

(2011) 01 MAD CK 0420

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1393 of 2003 and C.M.P. No. 9382 of 2003

Government of Andhra Pradesh

APPELLANT

Vs

T. Srinivasan

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0420

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

Bench : Single Bench

Advocate : R. Muthaiah, for the Appellant; J. Mahalingam, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellants/Sub Divisional Prohibitions Excise Officer, Tirupathi, Andhra Pradesh and the Collector, Chittur, Andhra Pradesh against the award and decree dated 22.08.2002 made in M.C.O.P. No. 2318 of 1998 on the file of Motor Accident Claims Tribuna, IV Small Causes Court, Chennai, on awarding a compensation of a sum of Rs. 19,500/- together with interest at 9% p.a., from the date of filing the claim petition till the payment of the compensation.

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

On 08.01.1997 at about 10.15 a.m., when the Petitioner was travelling on his scooter bearing Registration No. TN22-A-7216, on the Anna Salai from North to South direction and when it was near Maraimalai Adigal Bridge, the jeep bearing Registration No. TNA-630, driven by its driver at a high speed and in a rash and negligent manner, dashed behind the scooter. As a result, the Petitioner sustained injuries. Hence, he has claimed a compensation of Rs. 75,000/- from the Respondents.

3. The Government of Andhra Pradesh rep. by Sub Divisional Prohibition Excise Officer Tirupati and the Government of Andhra Pradesh, represented by Collector,

Chittur, Andhra Pradesh, the Respondents herein, in their counter have resisted the claim stating that on the date of accident, they were not the owners of the Jeep bearing Registration No. TNA-630. It was stated that on 20.10.1995, at about 04.30 p.m., the first Respondent and his employees had stopped the jeep bearing Registration No. TNA-630, near Govindarajulu temple and conducted a search operation. They found that it carried illicit liquor. Hence, it was seized and the vehicle was handed over to the Assistant Commissioner, Prohibition and Investigation Wing at Anantapur. Subsequently, it had been handed over to the Sub-Inspector on 27.10.1995 for safe custody and it had remained in his possession so far. It was further stated that the vehicle after being seized was not in use till date. The vehicle is not in a road-worthy condition. The Respondent has denied that on 08.01.1997, the jeep was driven by B. Rajasekara Rao in a rash and negligent manner. It was also stated that the Petitioner should prove the claim regarding his age, monthly income, nature of injuries.

4. After going through the pleadings of both parties, the Tribunal framed two issues for consideration, namely;

(i) Who is responsible for the accident? Have the necessary parties been added for proper adjudication?

(ii) Is the Petitioner entitled to receive compensation? If so, what is the quantum of compensation?

5. On the side of the claimant three witnesses were examined and five documents were marked. On the side of the Respondents one witness was examined and one document was marked.

6. PW1, has adduced evidence that on 08.01.1997, at about 10.15 a.m., when he was travelling in his scooter bearing Registration No. TN22-A-7216, on the left side of the Maraimalai Adigal bridge and when he was proceeding towards Chinnamalai, Saidapet, the jeep bearing Registration No. TNA-630 had dashed against him; that he had fallen down and sustained injuries; that the accident had been caused by the rash and negligent manner of driving by the driver of the jeep; that he had registered a complaint with the police, which had been marked as Ex.P2. PW2, the eyewitness of the accident, adduced evidence that on 08.01.1997, at about 10.15 a.m, when he was walking on the Maraimalai Adigal bridge, the jeep bearing Registration No. TNA-630 had dashed against the scooterist; that the police had noted the registration number of the jeep; that the scooterist sustained bleeding injuries in his head and chest; that he had admitted the scooterist at Government Hospital, Saidapet; that the driver of the jeep caused the accident.

7. RW1, has adduced evidence that he was working in the first Respondent's office till 02.09.1995; that the Government of Andhra Pradesh was not the owner of the jeep involved in the accident; that he was not aware of the accident which occurred on 20.10.1995; that he had seized the jeep bearing Registration No. TNA-630 at Tirupati as it was carrying illicit arrack; that the jeep was in the

possession of the House Station Office, Tirupati; that it was handed over to the Assistant Commissioner, Anantapur, who had subsequently handed over custody of the jeep to the Sub Inspector on 27.10.1995. He had further stated that he had enquired with the R.T.O., Madurai and found that the jeep had been registered under the name of the Divisional Manager, L.I.C., that he had questioned the Divisional Manager; that the Divisional Manager had informed him that the jeep had been disposed of on 28.03.1984; that Manager did not have the necessary documents to substantiate this; that he had later accepted that the said jeep was as assembled one and that it had been used for illegal purpose, that a F.I.R. and charge sheet was filed on 07.12.1996 and that this had been marked as Ex.R1.

