

**K.Ramakrishnan Vs. 1.A.Babu**

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**Court :** Chennai

**Decided On :** Mar-12-2013

**Judge :** C.S.Karnan

**Appellant :** K.Ramakrishnan

**Respondent :** 1.A.Babu

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

12. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)No.977 of 2012 K.Ramakrishnan ... Appellant Vs. 1.A.Babu 2.National Insurance Company Limited, Represented by its Branch Manager, Tallakulam, Madurai. ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to modify the fair order and Ex-order dated 15.09.2006 made in M.C.O.P.No.1060 of 1999, on the file of Additional District and Sessions Judge, Fast Track Court-III, Madurai. !For Appellant ... Mr.S.Suriyanarayanan ^For Respondents... Mr.K.C.Ramalingam for R-1 M/s.P.Malini - - - :JUDGMENT The appellant / petitioner has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.1060 of 1999, on the file of Additional District and Sessions Judge, Fast Track Court-III, Madurai.

2. The short facts of the case are as follows:- The petitioner has filed the claim in M.C.O.P.No.1060 of 1999, claiming compensation of a sum of Rs.2,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident. It

was submitted that on 10.09.1995, when the petitioner was travelling as a pillion rider in the 'Bajaj M80' motorcycle, driven by his friend Samsudeen, and at about 4 p.m., when the motorcycle was near Bharati Nagar, the first respondent's car bearing registration not TSE-138, driven in a rash and negligent manner by its driver had dashed against the motorcycle and caused the accident. In the result, the petitioner and his friend were thrown out of the vehicle and sustained injuries. Hence, the petitioner has filed the claim against the first and second respondents, who are the owner and insurer of the car bearing registration not TSE-138.

3. The second respondent, in his counter has denied the averments in the claim regarding age, income and occupation of the petitioner, injuries sustained by him, physical disability, as well as the manner of accident. It was submitted that the first respondent's car driver had not been rash and negligent in his driving and that the accident had occurred only due to the negligence of the rider of the 'Bajaj M80' motorcycle, as he had come on the wrong side of the road. It was submitted that the petition was bad for non-joinder of necessary parties viz., the owner and insurer of the 'Bajaj M80' motorcycle. It was also submitted that the driver of the car did not have a valid licence at the time of accident and as such, the second respondent cannot be held liable to pay compensation.

4. The Motor Accidents Claims Tribunal had framed two issues for consideration in the case, viz., "(i) Was the accident caused by the rash and negligent driving by the driver of the car bearing registration not TSE-138? (ii) Is the petitioner entitled to get compensation? If so, what is the quantum of compensation which he is entitled to get?" 5. On the petitioner's side, two witnesses were examined and thirteen documents were marked as Exs.P1 to P13, viz., Ex.P1-F.I.R, Ex.P2-wound certificate, Ex.P3-judgment copy, Ex.P4-X-rays, Ex.P5-prescription chits, Ex.P6- medical bills, Ex.P7-Lab report, Ex.P8-case sheet, Ex.P9-disability certificate, Ex.P10-N.S.Hospital case sheet, Ex.P11-X-rays, Ex.P12-S.S.L.C. Certificate, Ex.P13-N.S.Hospital bills. On the respondent's side, one witness was examined and two documents were marked as Exs.R1 and R2, viz., Ex.R1-policy, Ex.R2- investigation report.

6. P.W.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 Exs.P1 to P13. On scrutiny of Ex.P1, the F.I.R., it is found that the statements contained in the F.I.R. is in synchronization with the evidence of P.W.1 regarding manner of accident. P.W.1 had categorically deposed that the accident had caused by the rash and negligent driving of the first respondent's car by its driver.

7. R.W.1 Sankaranarayanan, the Assistant in Insurance Company deposed that the car was a tourist taxi and that they had appointed an investigator to investigate the matter. R.W.1 deposed that the car driver was not having the licence to drive his taxi and in support of his evidence, he had marked Ex.R1, policy and Ex.R2-investigator's report.

8. On scrutiny of Ex.P3, it is seen that the car driver had pleaded guilty and paid the fine before the criminal Court and that he was charge sheeted under Section 279, 337 and 338 IPC. The Tribunal observed that he was not charged under Section 3 of Motor Vehicles Act for not possessing the driving licence. Hence, the Tribunal, on considering the oral and documentary evidence held that the accident had been caused by the rash and negligent driving of the car bearing registration not TSE-138 by its driver and hence, held both the first and second respondents liable to pay compensation to the petitioner.

9. P.W.1 had further adduced evidence that he sustained abrasions on his hand and leg and that he sustained cut injuries in his heel. He deposed that he was treated at Government Rajaji Hospital, wherein first aid was given and that he received treatment as an inpatient at N.S.Hospital at Palanganatham from 10.09.1995 to 26.09.1995, wherein a surgery was done in the heel and steel plate and screws were fixed in the fractured area. He deposed that he had taken further treatment at the hospital from 02.11.1995 to 11.11.1995 and that screws fixed in his heel was removed. He deposed that due to the injuries sustained, he could not sit and raise up and that he cannot walk without wearing foot gear and that he had to use the walking stick for support while walking. He deposed that he was not able to earn as he used to do before the accident.

