

(1987) 06 MAD CK 0016

In the Madras High Court

Case No : Appeal Against Order No. 642 of 1981

Rajam

APPELLANT

Vs

Ramaswamy and Another

RESPONDENT

Date of Decision : 24-06-1987

Acts Referred:

Accidents Claims Tribunal Rules, 1961 — Rule 3

Citation : (1988) ACJ 1067 : AIR 1988 Mad 170

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : K. Thirumaiai, for the Appellant; B. Rarnamoorthy and R. Vedantham, for the Respondent

Judgement

Swamikkannu, J.—This is an appeal filed by the first respondent-minor Rajam, represented by father and guardian Neelakandan,

Proprietor, Anandan Bus Service, against the Award passed in C.P. No. 293 of 1979 on 291- 1981 along with C.P. No. 162 of 1979 by the

Motor Accidents Claims Tribunal (Third Additional Subordinate Judge), Cuddalore, finding that Ramaswamy petitioner/first respondent herein is

entitled to recover a compensation of Rs.9,000/-. The Tribunal observed that during the period of treatment, the injured would have suffered much

pain and suffering and as such a compensation of Rs.3,000/- is just and adequate. It is also held that the injured due to malunion of the bone has

suffered permanent disability and as such a compensation of Rs.6,000/- for the same was awarded. Thus, it was held that the first respondent

herein was entitled to a cover a total compensation of Rs.9,000/-.

2. The petitioner/first respondent herein (in C. P. No. 293 of 1979),. aged about 50 years is an agriculturist in Thondankurichi village earning about

Rs.100/- per month. On 2-6-1978 at about 1.15 p.m., both the first respondent herein as well as the petitioner in C.P. No. 162 of 1979 were

traveling in the bus TNF-405 belonging to the appellant herein and insured with the second respondent herein. When it was coming near Uchimedu

village in Kallakurichi Vridhachalam Road, it was driven in a rash and negligent manner and it dashed against a road side tamarind tree as a result

of which both of them sustained injuries. The first respondent herein sustained fracture in his right upper arm, internal wound in chest and other

injuries on his fingers. Even after treatment in Government Hospital, Kallakurichi and in the headquarters hospital at Cuddalore as an in-patient for

17 days and also in the Jimper Hospital at Pondicherry for about four months, still he is not able to do any work with his right arm and especially

agricultural work. Therefore, the first respondent herein claimed a compensation of Rs.10,000/-.

3. The appellant herein in its counter before the Tribunal contended that on a latent mechanical defect, the steering wheel went out of control all of

a sudden and could not" be controlled by the driver. Thus, the accident had happened not due to rash and negligent driving of the bus, but due to

an act of God for which no one can be held liable.

4. The appellant herein denied the injuries alleged to have been sustained by the first respondent herein in the accident and the permanent disability

pleaded by him. The compensation amounts claimed are excessive.

5. The second respondent herein in its counter before the Tribunal contended that when the bus was proceeding in Kallakurichi Vridhachalam

Road which is a narrow one, a boy ran across the road and in order to save him the bus had to be swerved to the side of the road. Then accident

had happened which is entirely due to an act of God and not due to rash and negligent driving of the bus.

6. The following points were framed by the Tribunal for determination

(I) Whether the accident has happened due to rash and negligent driving of the bus TNF 405?

(2) Whether the delay in filing the petitions may be condoned?

(3) Whether the petitioners are entitled to compensation and if so, for how much?

(4) To what relief are the parties entitled?

7. The first respondent herein examining himself as P.W. 2 deposed that he is residing in Thondankurichi village. He is an agriculturist owning about one acre of land. He is working as a jelly maistry employing labourers out of which he would get about Rs.300/- p.m., About two years prior to himself deposing before the Tribunal, one day he got into Anandan Bus Service belonging to the appellant herein at Kallakurichi at about 12.30 pm. to go to Veppur. When the bus was coming near Uchimedu village about 1 p.m ., very fastly west to I east, it turned towards left side and dashed against a tamarind tree on the northern side of the road. He fell down and sustained a fracture below his right shoulder and also other multiple injuries on his chest and fingers. At first he was taken to Kallakurichi hospital where he was given first aid and afterwards treatment in Government Hospital, Cuddalore and again at Gorimedu Hospital. Even after treatment, he is not able to do his work with his right hand. He prayed for a compensation of Rs.10,000/-. In his cross-examination he has deposed that he was sitting in the long seat near the front entrance of the bus. When the accident took place, he did not know where the conductor and checker were. It is true that the fractured bones, have United together properly, he is able to do all works and he is deposing now falsely with a view to claim higher compensation.

