

(2010) 09 MAD CK 0344

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1401 of 2006 and C.M.P. No's. 1356 and 6231 of 2006

Government Kilpauk Medical College

APPELLANT

Vs

P. Mani

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0344

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : P. Shanthi Rakkappan, for the Appellant; Santhanakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / Government Kilpauk Medical College, against the award and decree dated 08.09.2005 made in M.C.O.P. No. 3165 of 2001, on the file of Motor Accidents Claims Tribunal, Vth Small Causes Court, Chennai.

2. The short facts of the case are as follows:

On 23.02.2001, while the Petitioner was travelling in a TVS Champ bearing registration No. TN 01 E 8701, as rider, through Marshall Salai from North to South direction and at about 11.15 hours, when the Moped was idling at Ethiraj Salai Junction, in order to turn to the easter side, the bus bearing Registration No. TMY 2021 coming from North to South direction and driven by its driver in a rash and negligent manner, hit against the said moped. As a result of the impact, the rider, the Petitioner and its pillion rider sustained grievous injuries. Hence, the Petitioner has claimed a compensation of Rs. 1,00,000/- with interest and costs from the first Respondent, the owner of the bus and the second Respondent, its insurer.

3. The first Respondent, the Government Kilpauk Medical College, Chennai - 10,

has in its counter refused the allegations made in the claim. It has been stated that when the driver of the bus had turned the bus towards left at the turning of Marshalls Road end, the said two wheeler had tried to overtake the bus on the left side. As there was insufficient place between the two vehicles, the accident had occurred. If the bus had dashed the moped from behind, the moped would have suffered extensive damage in its rear side of moped as well as causing fractures in the back side or hip bone of the rider and pillion rider of the moped. The fact that only the Moped's front fork and front wheel were damaged and the fact that the Petitioner had only minor injuries clearly proves that the bus did not hit behind the moped as alleged in the claim. It was further stated that the rider of the Moped did not have a valid driving licence at the time of accident and the rider had submitted L.L.R. to the Police Department in L.R. No. 3177/2001, dated 12.03.2001 for the period from 12.03.2001 to 11.09.2001. It was further stated that the rider of the Moped was not its owner. Hence, the first Respondent had prayed for dismissal of the claim with costs.

4. On the pleadings of both parties, the Motor Accidents Claims Tribunal framed two issues for consideration, namely;

(i) Who is responsible for the accident?

(ii) Is the Petitioner entitled to get compensation?

5. On the Petitioners side, three witnesses were examined and nine documents were marked. On the Respondents side, there was no witnesses and no documents were marked.

6. PW1, the rider of the Moped in his evidence adduced that while he was travelling from North to South on Marshalls Road and when his moped was idling near its turning, the bus had hit the moped from behind. PW2, the pillion rider of the moped had also adduced evidence that the said bus had hit him from behind and that the accident was caused only by the negligence of the driver of the bus. On scrutinizing of P2, the F.I.R., it is seen that the accident had occurred only due to negligence of the bus driver and a criminal case had been registered against him in Cr. No. 77/T3/2003. The Tribunal, on considering the evidence and circumstances of the case, held that the accident occurred due to the negligence of the bus driver.

7. PW1, in his evidence adduced that because of the said accident, his right hand wrist had been fractured and that the bone in calf of his left leg had been fractured; that he had injuries on the portion near his left eye; that he had taken treatment at Royapettah Hospital, as inpatient, for a period of 2 days; that he is not able to perform work as before.

8. PW3, the Doctor, in his evidence adduced that in the said accident, PW1 had suffered fracture injuries on the head of radius bone, in his left torn arm joint and that due to constriction of flesh in this area, his left forearm movements had been reduced by 200; that he would not be able to do any hard work with his left

hand; that after going through medical records, he had certified that the Disability sustained by the Petitioner as 20% in his left hand.

9. The Tribunal, on considering the age of the Petitioner, and also considering that he was a mason, earning Rs. 4,000/- per month and that he was not employed for a period of two months after the accident , granted compensation as follows:

Rs. 8,000/- (R. 4,000 x 2) towards loss of income for two months;

Rs. 500/- for transport expenses;

Rs. 500/- against nutrition;

Rs. 5,000/- towards pain and suffering;

Rs. 20,000/- for partial permanent disability;

Rs. 5,000/- loss of earning capacity;

In total, the Tribunal awarded a compensation of Rs. 39,000/- to the Petitioner.

10. The learned Counsel for the Appellant argued that the claimant underwent treatment at Royapettah Hospital for two days. This proves that he had sustained simple injuries only. The Tribunal had awarded Rs. 8,000/- under the head of "loss of income" for two months and this is also not proper.

11. The learned Counsel for the claimant argued that the claimant had sustained bone fracture injuries and he was professionally carrying on the work of a mason. The learned Tribunal had not considered compensation under the head of "attendant charges". The claimant, after discharge from hospital had undergone treatment for a period of two months as outpatient.

12. In view of the facts and circumstances of the case and arguments submitted by the learned Counsels on either side and on perusing the award of the Tribunal, this Court is of the considered opinion that the compensation amount a sum of Rs. 39,000/- granted by the Tribunal is reasonable, especially as it has been granted under the relevant heads namely, pain and suffering, disability, nutrition, transport, medical expenses, attendant charges and loss of income, during medical treatment period and convalescent period . As such, this Court is not able to find any discrepancy in the said award. Hence, the award granted by the Tribunal is confirmed as it is fair and equitable.

13. It is open to the claimant to withdraw the entire compensation amount lying in the credit of M.C.O.P. No. 3165 of 2001, on the file of Motor Accidents Claims Tribunal, Vth Small Causes Court, Chennai, after filing necessary payment out of application in accordance with law, subject to withdrawals if any made already.

14. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal on the file of Vth Small Causes Court, Chennai, made in M.C.O.P. No. 3165 of 2001, dated

08.09.2005 is confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.