

(2011) 02 MAD CK 0429

In the Madras High Court

Case No : C.M.A. No. 406 of 2011 and M.P. No. 1 of 2011

Government of Tamilnadu

APPELLANT

Vs

C. Murugesan

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (2011) 02 MAD CK 0429

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : V. Bhavani Subbaroyan, Spl. Govt. Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Appellants against the award dated 4.12.2008 made in MCOP No. 135 of 2006 by the Motor Accident Claims Tribunal, Erode District, Bhavani.

2. Background facts in a nutshell are as follows:

The injured C. Murugesan met with motor vehicle accident that took place on 25.10.2005 at about 12.30 p.m.. The said injured was riding his TVS XL Super bearing registration No. TN-33-11-2245 on the western side of the North south Mettur-Bhavani road from south to North. When he was nearing opposite to Karpakam Petrol Bank, Chithar, at the time, an ambulance van bearing registration No. TN-36-G-0109 belonging to the 3rd Appellant came in a rash and negligent manner and also in a high speed and hit the injured. Due to which, the claimant had sustained fracture and multiple injuries all over the body. Immediately he was admitted in Orthopedic Hospital, Bhavani. He claimed a sum of Rs. 5,00,000/- as compensation. The appellants resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the ambulance van, the third Respondent herein?

2. Whether the claimant is entitled to the compensation? If so, what is the amount?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the ambulance van and awarded a compensation of Rs. 2,37,000/-with interest at 6% per annum from the date of petition and the details of the same are as under:

Loss due to 70% disability

Rs. 1,05,000/-

Pain and sufferings

Rs. 25,000/-

Medical expenses

Rs. 1,00,000/-

Transport expenses

Rs. 2,000/-

Extra Nourishment

Rs. 5,000/-

Total...

Rs. 2,37,000/-

Aggrieved by that award, the Appellants have filed the present appeal.

3. The learned Counsel appearing for the Appellants vehemently contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and further contended that the Tribunal awarded a sum of Rs. 1,05,000/-towards loss due to 70% disability which is also excessive and also without any basis. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Heard the counsel and perused the materials available on record.

5. On the side of the claimant, P. Ws.1 and 4 were examined and 4 documents Exs.P1 to P24 were marked. The injured himself was examined as P.W.1. PW2 is the Doctor M.A. Loganathan. PW.3 is the Doctor N.S.V. Kumar. Ex.P1 is the xerox copy of the First Information Report. Ex.P2 is the Rough sketch. Ex.P3 is the Seizure Mahazar. Ex.P4 is the Motor Vehicle Inspector's report. Ex.P5 is the xerox copy of the Motor Vehicle Inspector's report. Ex.P6 is the Wound Certificate. Ex.P7 is the copy of the charge sheet. Ex.P8 is the medical bills. Ex.P9 is the x-ray and medical bills. Ex.P10 & P11 are the discharge summary. Ex.P12 is the hospital receipt. Ex.P13 is the medical bills. Ex.P14 is the x-ray and

Blood check up bills. Ex.P15 is the bills for bringing blood and lab receipt. Ex.P16 is the discharge summary. Ex.P17 is the bills for X-ray. Ex.P18 is the medicine receipts. Ex.P19 is the Discharge summary. Ex.P20 is the x-ray. Ex.P21 is the copy of the Wound Certificate. Ex.P22 is the Disability certificate. Ex.P23 is the X-ray. Ex.P24 is the bills of x-ray. On behalf of the Appellants one Dr. S. Kavitha was examined and no document was marked to support their claim. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the ambulance van, and it is the question of fact and the same is confirmed.

6. At the time of accident, the injured-claimant was aged about 57 years old. He is working as Health Inspector in Government Primary Health Centre, Aramapet and was earning Rs. 11,682/-per month. P.W.1, the claimant, in his 5 evidence has stated that the accident had occurred due to the rash and negligent driving of the driver of the ambulance van and a case has been registered against him and he was charge sheeted by Bhavani Police Station in Crime No. 655 of 2005 under Sections 279 and 338 and 304(A) I.P.C. He further stated that due to the accident, he sustained fracture of ribs and also other multiple injuries all over the body. Immediately, after the accident, he was admitted at Orthopedic Hospital, Bhavani and also Dr. K.M. Nallasamy Hospital, Erode. Due to the injury, he has unable to walk, sit and also unable to breath and unable to do his work as before. Further in the evidence of PW.1, it is stated that he was admitted in Orthopedic Hospital, Bhavani and also surgery was also done and rod also fixed. Later he was also treated by Dr. K.M. Nallasamy hospital as inpatient. PW.2 is the Orthopedic Doctor, in his evidence, he has stated that the claimant was admitted from 25.10.2005 to 27.10.2005. Later, he was referred to Erode hospital for better treatment and Ex.P10 is the discharge summary. Ex.P11 is the case register and also Ex.P21 is the Wound certificate. PW.3 is the another Doctor, also in his evidence stated that the injured was treated in his hospital and he has given Ex.P6 Wound certificate and Exs.P12 and P13 series of medical bills. Further in his evidence, he has stated that the fracture of ribs, he has unable to breath freely. The evidence of Pws.2, 3 and 4 who are doctors fixed the disability at 70%. PW.3, Doctor N.S.V. Kumar, determined the disability at 70% and issued the disability certificate Ex.P22. Exs.P23 and P24 are also x-rays. The 6evidence of doctor also, it is clear that the fracture of ribs and multiple injuries all over the body. So, the Tribunal considering the oral and documentary evidence, fixed the disability at 70% and awarded a sum of Rs. 1,500/-per each percentage of disability. After considering the oral and documentary evidence, the Tribunal correctly awarded a sum of Rs. 1,500/-towards each percentage of disability and fixed a sum of Rs. 1,05,000/-towards the loss due to 70% disability. It is very reasonable and therefore, the same is confirmed. The Tribunal has also awarded a sum of Rs. 25,000/-towards pain and suffering. There was no dispute that the injured was admitted in various hospitals and taken treatment in the hospital and surgery was also done. So after taking into consideration, the Tribunal has

correctly awarded a sum of Rs. 25,000/-towards pain and suffering which is also reasonable and the same is also confirmed. The Tribunal has also awarded a sum of Rs. 1,00,000/-towards medical expenses. There is no dispute that he took treatment as inpatient in Bhavani and Erode hospital and produced Exs. P8, P9, P12, P13, P14, P15, P17, and P18 series of medical receipts. It is an actual expenditure incurred by the claimant. Therefore, the Tribunal correctly awarded a sum of Rs. 1,00,000/-which is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 2,000/-towards transportation and another sum of Rs. 5,000/-towards extra nourishment. Considering the period of treatment, the amount awarded by the Tribunal under these heads are very reasonable and the same are confirmed. The Tribunal has awarded interest at 6% per 7 annum from the date of the petition. The accident occurred on 25.10.2005. Taking into consideration, the prevailing rate of interest during that period, the interest awarded by the Tribunal is confirmed.

7. Taking into consideration of the total circumstances of the case, I am of the view that the amount awarded by the Tribunal is based on valid material and there is no error or illegality in the order of the Tribunal warranting interference by this Court. It is the question of fact and it is not a perverse order and therefore, it is not a fit case for admission and hence the Civil Miscellaneous Appeal is dismissed.

8. The Appellants are directed to deposit the entire award amount with 6% interest to the credit of MCOP No. 135 of 2006 on the file of the Motor Accident Claims Tribunal, Erode District, Bhavani, within a period of ten weeks from the date of receipt of a copy of this order. On such deposit, the injured-claimant is permitted to withdraw the award amount with 6% interest on making proper application.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.