

(2010) 03 MAD CK 0154
In the Madras High Court
Case No : C.M.A. No. 777 of 2005

T. Ramesh

APPELLANT

Vs

K. Thangavel Udayar and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2010) 03 MAD CK 0154

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

Bench : Single Bench

Advocate : V.K. Sellathurai, for the Appellant; No appearance, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Judgment and Decree, dated 05.08.2004, made in M.C.O.P. No. 260 of 2002, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Ariyalur, dismissing the claim of the compensation of Rs. 2,00,000/-.

2. Aggrieved by the said Judgment and Decree, the appellant/petitioner has filed the above appeal praying to set aside the said Judgment and decree passed by the Tribunal and restricting his claim compensation to Rs. 1,00,000/-.

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

On 01.02.2000, at about 18.00 hours, the petitioner was travelling in the Tractor bearing registration No. TN32 Z1729 and Trailer bearing registration No. TN45 Y9820, accompanying a sugarcane load. The said tractor trailer was driven by its driver Chandrasami from Neikuppai to Eraiyur Sugar Factory for supply of the sugarcane and was stopped in front of Jaya Hotels there were a large number of tractor trailers parked in front of the hotel, waiting to unload sugarcane loaded on their trailers. Hence, the petitioner, in order to get some rest, was resting

under the first respondent's stationery tractor-trailer. But, the driver of the first respondent's tractor without noticing him suddenly started the tractor trailer at high speed and in a rash and negligent manner and in the process, the tractor ran over the right leg of the petitioner causing grievous injury in three of his toes. The petitioner was given first aid at Government Hospital, Perambalur and subsequently taken for treatment at Government Hospital, Trichy for one week as an inpatient. Subsequent to this, the petitioner has been receiving treatment at a private hospital. The petitioner is aged about 19 years and was an agriculturist earning a sum of Rs. 300/- per day. The petitioner has claimed that he has sustained permanent disability in the accident and has suffered a loss of income due to this. As the first respondent's vehicle was insured with the second respondent at the time of accident, the petitioner has claimed a compensation of Rs. 2,00,000/- from both the respondents under Sections 140 and 166 of the Motor Vehicles Act.

4. Regarding the said accident, a criminal case has been registered at the Mangalamedu Police Station in Crime No. 62/2000 as against the driver of the said tractor trailer involved in the accident, under Sections 279, 337 and 338 of I.P.C.

5. The second respondent, in his counter, has resisted the claim denying the manner of accident as alleged in the claim. It has been submitted that the petitioner sustained injuries in the accident caused while he was travelling in a bullock-cart, loaded with sugarcane and that this is established by the accident report given by the Doctor of the Government Hospital, Trichy. The second respondent has submitted that the petitioner and the first respondent had colluded together and have tried to hide this fact, in order to claim excessive compensation from him. It has also been pointed out that for the accident, which had occurred on 02.02.2000, the FIR has been registered as against the driver of the tractor-trailer only on 16.02.2000 and that the petitioner has not explained the reason for the delay in filing the complaint. Hence, the second respondent has submitted that the first respondent's vehicle had not been involved in the said accident and hence he is not liable to pay any compensation to the petitioner. The second respondent has also not admitted the averments in the claim regarding the age, income and occupation of the petitioner as well as the nature of injuries sustained by the petitioner, medical expenses and permanent disability sustained by the petitioner. It has been submitted that the claim is excessive and has to be dismissed with costs.

6. The Motor Accident Claims Tribunal framed four issues for the consideration namely:

(i) Was the accident caused due to the high speed, rash and negligent manner of the driving by the driver of the first respondent as alleged by the petitioner?

(ii) Was the contention of the second respondent that the accident was not caused by the first respondent's vehicle and that it was caused by a bullock-cart,

correct?

(iii) What is the quantum of compensation, which the petitioner is entitled to get?

(iv) To what other relief is the petitioner entitled to?