8. On the Petitioner's side it was argued that there was no evidence to show that the said jeep was an assembled one; that it had been used by the Manager, L.I.C., that it had been so, the sections should have been mentioned in the charge sheet; that there was no documentary evidence to prove that the vehicle was not in a usable condition; that the Divisional Manager, L.I.C., should have been questioned.

9. The Tribunal on considering the documentary evidence and after hearing witnesses held that the accident had been committed, while the jeep had been in the custody of the Respondents.

10. PW1, in his evidence had adduced that immediately after the accident, he had taken First Aid at Saidapet, and subsequently at Government Royapettah Hospital; that the Discharge Summary marked as Ex.P1 was from the said hospital; that he was the owner of Refrigeration Service Centre and to prove this, he had marked Ex.P3, the licence. PW3, the doctor who had inspected the Petitioner on 20.08.2001, adduced evidence that the Petitioner had sustained a tear injury of size ? x ? cm on his right chest and also constriction of his muscles; that due to this he has pain while inhaling; that he had difficulty in working; that he had sustained a permanent disability of 20% and to substantiate this had marked Ex.P5, the X-ray and Ex.P6, the disability certificate.

11. The Tribunal on consideration of the documentary and oral evidence awarded compensation as follows: Rs. 500/- for transport and nutrition; Rs. 5,000/- under the head of pain and suffering; Rs. 10,000/- for partial permanent disability; Rs. 4,000/- for loss of income during medical treatment period. In total, the Tribunal awarded the compensation a sum of Rs. 19,500/- with interest at the rate of 9% per annum.

12. Aggrieved by the said award, the Appellants have filed the present appeal to set-aside the award and decree passed by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai in M.C.O.P. No. 2318 of 1998.

13. The learned Counsel for the Appellants has argued in his appeal that the Tribunal had erred in holding that the vehicle belonging to the Government of Andhra Pradesh was involved in the accident. It was argued that the Tribunal

erred in not appreciating the valuable documentary evidence that the vehicle in question was seized by the enforcement wing of the Prohibition and Excise Department of Government of Andhra Pradesh and after the seizure and confiscation of the vehicle, it was handed over to the Assistant Commissioner, Excise Department on 27.10.1995. To that effect, the said Assistant Commissioner had also written a letter on 05.08.1998 vide R.C.134/311/95 that the vehicle is under his control at Anandapur Assistant Commissioner of Prohibition and Excise and therefore there is no question of the vehicle being taken to Madras, where the accident is said to have taken place on 08.01.1997.

14. Considering the facts and circumstances of the case and arguments advanced by the learned Counsel for the Appellant, this Court is of the considered opinion that the F.I.R. was registered against the offending vehicle by the Investigation Officer, who is a Police Officer. Further, the Tribunal had come to the conclusion that the accident had been committed by the driver of the offending vehicle, which was decided on oral and documentary evidence. This Court further opines that as per the Appellants contention that the vehicle was in the possession of the Assistant Commissioner, Excise Department, he should have been examined to prove the custody of the vehicle. As this has not been done, so the view of the Tribunal is justified. As such, there is no discrepancy in the Tribunal's order regarding liability. The quantum of compensation i.e., a sum of Rs. 19,500/- awarded by the Tribunal is also not on the higher side. Therefore, this Court confirms the said award of the Tribunal, as it is found to be fair and equitable. Hence, the Court directs the Appellants to comply with the Tribunal order within a period of six weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimant/Respondent to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 2318 of 1998 on the file of Motor Accident Claims Tribunal, IVth Small Causes Court, Chennai after filing a Memo along with this order, subject to withdrawal if any made already.

15. Resultantly, the Civil Miscellaneous Appeal is dismissed. Consequently, the award and decree, passed by the Motor Accidents Claims Tribunal, IVth Small Causes Court, Chennai made in M.C.O.P. No. 2318 of 1998, dated 22.08.2002 is confirmed. There is no order as to costs. Consequently, connected C.M.P. No. 9382 of 2003 is closed.