Court on the ground that the accident was due to the rash driving on the part of the Tata Indica Car and he had also not stated in his evidence whether the Tata Indica Car was driven by its driver in a rash and negligent manner.

11. Though it was contended on the side of the respondents that as per Ex.R5, the copy of the judgment of Criminal Court, the second respondent has proved that the accident was due to the negligence or rashness on the part of R.W.2 and that it was only due to the negligence of the driver of the Tat Indica Car, the Tribunal opined that Ex.R5, cannot be used for the purpose of deciding the cause of the accident. The Tribunal further opined that the rough sketch marked as Ex.R2, and the report of the investigator of the second respondent marked as Ex.R3, do not have any evidentiary value as regards the question of determining how the accident had taken place.

12. Hence, the Tribunal on scrutiny of Ex.P1 and the evidence of P.W.2 and on scrutiny of the oral and documentary evidence held that the accident had been caused by the negligence of the first respondent's lorry driver. The Tribunal, on opining that it is the prerogative of the petitioner to claim compensation against the person, who according to the petitioners were responsible for the tort and on observing that they have thought it fit to only file the claim against the owner and insurer of the lorry, held that the petition is not bad for non-joinder of necessary parties.

13. P.W.2, the claimant had adduced evidence that he had suffered fracture of bone in his left knee, right thigh, right wrist, right shoulder and right hip bone. He deposed that he had undergone treatment as an inpatient in a private nursing home for 16 days and several surgeries were performed on him and despite such treatment, he has not fully recovered and that he has been taking treatment even at present.

14. P.W.4, Dr.Ramaguru adduced evidence that he had examined the petitioner and the medical records and had found that the petitioner sustained fracture on his left wrist and left knee and sustained fracture on his right shoulder joint bone and that his left hip bone dislocated. He further deposed that the petitioner experiences pain on his right chest, right shoulder, wrist joint and right knee. She deposed that the strength of muscles in these areas have been reduced and that the movements of the left leg had also been restricted. He deposed that the petitioner had suffered dislocation of shoulder joint on right side and suffered compound

fracture in right distal radius of fracture of distal femur in left knee and also fracture of rib bones 1, 2, 3, 4 and 5 and had initially undergone treatment from 23.06.2005 to 08.07.2005 and thereafter undergone treatment as an inpatient from 05.08.2005 to 10.08.2005 and has been undergoing treatment since then continuously. He deposed that the petitioner had sustained 70% partial permanent disability and in support of his evidence, he had marked Ex.P40, disability certificate.

15. Hence, the Tribunal on scrutiny of Ex.P16, wound certificate, Ex.P40-disability certificate and Ex.P28-X-rays and on considering the evidence of P.W.2 and P.W.4, awarded a sum of Rs.70,000/- under the head of disability and loss of earning capacity due to partial permanent disability of 70% sustained by him; Rs.1,00,000/- was awarded under the head of 'medical expenses as per Exs.P19 to 26 medical bills, Rs.25,000/- was awarded under the head of 'pain and suffering' and Rs.5,000/- was granted towards extra nourishment, transport to hospital and expenditure on attendants. In total, the Tribunal, awarded a sum of Rs.2,00,000/- as compensation to the petitioner and directed the second respondent, on behalf of the first respondent, to deposit the said sum together with interest at the rate of 6% per annum from the date of filing the petition till the date of deposit, with costs, within three months from the date of its order.

16. Not being satisfied with the award passed by the Tribunal, the petitioner/claimant has preferred the appeal in C.M.A.(MD)Nos.614 of 2008.

17. The learned counsel for the appellant / claimant has contended in his appeal that the Tribunal ought to have granted a sum of Rs.1,40,000/- under the head of 'disability' as per the judgment reported in 2007 (2) TN MAC 257. It was contended that the Tribunal ought to have granted Rs.3,96,000/- under the head of 'loss of earning' as the claimant sustained fracture of bone in his left knee, right thigh, right wrist, right shoulder and right hip. It was contended that the Tribunal failed to award any sum towards loss of amenities and that a sum of Rs.50,000/- should have been awarded under this head. It was pointed out that the award of Rs.25,000/- given as compensation under the head of pain and suffering was low and that it has to be enhanced to Rs.50,000/-. It was also contended that the award of Rs.15,000/- should have been granted under the head of 'extra

nourishment and transportation as the appellant/claimant had undergone treatment for more than six months. Hence, it was prayed to grant an additional award of Rs.2,00,000/-.