7. On the petitioner's side, three witnesses were examined as PW1, PW2 and PW3 and seven documents were marked as Exs.P1 to P7. On the respondents' side, the Doctor of Government Hospital, Trichy was examined as RW1 and one document was marked as Ex.R1.

8. Ex.P1 is the FIR; Ex.P3 is the Motor Vehicle Inspector's Report; Ex.P4 is the Rough Sketch; Ex.P5 is the Judgment made in criminal case filed against the driver of the tractor-trailer. It is seen after examination of the evidence of PW1 and the documentary exhibits marked as P1, P3, P4 and P5 that the said accident was alleged to have taken place on 02.02.2000, at 04.00 a.m. in the morning; that the first respondent's driver had stopped the tractor driven by him near Erraiyur Sugar Mill and had subsequently started the tractor and moved it at a high speed and in a rash and negligent manner thereby running the tyres of the tractor over both the legs of the petitioner, who was sleeping beneath it; that due to this the petitioner had sustained fractures of his bones and had sustained grievous injuries; that the said accident had been caused only due to the fault of the first respondent and that the petitioner has claimed a compensation of Rs. 2,00,000/-.

9. The learned Counsel appearing for the second respondent has argued that the accident has not been caused by the first respondent's vehicle and in support of his contentions had stated that as per the report in exhibit marked as P2, which is the copy of the Accident Register, the accident was said to have occurred on 02.02.2000 at 04.00 a.m.; that the petitioner on being admitted at the Government Hospital, Trichy had been medically examined by the Government Doctor and that when the Government Doctor queried the petitioner about the cause of the accident, the petitioner had stated that he had sustained the injuries after he fell down from a bullock-cart at 04.00 a.m. on that day. The petitioner had also stated to the Doctor that he was admitted in the hospital by his uncle Nallaperumal and that he was aged about 15 years at the time of accident. The learned Counsel for the second respondent has argued that the petitioner had stated before the Tribunal; that his age was 19 years at the time of filing the petition i.e. on 24.06.2002. Further, when he was examined again on 05.11.2003, before the Tribunal, he had stated that his present age was 19 years. As such, the counsel for the respondent had argued that contradictory claims had been made by the petitioner regarding his age. He has further argued that for the accident, which had occurred on 02.02.2000 at about 04.00 a.m. the petitioner had lodged the complaint with the Police only at 05.00 p.m. on 16.02.2000 i.e. after the delay of 14 days and in support of this contention, he had cited the exhibit marked as P1, the FIR. It is further seen after scrutiny of Column 7 in the FIR that the petitioner has gone to the Orthopaedic Department

at Government Hospital, Trichy and that the petitioner has stated in the claim and the complaint to the Police that the delay in filing the complaint has been caused only because the first respondent had told him not to register a criminal case regarding the accident and that he would pay the expenses incurred by the petitioner. The counsel for the second respondent has said that this allegation of the petitioner was contradictory to the statements contained in Column 7 of the FIR. As such, it has been argued on the respondents' side that the accident did not happen as alleged in the claim petition. It was argued that as the petitioner and the first respondent were from the same place and were related to each other, the first respondent had exercised his influence with the local Police and concocted a fabricated complaint and registered it and has also given false reasons for the delay in filing the FIR. It was contended that the petitioner and the first respondent had colluded with one another and filed the complaint; that subsequently the first respondent had asked the driver of his tractor trailer to admit his guilt before the Criminal Court and pay the fine imposed on him and the first respondent had given the said fine. As such, it has been contended on the second respondent's side that he is not liable to pay any compensation in the instant case, as the injuries caused to the petitioner was in an accident caused by the tyres of a bullock-cart and as such the owner of the bullock-cart only is to be held liable to pay the compensation to the petitioner.

10. It is seen that, when the petitioner was admitted at the Government Hospital, Trichy on 02.02.2000, he had stated that his age was 15 years. Subsequently, the petitioner had stated that his age was 19 years at the time of filing the claim petition in the year 2002. During trial on 05.11.2003, the petitioner had stated that his age was 19 years. As such, the Tribunal on seeing the contradictory claims made by the petitioner regarding his age were not inclined to believe his claim regarding his age.