8. It is common ground that the bus TNF 405 plying between Kallakurichil and Vridhachalam dashed against a road-side tree on the left side near Uchimedu village at about 1.15 p.m., on 2-6-1978 in which the first respondent herein and another sustained injuries. While the first respondent herein contended that the accident happened due to rash and negligent driving of the bus, the appellant herein contended that it had happened due to a latent mechanical defect in the steering rod of the bus, as a result of which it went out of control and dashed against the tree. Thus, we find that the appellant herein admitted the accident, but would plead a latent mechanical defect in the steering rod as defence for the same. But they have not let in any evidence to substantiate the same. The burden is heavily on the appellant herein to show that the said fact of steering wheel going out of control is not due to rash and negligent driving of the bus, but due to a latent mechanical defect. It is not enough that he had pleaded the same in the statement, but he should have also added that the said latent mechanical defect could not be detected in spite of periodical checking and

servicing. But the appellant herein has not pleaded the same. The appellant herein has not also let in any evidence to substantiate the same. So the said plea cannot be accepted and the same was rightly rejected by the Tribunal.

9. Ex. A-1 certified extract from the first information report shows that it has been given by Kannan, the driver of bus TNF 405 and the relevant portion therein reads as follows : -

(Extract being in Tamil language is not reproducedEd.)

Thus, it is seen that he has simply stated therein that at the place of accident, the bus dragged to the left side and he applied brake, but did not

work and the bus dashed against a tamarind tree on the left side of the road. But he has not stated therein that the bus dragged to the left side due

to the steering wheel going out of control. Ex. A-2 certified copy of Motor Vehicles Inspector's report gives a list of damages caused to the bus in

Col. 9. But nowhere it has been given there that the settling rod of the bus went out of control. Ex. A-3 certified copy of judgment in C.C. No.

102 of 1979 in the Judicial Second Class Magistrate Court at Ulundurpet shows that the accused driver Kannan had pleaded guilty for offences

under Ss. 279 and 338 I.P.C., and he had been sentenced to pay a fine of Rs.300/-. Thus, taking the entire evidence available before the Court

we find that the driver of the vehicle in question had driven the bus with culpable negligence and rashness. The finding of the Tribunal in this regard

is correct and the same is confirmed.

10. P. W. 2 the first respondent herein has stated that in the accident he sustained a fracture in his right shoulder bone and other multiple injuries on

his chest and thumb. After first aid in Kallakurichi hospital, he took treatment as an in-patient in Cuddalore Hospital for 12 days. After discharge, 5

days later, as he felt painful, he got himself admitted in Government headquarters hospital at Cuddalore again and took treatment for another five

days. Even after that, he took treatment in Gorimedu Hospital as an outpatient for four months. Even now, he is not able to lift his right hand above

the shoulder or do any work with that hand. In his cross examination he would depose that it is not true that the fractured bones have joined

completely, he is able to do all works properly at present and his statements to the contrary that he is not able to do any work is false and it is

being made by him only with a view to claim higher compensation. Ex. A 14 case

sheet shows that the first respondent herein sustained the following injuries in the accident : -

1. A lacerated injury 1/2" X 1/4" X 1/4" in the back of left middle finger;
2. A deformity- of right arm at the middle and suspicion of fracture shaft humerus. Referred to the Government headquarters hospital, Cuddalore.

X-rays disclosed comminuted fracture mid shaft of right humerus and that he was given treatment in the Government, hospital from 2-6-1978 to

13-6-1978 and was discharged. Ex. A-18 shows that he took treatment in Jipmer Hospital from 21-6-1978 to 11-8-1978. Thus, the documents

show that he took treatment for a period of 3 months and 9 days i.e., from 2-6-1978 to 11-8-1978. P.W. 3 Dr. Thiagarajan has deposed that he

examined P. W. 2 on 4-8-1980 for complaints of pain in his right shoulder and difficulty in movement and the x-ray revealed ununited fracture

shaft of right humerus. P.W. 3 is of the opinion that pain and limitation of right shoulder movements are due to malunion of the fractured shaft of

right humerus. These complaints are likely to aggravate as the age advances. He estimated the disability at about 30% and Ex., A. 22 is the

disability certificate given by him. In his cross-examination P.W. 3 had deposed that on the third day of putting of P.O.P. cast, X-ray is usually

taken. It would show whether the fractured bones have been set properly or improperly. Usually check Xray is taken two weeks after P.O.P.

cast. Ex. A-14 shows fracture of humerus, manipulation, i.e., setting right of the fractured bones was done to P.W. 2 on 7-6-1978 cuff and collar

were applied. He saw him for the first, time only on 4-8-1980. He had not seen him before. He did not also know where he took any treatment

earlier. If it is suggested that P.W. 2 was in a proper condition from the date of discharge from the hospital i.e., on 13-6-1978 as to his

appearance before him on 14-8-1980 that he did not know it is not true that he is perfectly normal, now and is not suffering from any permanent

disability at all. Ex. A-15 and Ex. A-16 show comminuted fracture in the mid shaft of right humerus. Ex. A-17 has not disclosed, any fracture at all.

