

(2010) 09 MAD CK 0391

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1402 of 2006 and C.M.P. No's. 1357 and 6232 of 2006

Government Kilpauk Medical College

APPELLANT

Vs

S. Kumar

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0391

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. 4107 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 a pillion 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 eastern 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 and the pillion rider, the Petitioner herein sustained grievous injuries. Hence, the Petitioner has claimed a compensation of Rs. 3,00,000/- 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. PW2, in his evidence had stated that because of the said accident, his left thigh bone had been fractured and that two bones had been fractured in the region below his right knee and that he had suffered bruises on his left eyebrow and left calf of his leg. He stated that he had taken treatment at Royapettah Government Hospital, as inpatient, for a period of six months and that he is not bale to perform his work and also not able to stand for long periods of time and that even for passing stools, he needs the help of another person. He has further stated that as a result of the accident, one of his leg has been shortened by 2".

8. PW3, the Doctor had adduced evidence stating that in the said accident PW1

had suffered left femur fracture, fracture of bones in his right and left leg and also abrasions over left elbow and that skin surgery had also been done. He had further stated that the fractured two bones in his right leg had not joined properly, even after treatment and his knee movements had been reduced by 200. He had certified that the disability sustained by the Petitioner as 50% and marked Ex.P8, the disability certificate.

9. The Tribunal on considering that the Petitioner was earning Rs. 3,500/- per month as mason, and considering that he was not able to do any work for a period of one year after the accident and after considering the facts and circumstances of the case, gave compensation as follows:

Rs. 42,000/- (Rs. 3,500 x 12) towards loss of income for one year;

Rs. 5000/- for transport expenses;

Rs. 5000/- against nutrition;

Rs. 17,250/- towards medical expenses as per Ex.P4 Rs. 15,000/- towards attendant charges;

Rs. 25,000/- towards pain and suffering;

Rs. 50,000/- for loss of earning capacity;

In total, an award of Rs. 2,09,250/- was granted as compensation to the Petitioner.

10. The learned Counsel for the Appellant argued that the Tribunal had awarded Rs. 42,000/- under the head of "loss of income" and that this is not proper, besides the Tribunal had awarded Rs. 50,000/- under the head of "loss of earning capacity" and this is also not pertinent. The learned Counsel further argued that the 50% disability, which had been assessed by the Doctor was on the higher side.

11. The learned Counsel for the claimant argued that the claimant had sustained bone fracture injuries on his left thigh, right leg, left leg knee and other bodily injuries. The claimant had undergone six months medical treatment, as inpatient, at Government Royapettah Hospital, Chennai. His leg has been shortened by 2". During medical treatment period, a surgical operation was conducted and steel plates and screws were fixed in the operated area. After some time, they had been pus formation in the area and the steel plates were then removed. Considering the nature of injuries and period of medical treatment, the award is not on the higher side. The learned Counsel further argued that the claimant's leg had been shortened by 2" and as such the claimant is unable to perform his normal duty as mason.

12. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award, this Court is of the considered opinion that the claimant had sustained bone fracture

injuries in his two legs. A surgical operation had also been conducted and the doctor had assessed the disability at 50%. Therefore, the compensation amount of a sum of Rs. 2,09,250/- is reasonable, especially considering the Petitioner's disability, loss of income during medical treatment period, attendant charges, nutrition, transport, medical expenses, pain and suffering and loss of earning capacity. Therefore, this Court is not warranted to interfere with the quantum of compensation and hence this Court confirms the award of the Tribunal, 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. 4107 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. 4107 of 2001, dated 08.09.2005 is confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.