11. The Tribunal, on scrutiny of Ex.P2, the copy of the Accident Register of the Government Hospital, Trichy, wherein it has been stated that the accident had been caused due to the fall of the petitioner from his bullock-cart and the subsequent fracture sustained by him due to the wheels of the bullock-cart running over his legs, were of the opinion that as Ex.P2 had been filed by the petitioner had also been accepted by the second respondent, the statements made by the petitioner have to be held as true. The Tribunal was of the opinion that a 15 years old boy could not be held capable of concealing the facts while giving the statement to a Doctor examining him at the time of accident, as he would not be in a position to know the subsequent legal complications caused due to this. Further, the Tribunal were of the opinion that the petitioner had not clearly stated as to why there was a delay of 14 days in filing the complaint before the Police and as to why he had given the complaint involving the first respondent's vehicle in the said accident. As such, the Tribunal was of the opinion that during the delay of 14 days before the filing of the complaint, the petitioner should have thought of ways and means to get compensation and accordingly managed to produce the documentary exhibits before the Court.

Further, it is seen in the petition that the petitioner had claimed he was an agriculturist and was accompanying a sugarcane load being carried on the tractor trailer, but during trial he has deposed in his evidence that he was a cleaner in the said tractor. As such, the Tribunal were not inclined to believe the evidence of the PW1 as it was contradictory. It is seen that when the petitioner was examined by the Mangalamedu Police on 03.02.2000, he had stated that he had sustained injuries in the fall from a bullock-cart and that the said bullock-cart had been driven by his brother. Subsequently, when the petitioner had given the modified complaint to the police, he had stated that the accident had been caused by the first respondent's vehicle, when queried about this, he had stated that he had given the earlier complaint only because he had been promised monetary help by the first respondent. The Tribunal was of the opinion that even if the delay of 14 days in filing the FIR was condoned based on the above reasons, the statements contained in Column 7 of the FIR was contradictory to these averments.

12. On the respondents' side, the Doctor of the Government Hospital, Trichy was examined as RW1. The RW1, in his evidence, has deposed that he had prepared the Accident Register marked as Ex.P2 and that he had prepared it based on the statements given by petitioner, and had further deposed that the injuries caused to the petitioner could only be caused by the running over of the tyres of the bullock-cart.

13. The Tribunal was of the opinion that the short time at which all the documents regarding the criminal Court Judgment and other exhibits marked on the petitioner side clearly shows that the first respondent had been hand in glove with the petitioner and had foisted a false case in order to get compensation from the second respondent. Further, even during cross-examination of the driver of the first respondent's vehicle, the counsel on the petitioner's side had not framed and asked him questions regarding the delay in filing the FIR, the claim of the petitioner that he had not given the complaint earlier as the first respondent had promised to pay money to him; that on subsequent refusal of the first respondent to pay the petitioner, he had filed the complaint.

14. The Tribunal, on considering all the above aspects held that the accident had not been caused by the fault of the driver of the first respondent's vehicle as alleged by the petitioner and held that the accident did not involve the first respondent's vehicle and hence held that the contentions made by the second respondent are true and accordingly held that the second respondent is not liable to pay any compensation to the petitioner. Further, the Tribunal held that the petitioner had foisted a false case on the second respondent with the intention of getting undue compensation and that the first respondent had also colluded with him with the intention to cheating the second respondent and therefore held that a cost of Rs. 1,000/- has to be paid by the petitioner to the second respondent and a cost of Rs. 2,000/- has to be paid by the first respondent to the second respondent. In the result, the petition was dismissed with costs.

15. The learned Counsel appearing for the appellant has contended in his appeal that the claimant was taken to the hospital in an unconscious stage by his underling, Nallaperumal and that the statement recorded in the Accident Register on the basis of the statement of Nallaperumal cannot over ride the pleadings or evidence of the PW1. Hence, it was contended that the Tribunal erred in placing reliance on Ex.P2. It was further pointed out that the learned Judge had completely ignored the evidence of the PW2 and Ex.P5, whereby the driver of the tractor was convicted and sentenced to pay fine.