10. P.W.2, Dr.Shanmugam, had adduced evidence that after examining the petitioner, he had seen a scar of length 15 cmt at the right ankle in the inner part and that at the outer part a scar of length 16 cm was found. He deposed that the petitioner has lost sensation in a portion of the scar measuring 12 cms and that the movements of muscles, joints and bone joints have become restricted. He deposed that the petitioner would feel difficulty while shifting on the floor and squatting and that he had assessed the disability sustained by the petitioner at 34% and in support of his evidence, he had marked Ex.P9, disability certificate, Ex.P10-medical notes and Ex.P11-X-rays.

11. The Tribunal, on scrutiny of the oral and documentary evidence awarded a sum of Rs.5,000/- for loss of income during medical treatment and convalescence period, Rs.500/- was awarded for transport expenses and Rs.500/- was awarded towards nutrition; Rs.10,000/- was awarded towards medical expenses as per bill Nos.18 to 32, marked in Ex.P6, medical bill series; Rs.9,000/- was awarded under the head of pain and suffering. The Tribunal on considering that the disability assessed by the doctor was on the higher side, awarded a sum of Rs.20,000/- under the head of disability. In total, the Tribunal awarded a sum of Rs.45,000/- as compensation to the petitioner and directed the second 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.

12. Not being satisfied with the award passed by the Tribunal, the petitioner has preferred the present appeal.

13. The learned counsel for the appellant / claimant has contended in his appeal that the Tribunal had failed to note that the petitioner is a businessman, having an earning of Rs.10,000/- per month, but came to a conclusion that the income is not proved in view of non-filling of column No.4. It was also contended that the Tribunal had wrongly rejected some of the medical bills marked, by observing that there is no date and patient's name on it. It was contended that the Tribunal wrongly held that P.W.2, the doctor cannot fix the percentage of disability as he is not attached to N.S.Hospital and failed to note that the doctor, being an expert can

speaking about the disability even if he had not attended the patient. It was contended that the Tribunal failed to consider the nature of injury, mode of treatment, non-removal of steel plate, non movement without walking stick and continuous pain, but fixed the low compensation of Rs.45,000/-. It was contended that the Tribunal failed to see that the fracture is made in the heel and the same would not be easily healed and hence, the pain and suffering is a continuous one and as such, the compensation of Rs.9,000/- towards pain and suffering is on the lower side. It was also contended that the award of Rs.20,000/- towards disability of 34% granted by the Tribunal, by disregarding the evidence of P.W.2, doctor was erroneous. Hence, it was prayed to modify the order passed by the Tribunal and grant an additional compensation of a sum of Rs.1,55,000/-.

14. The learned counsel for the Insurance Company has submitted that even though the criminal case has not been registered under Section 3 of Motor Vehicles Act, the driver of the car did not possess a valid driving licence to drive the said vehicle. The doctor had assessed the disability at 34%, which is on the higher side. The claimant had undergone medical treatment at Government Hospital. Adequate compensation had already been granted by the Tribunal. Hence, the learned counsel entreats the Court to dismiss the said appeal.

15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side, and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in conclusions arrived at regarding liability. However, the Tribunal had not granted adequate compensation to the claimant, since the claimant had been hospitalized for more than 25 days, as an inpatient. During medical treatment period, a surgical operation had been conducted on his heel bone. The doctor had also assessed the disability as 34%. Hence, this Court is inclined to grant additional compensation. Therefore, this Court restructures the compensation as follows:- Rs.34,000/- is awarded under the head of disability; Rs.10,000/- is awarded towards pain and suffering; Rs.5,000/- is awarded towards attender charges; Rs.5,000/- is awarded towards nutrition; Rs.5,000/- is awarded towards transport expenses; Rs.10,000/- is awarded towards medical expenses; Rs.5,000/- towards loss of earning during medical treatment and convalescence period; Rs.5,000/- towards loss of comfort and loss

of amenities. In total, this Court awards a sum of Rs.79,000/- as compensation to the petitioner. After deducting initial compensation of a sum of Rs.45,000/-, this Court awards a sum of Rs.34,000/- as additional 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 claim petition till date of payment of compensation. This Court directs the second respondent herein to deposit the additional compensation with accrued interest thereon, as per this Court's findings, within a period of four weeks from the date of receipt of a copy of this order. The Insurance Company had raised an objection that the offending vehicle driver was not possessing a driving licence at the time of accident. However, the respondent had not let in evidence to prove that the driver of the offending vehicle was not possessing a valid driving licence at the time of accident. Therefore, this Court rejects the contentions of the respondent on the said issue.

16. 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.1060 of 1999, on the file of Additional District and Sessions Judge, Fast Track Court-III, Madurai, after filing a Memo, along with a copy of this order. This Court further observes that for filing the above appeal, there was a delay of 45 days and that the same was condoned by this Court. The Insurance Company need not pay interest on the award amount granted by this Court, for the delay period of 45 days.

17. In the result, the appeal is partly allowed. Consequently, the order passed in M.C.O.P.No.1060 of 1999, on the file of Additional District and Sessions Judge, Fast Track Court-III, Madurai, dated 15.09.2006 is modified. There is no order as to costs. r n s To The Additional District and Sessions Judge, Fast Track Court-III, Madurai.

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