So the first respondent here in had sustained only one fracture in his right humerus bone. Thus the medical evidence showed that the first

respondent herein took treatment in various hospitals from 2-6-1978 to 11-8-1978, During the said period of treatment, he would have suffered

much pain and suffering and therefore the compensation of Rs.3,000/- awarded by the Tribunal under that head is just and reasonable and the

same is confirmed. Ex. A-24 shows malunion of right humerus bone, which would certainly cause him permanent disability in using the same.

Therefore, the compensation of Rs.6,000/- awarded by the Tribunal for disability is quite adequate and reasonable and the same is hereby

confirmed. Therefore, the award of Rs.9,000/- passed by the Tribunal with respect to the claim made in C.P. No. 203 of 19179 by the first

respondent herein is correct, just and adequate and the same is confirmed.

11. It is contended by the learned counsel for the appellant herein that the petition preferred by the first respondent herein before the Tribunal does

not contain particulars as against the various items of claims contemplated in the form. In this regard the decision reported in *Seethamma v.*

Benedict D'Sa, AIR 1967 Mys 11 is relied and the following passage which occurs at page 13 runs as follows :-

It appears to me that the form which is prescribed for the presentation of a claim was mechanically filled up by the claimants in the belief that

since rashness and negligence and other particulars had already been set out in the notice preceding the presentation of the claim petition, it was not

necessary to reiterate those allegations again. To my mind, the language of the form is such as to mislead a claimant in that way. The 22nd column

should require the claimant to state the grounds on which the respondents are sought to be made liable for compensation instead of merely asking

him to give any other information that may be necessary or helpful in the disposal of the claim.

The form prescribed by the Rules is to my mind both inadequate and misleading. It asks the claimant to state many things without requiring him to

state the really essential facts supporting the claim. The 22nd column is the only column against which those material facts could be stated, but, that

column which speaks of "any other information that may assist" "the disposal of the claim", cannot be comprehended as a requisition for facts

creating a right to compensation. The language of that column appears to be in the nature of an invitation to state other subsidiary information which

the claimant might consider useful to him. So the prescribed form is a poor substitute for a plaint and there can be no rational reason for insistence

on a pleading through its columns. A claim for compensation for death or injury which should be supported by a statement and proof of facts which create a right to it, should be allowed to be made through a properly prepared pleading such as a plaint produced before the ordinary Courts, and, not through the obscure columns of an imperfect form such as the one prescribed by the Rules. It is however, unnecessary to say more about this in this appeal"".

12. Rule 3 of the Motor Accidents Claims Tribunal Rules, 1961 reads as follows: -

3. Applications: (1) Every application for payment of compensation made u/s 110-D shall be made in the form appended to these rules and shall be accompanied by the fee prescribed therefore in Rule 20.

13. A careful reading of the observations

22. Where the application is not made within time state the cause thereof :

Merely on the ground that the details required in Col. 21-A, parts I and 11 against each and every subject, such as loss of earnings, partial loss of

earnings, etc., were given, it cannot be held that the failure on the part of the first respondent herein to fill up these columns in Col. 21-A in the

claim petition disentitle the first respondent herein from claiming compensation under the Act. It is seen that as against Col. 21-A a comprehensive

amount of compensation has been claimed. The first respondent herein examined himself as P.W. 1. Nothing has been elicited from him on behalf

of the appellant herein as to why he has not chosen to fill up the columns giving details. On the other hand, we find that P.W. 1 has spoken about

the various claims made by him amounting to Rs.10,000/- comprehensively in his chief-examination. It is a well established principle of law that the

failure of a person seeking remedy in a court of law should not be held as not entitled to get his legal claim on the ground of failure to mention under

what provision of law he has pleaded the prayer by way of a petition or a suit . or any other proceeding. No doubt ignorance of law is no excuse, but

that does not mean that each citizen of the great Bharat has to acquaint himself with the relevant provisions. It is for the Court to apply, its mind

under what provision of law relief can be granted for the prayer that has been made together with the details for such a prayer by the claimant or a

citizen seeking relief Bearing this broad principle of law, we find that the contention raised in this regard by the learned counsel for the appellant

herein cannot be upheld. No other point has been raised on behalf of the appellant herein. The Tribunal in the decision in AIR 1967 Mys 11 as

well as R. 3 of the Motor Accidents Claims Tribunal Rules, 1961 do not help the appellant herein for upholding his point as tenable. In Column 22

of the claim petition, the first respondent herein has given the following version :-

The petitioner was not able to get the address of the owner of the vehicle and the address of the Insurance Company. So there is a delay of 310

days and it is prayed that the delay may be excused. Amended as per I.A..... /81, dt.12-4-81.

had applied its mind and had come to the correct conclusion both with respect to the liability as well as the quantum of compensation and the same

are confirmed. This Court does not find any ground in the appeal. There is no merit in the appeal.

14. Hence the appeal is dismissed. In the circumstances of the case, there is no order as to costs.

15. Appeal dismissed.