

T.Elwin Vs. 1. Sreekumar

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Court : Chennai

Decided On : Jan-30-2013

Judge : C.S.Karnan

Appellant : T.Elwin

Respondent : 1. Sreekumar

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

30. 01/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
C.M.A.(MD)No.2830 of 2002 & C.M.P.(MD)No.19161 to 19163 of 2002 T.Elwin ...
Appellant Vs.

1. Sreekumar 2. R.Lathika 3. United India Insurance Company Limited, Branch
Office, Post Box No.5521, IInd Floor, Malankara Buildings, V.J.T.Hall Road,
Palayam, Trinvandrum

034. ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, against the award and decree dated 08.02.2002
made in M.A.C.T.O.P.No.72 of 1994, on the file of Motor Accidents Claims
Tribunal, (Sub Judge), Padmanabhapuram. !For Appellant ... Mr.G.Sam Edwin Raj
(No appearance) ^For Respondents... Mr.A.S.Mathialagan for R-3 R-1 and R-2 -
dismissed for default - - - :JUDGMENT The appellant / petitioner has preferred the
present appeal against the judgment and decree passed in M.A.C.T.O.P.No.72 of

1994, on the file of Motor Accidents Claims Tribunal, Sub Judge, Padmanabhapuram.

2. The short facts of the case are as follows:- The injured petitioner represented by his father has filed the claim in M.C.O.P.No.72 of 1994, claiming compensation of Rs.3,00,000/- from the respondents for the injuries sustained by the petitioner in a motor vehicle accident. It was submitted that on 08.10.1993, the petitioner was travelling as a pillion rider in a motorcycle bearing Registration not TCK-2136, along with one Sreetharan as the rider, on the Marthandam-Thuckalay Road and their friends, viz., Vijaya Kumaran Thampi and Sethunath came behind them on another motorcycle. When the above vehicles came near the weighing bridge at Vellicode, the second respondent's lorry bearing Registration not KEV-4646, coming in the opposite direction and driven by its driver, i.e, the first respondent, at a high speed and in a rash and negligent manner dashed against the motorcycle bearing Registration not TCK-2136. The motorcycle was trapped inside the lorry and the petitioner and Sreetharan sustained grievous injuries. They were immediately taken to George Hospital at Thuckalay for first aid and then admitted at Trivandrum Medical College Hospital. The said Sreetharan died on the same day and the petitioner continued to take treatment at the hospital, as an inpatient for 21 days in the intensive care unit and was in the medical college hospital for more than 90 days. He was given nasal feeding and breaths through tracheostomy tube. After discharge from the medical college hospital, he was admitted at the Grace Nursing Home at Kaliyakavilai. He is still in an unconscious stage and not able to identify things. He has been totally disabled due to the injuries sustained in the accident. At the time of accident, the petitioner was a third year B.Sc. Computer Science student at Marshal Nesamony College, Marthandam. He was the Secretary of the students union and was clever and intelligent. Hence, the petitioner has filed the claim as against the first, second and third respondents, who are the driver, owner and insurer of the lorry bearing Registration not KEV-4646.

3. The third respondent / United India Insurance Company Limited, in his counter has denied the averments in the claim regarding age and avocation of the petitioner as well as the manner of accident. It was also contended that the non

inclusion of the owner and insurer of the motorcycle bearing Registration not TCK-2136 as necessary parties, makes the claim as not maintainable. The averments in the claim regarding nature of injuries sustained and medical treatment taken and disability sustained was also not admitted. It was submitted that the accident was caused only due to the rash and negligent riding of the motorcycle by the deceased A.S.Sreedhar and that the driver of the lorry bearing Registration not KEV-4646 had not been rash and negligent in his driving, as alleged in the claim. It was submitted that the claim was excessive.

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 first respondent's lorry? (ii) Is the petitioner entitled to get compensation?" 5. On the petitioner's side, four witnesses were examined and ten documents were marked as Exs.P1 to P10, viz., Ex.P1-copy of judgment, Exs.P2 and P3-copy of disability certificate, Ex.P4-medical bills (series), Ex.P5-copy of rough sketch, Ex.P6-copy of policy, Ex.P7-copy of disability certificate, Ex.P8-copy of S.S.L.C. certificate, Ex.P9-copy of mark sheet and Ex.P10-copy of driving licence. On the respondent's side, no witness, no documents.

6. P.W.1, the father of the petitioner had adduced evidence which is corroborative of the statements made by him in the claim and in support of his contentions, he had marked the exhibits listed as Exs.P1 to P10. However, on cross examination, he had admitted that he is not an eyewitness of the said accident.

7. P.W.2, Vijayakumaran Thambi had adduced evidence that on 08.10.1993, the petitioner was travelling as a pillion rider on the motorcycle bearing Registration not TCK-2136 and driven by the (deceased) Sreetharan and that he had ridden his motorcycle bearing Registration not KEV-369 and followed them. He deposed that he had seen that the second respondent's lorry coming in the opposite direction and dashed against the motorcycle ridden by Sreetharan. He deposed that the accident had occurred only because of the rash and negligent driving of the second respondent's lorry by its driver. He deposed that he had admitted the injured two persons at the Thukkalai George Hospital. On scrutiny of Ex.P1, it is seen that the first respondent had admitted his guilt and paid the fine. On scrutiny

of Ex.P10, it is seen that the (deceased) Sreetharan had a valid driving licence to drive the motorcycle at the time of accident. Hence, the Tribunal, on considering the oral and documentary evidence held that the accident had been caused by the rash and negligent driving by the driver of the second respondent's lorry.

