

(2013) 10 MAD CK 0042
In the Madras High Court
Case No : C.M.A. No. 959 of 2007

Sheikh Abdul Khader

APPELLANT

Vs

Balu and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0042

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

Bench : Single Bench

Advocate : N. Anand Venkatesh, for the Appellant; S. Arunkumar for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 24.04.2006, made in

M.C.O.P. No. 193 of 2004, on the file of the Motor Accident Claims Tribunal, Tiruvarur. The short facts of the case are as follows:-

The claimant had filed a claim petition in M.C.O.P. No. 193 of 2004, on the file of the Motor Accident Claims Tribunal, Tiruvarur, claiming a sum

of Rs. 2,00,000/- as compensation from the respondents for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 12.09.2002, when the claimant was driving his Taxi bearing registration No. TN45 A1839, along with other

passengers, on Thanjavur-Tiruvarur Main Road and at about 02.30 p.m., when the car was proceeding near Koradacheri Vellai Madhagu Burial

Ground, the first respondent's tanker lorry bearing registration No. TN59 H4945, coming in the opposite direction and driven at a high speed and

in a rash and negligent manner, dashed against the car and caused the accident. As a result, his car was damaged and he as well as the other

passengers in the car sustained injuries. The claimant and others were admitted at Tiruvarur Government Hospital, wherein they received first aid.

Hence, the claimant had filed the claim petition against the respondents, who are the owner and insurer of the tanker lorry bearing registration No.

TN59 H4945.

3. The second respondent Insurance Company, in their counter affidavit, had submitted that the accident was not caused due to any rash and

negligent driving of the driver of the first respondent's tanker lorry and that it was caused only due to the negligence of the car driver. It was

submitted that the claimant should prove that the first respondent's tanker lorry was covered under a valid policy of insurance at the time of

accident. It was also submitted that the driver of the lorry did not have a valid licence to drive it at the time of accident. Further, it was submitted

that the claim was bad for non-joinder of owner and insurer of the car, involved in the accident, as necessary parties. It was submitted further that

the claimant had sustained only simple injuries and that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed two issues for consideration namely:

i. Whether the accident caused by the rash and negligent driving by the driver of the first respondent's tanker lorry? and

ii. Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

5. In the same accident another claim petitions had been filed by the injured passengers of the car, in M.C.O.P. Nos. 194 to 199 of 2004, claiming

compensation from the same respondents for the injuries sustained by them. Based on a joint memo filed by the counsels of the claimants, a joint

trial was conducted and common evidence was recorded. The claimants in M.C.O.P. No. 193 of 2004 to 199 of 2004 were examined as P.Ws.

1 to 7 and one Dr. Ansari was examined as P.W. 8 one Ganesh was examined as P.W. 9 and Dr. Ansari was examined as P.W. 10 and 24

documents were marked as Exs. P1 to P24 namely copy of FIR, copy of M.V.I's reports of lorry and car, copy of accident register, photo of

damaged car, R.C. Book of car, copy of driving licence, copy of insurance policy,

copy of accident register pertaining to Hamir Nisha, copy of accident register pertaining to Muthin Noori, copy of accident register pertaining to Mumtaz Begum, Ameena Beevi, Sheikna and Sahafulla, disability certificate, X-rays, bills, disability certificate, R.C. Book and case sheet. On the respondents' side, no witness was let in and no document was marked.

6. P.W. 1 had adduced evidence which is corroborative of the statements made in the claim petition regarding manner of accident.

7. P.Ws. 2 to 7 had also adduced evidence that the accident had been caused by the rash and negligent driving by the driver of the first

respondent's tanker lorry and in support of their evidence, they had marked Exs. P1 to P24. On scrutiny of Ex. P1, it is seen that FIR had been

registered against the driver of the first respondent's tanker lorry. On scrutiny of Exs. P2 and P3, it is seen that the accident had not been caused

due to any mechanism failure of either the car or the lorry. The Tribunal, on scrutiny of evidence of P.Ws. 1 to 7 and on scrutiny of Exs. P1 to P3

and on observing that the respondents had neither examined the lorry driver nor produced any evidence to rebut the claim of P.Ws. 1 to 7

regarding manner of accident, held that the accident had been caused by the rash and negligent driving of the driver of the first respondent's tanker

lorry.

