

(2010) 06 KL CK 0016
In the High Court Of Kerala
Case No : M.A.C.A. No. 2807 of 2009

Jaimon

APPELLANT

Vs

Sunilkumar, P.P. and Others

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) 06 KL CK 0016

Hon'ble Judges : P.Q. Barkath Ali, J; A.K. Basheer, J

Bench : Division Bench

Advocate : P.V. Baby and A.N. Santhosh, for the Appellant; Thomas Mathew Nellimottil, for 3rd Respondent, for the Respondent

Judgement

A.K. Basheer, J.—This appeal is at the instance of the claimant in an application u/s 166 of the Motor Vehicles Act seeking compensation for the injuries sustained by him in a road accident.

2. The Tribunal after considering the documentary evidence adduced by the Appellant, quantified the total compensation at Rs. 3,40,000 but held that the Appellant would be entitled to get only half of the said amount.

3. The Appellant impugns the award primarily on the ground that the finding of the Tribunal that he had contributed to the accident to the extent of 50% is wholly untenable and without any basis. It is further contended that the amount of compensation as quantified by the Tribunal is far too inadequate and low, particularly since the Tribunal had accepted the percentage of disability certified by the Doctor.

4. Before we deal with the above aspects, it has become necessary to refer to a disturbing trend or scenario that is being noticed in the proceedings of the Tribunals in the State. It has come to the notice of this Court that many of the Presiding Judges do not permit the claimants to get themselves examined in

their cases. In many cases, the Presiding Judges get endorsement on the claim petition from the counsel and/or the party that the claimant does not intend to adduce any oral evidence despite strong reservations of the counsel as well as the party concerned.

5. It is, no doubt, true that there is considerable pressure of work on the Tribunals in the State. It is equally true that many of the Tribunals do not have sufficient infrastructure to deal with the heavy backlog that has mounted over the years due to no fault of the incumbent, but because of various other reasons. It may yet again be true that unnecessary adjournments are being sought by the claimants and their counsel even in very old matters. In many cases the witnesses, especially Doctors, fail to turn up on the appointed day despite repeated summons, with the result the cases get adjourned. These may be some of the several factors which contribute to the malady of heavy backlog in almost all the Tribunals in the State.

6. But still, no claimant who comes before the Tribunal seeking compensation shall have a feeling, at the end of the day that he has not been given sufficient opportunity to prove his case. Undoubtedly, in some of the claim petitions there may hardly be any scope or necessity for oral evidence, but in many other, the situation may be totally different. What we wish to highlight is that the Tribunals must bestow more attention on these aspects. We do not propose to elaborate much.

7. We have adverted to the above scenario only since the case on hand has given us an opportunity to delve deeper into the prevailing state of affairs in the Tribunals.

8. Appellant is a Medical Practitioner working in the Employees' State Insurance Corporation. In a collision between his motor cycle and Anr. two wheeler, he sustained several injuries like fracture of left orbital roof, left maxilla and the medial wall of orbit. It is on record that he suffered complete blindness in his left eye due to trauma. He was taken to Kovai Medical Centre in Coimbatore for expert treatment after administering some initial treatment at the West Fort Hospital, Thrissur.

9. To cut a long story short, the Ophthalmic Surgeon who examined him later, assessed permanent visual disability in his left eye as 50%. It is not necessary to refer to the contents of the disability certificate in detail at this stage.

10. The Tribunal observed that the percentage of disability as certified by the Ophthalmic Surgeon can be accepted, since the present condition of the left eye of the Appellant was noticed in Open Court as is seen recorded in the award itself. However the Tribunal proceeded to observe further that the visual disability will not affect his earning capacity. Therefore the Tribunal fixed the "disability compensation" at Rs. 1,83,600 after reckoning his monthly "notional income" as Rs. 3,000 and applying multiplier of 17.

11. But when it came to the crucial question as regards negligence of the drivers of the two vehicles involved in the accident, the Tribunal noticed that the Police had laid A and B charges against the riders of both two wheelers for the offences punishable under Sections 279 and 338 of the Indian Penal Code.