8. P.W.3, Dr.Bonjai, had adduced evidence that he is running a hospital in the name and style of Grace Nursing Home and that the petitioner had been admitted in their hospital, when he was in an unconscious stage. He deposed that on examination, he had found that the right thigh bone of the petitioner had been fractured and that the petitioner had also sustained injuries in his head. He deposed that the wound certificate issued by his Nursing Home had been marked as Ex.P3. He deposed that during the treatment period, nasal feeding was done and tracheostomy tube was inserted in the petitioner's throat to facilitate respiration. He deposed that the petitioner was admitted in the hospital on 06.01.1994, as an inpatient and discharged on 26.06.1994 and that due to the injuries sustained in his head, the entire nervous system of the petitioner's body had been affected and the petitioner has sustained permanent disability.

9. P.W.4, Dr.Selvam, the Assistant Medical Officer at the Nagercoil Government Hospital had adduced evidence that on scrutiny of the medical treatment records and after examination of the petitioner, he had found that due to the injuries sustained by the petitioner in the accident, his brain had been affected and that even if medical treatment is given to the petitioner, he would not be able to lead a normal life. He deposed that the petitioner had sustained 100% disability in the accident and in support of his evidence, he had marked Ex.P7, disability certificate.

10. The Tribunal on scrutiny of the oral and documentary evidence awarded a compensation of Rs.38,500/- under the head of 'medical expenses' on considering that the petitioner had taken medical treatment as inpatient for a period of three months at Tiruvananthapuram Medical College Hospital and also at Kaliyakavillai Grace Hospital for six months. Rs.1,000/- was awarded towards transport expenses and Rs.500/- for damage to clothes, Rs.3,000/- was awarded towards nutrition, Rs.1,00,000/- was awarded under the head of 'disability'. The Tribunal

awarded a sum of Rs.25,000/- under the head of 'pain and suffering. In total, the Tribunal awarded a sum of Rs.1,68,000/- as compensation to the petitioner and directed the third respondent to deposit the said sum together with interest at the rate of 9% per annum from the date of filing the petition till the date of deposit of compensation within one month from the date of its order.

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

12. The learned counsel for the appellant has contended in the grounds of appeal that the Tribunal had erred in awarding a very low compensation of Rs.1,68,000/- to the appellant, who was aged 21 years and studying in third year B.S.C Computer Science at the time of accident and who on account of the said accident became a coma patient and paraplegic suffering 100% disability. It was pointed out that the Tribunal failed to see that on account of the accident, the appellant suffered brain damage and also right leg fracture which shortened his leg by two inches. Due to the said injuries, the appellant was in coma for about 9 months and thereafter also was totally disabled both mentally and physically. It was pointed out that the Tribunal failed to see that the appellant is undergoing medical treatment even now and incurring medical expenses of over Rs.5,000/- per month and hence the award of Rs.38,500/- towards medical expenses is on the lower side. It was also contended that the Tribunal committed an error in awarding only Rs.1,00,000/- for 100% disability and that the awards granted under the head of transport, nutrition and pain and suffering is also on the lower side. It was contended that the Tribunal erred in not awarding compensation under the head of 'loss of future earning', 'loss of expectation of life' and 'loss of amenities of life'.

13. It was contended that the appellant is entitled for enhancement of compensation as he is required to undergo further surgery for lengthening of (R) femur which would cost Rs.2,00,000/-. It was pointed out that the appellant is required to be under medical treatment, medication and physiotherapy for another two to three years which will cost over Rs.1,00,000/- per year. Hence, it was prayed to grant additional compensation of a sum of Rs.6,32,000/-.

14. The learned counsel for the respondent argued that the claimant has now created documents in order to claim enhanced compensation. At the time of trial, two doctors were examined. Both the doctors did not disclose any medical opinion regarding future medical expenses. The claimant has belatedly, at an afterthought created the documents and has sought additional compensation.

15. On considering the facts and circumstances of the case and arguments advanced by the learned for the Insurance Company and appeal grounds raised by the learned counsel for the appellant and on perusing the impugned award of the Tribunal, this Court is of the view that the claimant had originally claimed a sum of Rs.3,00,000/- with interest. Considering the nature of bone fracture injuries, surgical operation conducted and head injuries sustained by the claimant, this Court is of the view that the claimant is entitled to receive the original claim amount and as such, this court awards a compensation of a sum of Rs.3,00,000/- to the claimant. But, the learned Tribunal had granted only a sum of Rs.1,68,000/- as compensation with 9% interest per annum. After deducting the earlier compensation of Rs.1,68,000/- granted by the Tribunal, this Court grants a sum of Rs.1,32,000/- as additional compensation. The additional compensation 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. This Court directs the third respondent / United India Insurance Company Limited to deposit the additional compensation amount of a sum of Rs.1,32,000/- with interest at the rate of 7.5% per annum, this Court order, within a period of four weeks from the date of receipt of a copy of this order.

16. After such a deposit has been made, it is open to the claimant to withdraw the entire additional compensation amount, with accrued interest thereon, lying in the credit of M.A.C.T.O.P.No.72 of 1994, on the file of Motor Accidents Claims Tribunal, Sub Judge, Padmanabhapuram, after filing a Memo along with a copy of this order.

17. In the result, the above appeal is partly allowed. Consequently, the award and decree passed in M.A.C.T.O.P.No.72 of 1994, on the file of Motor Accidents Claims Tribunal, Sub Judge, Padmanabhapuram, dated 08.02.2002 is modified.

There is no order as to costs. Consequently, connected miscellaneous petitions are closed. r n s To The Sub Judge, Motor Accidents Claims Tribunal, Padmanabhapuram.

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