18. Aggrieved by the award passed by the Tribunal, the National Insurance Company has preferred the appeal in C.M.A(MD)No.61 of 2009.

19. The learned counsel for the appellant / Insurance Company has contended in his appeal that the Tribunal ought to have appreciated that the accident in question took place as a result of a head on collision of two vehicles. It was contended that the Tribunal ought to have found that the claimant has not chosen to implead the owner and insurer of the car bearing registration not TN-69-W-2678 in which they were travelling at the time of accident. It was contended that the Tribunal ought to have found that there was no negligence on the part of the driver of the lorry bearing registration not TN- 51-7815 and a perusal of Exs.R4 and R5 would prove the absence of guilt on the part of the driver of the lorry and also would prove that the competent Magistrate Court had acquitted the driver of the lorry from the criminal prosecution alleging negligence on the part of the driver of the lorry. It was contended that the Tribunal ought to have found that the accident had taken place as a result of the negligence on the part of the driver of the car bearing registration not TN-69-W-2678 only and at the worst, it is a composite negligence and as such, the Tribunal ought not to have fastened the entire liability on the owner and insurance copy of the lorry involved in the accident. It was contended that the Tribunal ought to have found that the witnesses examined on the part of the insurance company. R.W.s.1 and 2 would clearly prove the absence of negligence on the part of the driver of the driver of the lorry. It was also contended that the Tribunal was not justified in discarding the evidentiary value of Exs.R4 and R5 and that the oral testimony of R.W.1 and R.W.2 and the scope and ambit of judgment of the Magistrate Court, which had acquitted the driver of the lorry. It was submitted that the award was excessive and hence, it was prayed to set-aside the award passed by the Tribunal.

20. The learned counsel for the Insurance Company has submitted that the doctor had assessed the disability as 70%, which is on the higher side. The Tribunal had

granted a sum of Rs.1,00,000/- under the head of 'medical expenses, which is also on the higher side. In order to prove the medical claim, the concerned hospital authorities have not been examined before the Tribunal, who are necessary witnesses in the said case. As such, lacuna arises in the compensation granted under the head of medical expenses.

21. Per contra, the highly competent counsel appearing for the claimant has submitted that the claimants rib bones 1, 2, 3 and 5 were fractured and the claimant's bones in right wrist, right knee and right shoulder have been fractured. As such, the claimant had sustained compound bone fracture injuries. Several surgical operations were conducted. The Tribunal had not analyzed the compensation adequately.

22. On verifying the facts and circumstances of the case and arguments advanced by the highly competent counsels 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 awarded by the Tribunal is inadequate, considering the compound bone fracture injuries and surgical operation done on the petitioner and medical expenses incurred. Therefore, this Court reassesses the compensation as follows:- Rs.1,00,000/- is awarded towards medical expenses, Rs.20,000/- is awarded for pain and suffering; Rs.10,000/- is awarded towards transport; Rs.10,000/- is awarded towards nutrition; Rs.10,000/- towards attender charges; Rs.70,000/- is awarded under the head of disability of 70%; Rs.15,000/- is awarded under the head of loss of income during medical treatment period; Rs.35,000/- is granted under the head of loss of comfort and loss of amenities; In total, this Court awards Rs.2,70,000/- as compensation to the claimant. After deducting initial compensation of a sum of Rs.2,00,000/-, this Court awards an additional compensation of a sum of Rs.70,000/- 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 claim petition till the date of payment of compensation. As per Court records, it is seen that the Insurance Company has already been deposited the compensation amount awarded by the Tribunal. This Court directs the National Insurance Company to deposit additional compensation amount, with accrued interest

thereon, as per this Court's order within a period of four weeks from the date of receipt of a copy of this order.

23. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P.No.1129 of 2005, on the file of Motor Accidents Claims Tribunal, Principal District Judge, Tirunelveli, after filing a Memo, along with a copy of this order, subject to deduction of withdrawals made by the claimant, as per this Court's earlier order.

24. In the result, the above appeal in C.M.A.(MD)Nos.614 of 2008 filed by the claimant is partly allowed. The appeal in C.M.A(MD)No.61 of 2009 filed by the Insurance Company is dismissed. Consequently, the order passed in M.C.O.P.No.1129 of 2005, on the file of Motor Accidents Claims Tribunal, Principal District Judge, Tirunelveli, dated 01.08.2007 is modified. There is no order as to costs. r n s To The Principal District Judge, Motor Accidents Claims Tribunal, Tirunelveli.

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