16. It was also contended that the learned Judge failed to note that the theory, that the claimant suffered injury in an accident involving a bullock-cart is not based on any material and that there is not independent evidence to support the said theory.

17. Further, it was contended that the learned Judge erred in making an issue of the age of the claimant. The RW1 does not say that the claimant gave his age as 15. In the evidence, the claimant has stated that his age was 19 as given in the petition and as such there is nothing abnormal in the evidence of the PW1 to discredit the pleadings or his evidence. It has also been contended that the learned Judge erred in suspecting the bonafides of the claim and suspecting collusion between the claimant and RW2. There is no material to hold so. Mere delay in lodging the FIR will not lead to any conclusion of collusion to disbelieve the claimant.

18. As such, it has been contended that the order of the learned Judge is based on mere surmises contrary to the pleadings and evidence on record and hence the order of the learned Judge in dismissing the claim petition is not justifiable either in law or on the facts of the case. The learned Counsel appearing for the appellant has prayed to set aside the decree passed by the Tribunal.

19. Considering the facts and circumstances of the case, it is seen that the FIR has been registered against the driver of the first respondent's tractor by the Mangalamedu Police Station and the same was referred to the Criminal Court, wherein the driver had accepted his guilt and paid fine. Further, it is an admitted fact that the claimant had sustained injuries in an accident for which he underwent treatment at a Government Hospital. To establish the claim case, the claimant had produced the Motor Vehicle Inspector's Report, Rough Sketch, Judgment of the Criminal Court, Wound Certificate and copy of Accident Register. Even though there is slight discrepancy in the evidence given by the PW1 and RW1, the Doctor, the Inspector of Police, is to be considered the proper person to investigate the accident case. The Judicial Magistrate Court is also the proper forum to punish the offender, who had caused the said accident and in the instant case, as the driver of the tractor had admitted his guilt and paid the fine. Considering that in the instant case, both the Police and Judicial Magistrate, who are legal luminaries of law have held that the accident had been committed by the driver of the tractor-trailer belonging to the first respondent. So, this Court, considering the Judgment made by its Sub-ordinate Officer i.e. the Judicial

Magistrate in the instant case ie.Ex.P5 (C.C. No. 36 of 2005), wherein it is seen that the driver, one Chandrasami, of the first respondent's tractor-trailer had been punished for a crime under Sections 279 and 338 of I.P.C. This Judgment is in force and has been established in the criminal trial. As such, this Court has to necessarily set aside the Judgment and Decree passed by the Tribunal in M.C.O.P. No. 260 of 2002, dated 05.08.2004.

20.Hence, this Court awards the compensation to the petitioner as follows:

1. This Court awards a compensation of Rs. 40,000/- under the head of disability, considering that the petitioner has sustained 40% disability in the said accident,
2. This Court awards a compensation of Rs. 10,000/- under the head of pain and suffering,
3. This Court awards a sum of Rs. 5,000/- as compensation under the head of nutrition,
4. This Court awards a sum of Rs. 5,000/- as compensation under the head of transport expenses.

In total, this Court awards a compensation of Rs. 60,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation. Therefore, this Court hereby directs the second respondent/United India Insurance Company to deposit the compensation amount of a sum of Rs. 60,000/- together with interest, as observed above, into the credit of the M.C.O.P. No. 260 of 2002, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Ariyalur, within a period of four weeks from the date of receipt of this Order.

21. After such deposit has been made, by the second respondent, it is open to the appellant/claimant to withdraw the compensation amount, after filing the necessary payment out application in accordance with law, from the date of credit of the M.C.O.P. No. 260 of 2002, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Ariyalur.

22. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Judgment and Decree, dated 05.08.2004, in M.C.O.P. No. 260 of 2002, passed by the Motor Accident Claims Tribunal, Fast Track Court, Ariyalur is set aside by this Court. There is no order as to costs.