8. P.W. 1 had further adduced evidence that due to the accident, he had sustained injuries and that he was admitted at Tiruvarur Government

Hospital and subsequently took treatment at Tiruvarur Medical Centre, as out patient for one month. He deposed further that he had incurred

medical expenses of Rs. 2,000/-, transport expenses of Rs. 500/- and Rs. 2,000/- for nutrition. Further, he deposed that he had sustained tear

injuries in his left thigh, cut injuries due to glass piercing his right hand and that blood clots had been formed. He had also deposed that he had

sustained injuries in his forehead, right neck and head and that his car had been totally damaged and that the service estimate to set right his car

was Rs. 96,395/- and in support of his evidence, he had marked Exs. P17 to P19. However, the Tribunal, on scrutiny of Exs. P17 to P19,

observed that the bills marked as Exs. P17 to P19 had not been affixed with revenue stamps to prove payment towards services of car and hence

the Tribunal dismissed the claim under these bills. On scrutiny of Ex. P4, the Tribunal, observed that the claimant had sustained only lacerated

injuries and swelling over his cheek, right forearm, right and left thigh, left forearm and that these injuries are simple in nature.

9. Hence, the Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 8,000/- for simple injuries, Rs. 3,000/- for pain and

suffering and Rs. 2,000/- for nutrition. In total, the Tribunal awarded a sum of Rs. 13,000/- as compensation to the claimant and directed the

respondents to jointly and severally deposit the said sum together with interest at the rate of 9% per annum from the date of filing the claim till the

date of payment of compensation, with costs.

10. Not being satisfied with the quantum of compensation, the claimant has preferred the present civil miscellaneous appeal for additional

compensation of a sum of Rs. 1,00,000/-.

11. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal failed to note that the extent of damage caused to

the vehicle had been substantiated through Exs. P2 to P5 and the report filed by the M.V. Inspector clearly shows that the vehicle had been totally

damaged and the photos also support the claim of the appellant. It is also contended that the Tribunal failed to note that the appellant was eking his

livelihood by running tourist taxi and as the vehicle had been damaged, he had sustained loss of income due to non-usage of vehicle. Further, it is

contended that the vehicle was not in operation for more than two years and the quantum given by the mechanic for repairing the vehicle works out

to more than Rs. 96,000/-. Hence, it is prayed for grant of additional compensation of a sum of Rs. 1,00,000/-.

12. The learned counsel appearing for the Insurance Company has vehemently argued that in the said accident, two vehicles were involved and as

such the owner of the car and it's insurer are necessary parties in the claim. In the instant case, contributory negligence has to be attributed.

However, the Tribunal had granted adequate compensation, since the claimant had sustained simple injuries. Hence, the learned counsel prayed to

dismiss the appeal.

13. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned

award of the Tribunal, this Court is of the view that the claimant had marked Exs. P18 and P19 i.e., service charges and spare parts bills to set

right his car, wherein it is shown that he had spent a sum of Rs. 7,800/- and Rs. 24,000/- respectively. This Court holds that the claimant is entitled

to receive these amounts. Accordingly, this Court grants as additional sum of Rs. 31,800/- as compensation towards damage of car. This amount,

will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

14. Hence, this Court directs the second respondent Insurance Company to execute this Court's Judgment, by way of depositing the

compensation amount, to the credit of M.C.O.P. No. 193 of 2004, on the file of the Motor Accident Claims Tribunal, Tiruvarur, within a period of

four weeks, from the date of receipt of a copy of this Judgment.

15. After such a deposit having been made, it is open to the claimant to withdraw the said additional compensation amount, with proportionate

interest thereon, lying in the credit of M.C.O.P. No. 193 of 2004, on the file of the Motor Accident Claims Tribunal, Tiruvarur, after filing a memo,

along with a copy of this Judgment. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 24.04.2006,

made in M.C.O.P. No. 193 of 2004, on the file of the Motor Accident Claims Tribunal, Tiruvarur, is modified. No costs.