12. But while dealing with the Police charge, the Tribunal observed that the Appellant did not turn up "to adduce any oral evidence explaining away Ext. A-3 charge against him, or to put the entire blame on the second Respondent in spite of the Police proceedings against both". Thereafter the Tribunal dealt with Ext. A-4 scene mahazar and went in some detail to the contents of the said document, particularly with reference to the width of the road at the place of the accident. The Tribunal came to the conclusion that the "exact spot of accident was at the middle of the road". The Tribunal thereafter observed thus:

Petitioner has absolutely no explanation as to why or how or in what circumstances he came to the centre of the road, and he did not adduce any oral evidence explaining such a circumstance. He has also no explanation for the Police proceeding against him. This Court does not think that charge was laid against both the riders by the police on the basis of any influence.... In view of Ext. A-4 scene mahazar suggesting rashness and negligence on the part of both the riders including the Petitioner there can be a finding against both and the Petitioner cannot have any explanation otherwise, in view of the undisputed Ext. A-4 scene mahazar. It is nowhere explained why or in what circumstance he came to the centre of the road and the 2nd Respondent also did not turn up to explain the police proceedings against him or to explain how or why or in what circumstance he came to the centre of the road. In the above circumstances this Court finds on the issue that the 2nd Respondent was not solely responsible for the accident, that he had contributed 50% rashness and negligence to the accident and that the Petitioner had also contributed to the accident by his rashness and negligence on the extent of 50%.

13. It may at once be noticed that the rider of the other two wheeler involved in the accident (Respondent No. 2) did not contest the case before the Tribunal. As noticed by the Tribunal, he did not adduce any evidence at all controverting the charge laid against him by the Police; obviously for the reason that the vehicle was validly insured with Respondent No. 3.

14. The grievance of the Appellant is that the Tribunal was not justified in putting the entire blame on the Appellant for not adducing any oral evidence in the case. Learned Counsel submits that the Appellant had a very solid and plausible explanation about the manner in which the accident occurred. However the Appellant was not given an opportunity to adduce evidence in the case. In fact the Appellant was personally present before the Court on five occasions. (The fact that the Appellant was present before the learned Judge is evident from the observations made by the learned Judge about the present condition of his left eye). It is further pointed out by the learned Counsel that his counter part before the Tribunal was persuaded (?) to make an endorsement on the claim petition

that the claimant did not intend to adduce any oral evidence.

15. When the above contention was raised before us on the last occasion, we made a query to the learned Counsel as to whether the Appellant is prepared to swear to an affidavit in this regard. After ascertaining from his client the learned Counsel submitted before us that such an affidavit will be placed on record. Accordingly the Appellant has sworn to an affidavit indicating the five occasions between November 2008 and March 2009 when he was physically present before the Tribunal. We do not find any reason to disbelieve the Appellant in this regard.

16. We do not propose to deal with the subject any further. The Tribunals, in our view, have to address the issue highlighted above with a little more compassion and pragmatism. No doubt, there may be cases in which highly inflated claims are made. There may also be instances when some of the claimants may not be able to produce all the relevant documents at the initial stage itself. Still further, in some cases the victim of the accident may be continuing treatment at the time when the case is taken up for trial or he might have undergone prolonged treatment for the after-effects of the accident. These are only a few examples which occur to us now. Our attempt is only to highlight the fact that the Tribunals may have to bestow a little more attention, atleast in matters which call for such deeper scrutiny. In short, the endeavour should be to extend a helping hand to the victims of the accident to the extent possible and not to dispose of the claim petition in a mechanical manner.

17. At this juncture we are constrained to observe that some of the Tribunals have made it a habit to dispose of the claim petitions with cryptic and non speaking awards in a very casual and mechanical manner, most often bordering on contemptuous indifference towards the claimants/victims. We conclude by saying that this attitude cannot be countenanced.

18. Having considered the entire materials available on record in this case, we have no hesitation to hold that the finding entered by the Tribunal fixing the liability of the accident to the extent of 50% on the Appellant cannot be sustained. Therefore the said finding is set aside. It will be open to the Appellant and the Respondents to adduce evidence in this regard before the Tribunal, if they so choose.

19. Therefore the case is remitted to the Tribunal for further consideration, confining to the negligence aspect. The Tribunal shall pass a fresh award after considering the oral and documentary evidence, if any, that may be adduced by the parties. Learned Counsel for the Appellant submits that the claimant will not challenge the quantum as assessed by the Tribunal. The above submission is recorded. The parties shall appear before the Tribunal on July 14, 2010.