
(2007) 04 MAD CK 0299
In the Madras High Court
Case No : C.M.A. (MD) No. 757 of 2000

Tamil Nadu State Trans. Corpn. Ltd.

APPELLANT

Vs

Isakkiappan

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Citation : (2009) ACJ 751

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : D. Sivaraman and Rajnish Pathiyil, for the Appellant; Chitra Sampath, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—This civil miscellaneous appeal is. directed against the award dated 30.6.1999 passed by Motor Accidents Claims Tribunal (Additional Sub-Court), Tirunelveli in M.C.O.P. No. 131 of 1998 directing payment of a sum of Rs. 70,000 together with an interest at the rate of 12 per cent from the date of claim till realization and costs for the injuries sustained by the claimant in an accident alleged to have taken place on 8.9.1997 at about 2 p.m.

2. The respondent herein-claimant preferred a claim on the file of the Motor Accidents Claims Tribunal (Additional Sub-Court), Tirunelveli by filing M.C.O.P. No. 131 of 1998 praying for an award against the appellant-respondent for the injuries sustained by the claimant who met with an accident on 8.9.1997 at about 2 p.m.

3. The respondent-claimant in his claim petition had made the following averments in support of his claim:

On 8.9.1997 at about 2 p.m. the bus bearing registration No. TN 72-N 0287 belonging to the transport Corporation (appellant-respondent), on its trip from Kovilpatti to Tirunelveli, met with an accident near Bethal "Home of Orphans" situated on the south of Kovilpatti West Police Station at a distance of 4 km. The

driver of the said bus drove it in a rash and negligent manner and tried to overtake another vehicle that was proceeding in front of the bus in the same direction. After making an unsuccessful attempt to overtake the said vehicle, he saw a van coming from the opposite direction and hence stopped the bus on the middle of the road, as a result of which the van that came in the opposite direction grazed the bus on its rear portion of the right side body. In the said accident, the respondent-claimant who was travelling in the said bus seated in the window seat of the rear row and one Krishnasamy Thevar of Kalugumalai sustained grievous injuries. The respondent-claimant who had sustained grievous injuries on the right knee and right shoulder was given first aid treatment at Government Hospital, Kovilpatti and then taken to Tirunelveli Medical College & Hospital, Palayamkottai and admitted there as an inpatient. Subsequently, he also took treatment at private hospitals. Despite proper treatment, the injuries sustained by the respondent-claimant resulted in permanent disability and consequential loss of earning capacity. Even though the damages could be estimated to Rs. 3,05,000, the claimant would make a claim for Rs. 1,00,000 alone as compensation from the appellant-respondent on the basis that the rash and negligent driving of the bus belonging to the appellant-respondent by its driver happened to be the cause of the accident.

4. In order to prove his case, besides examining himself as PW 1, the claimant examined one more witness as PW 2 and relied on three documents marked as Exhs. P1 to P3.

5. The appellant-respondent filed a counter-statement and resisted the claim, denying the petition averments regarding the negligence, the age and occupation of the claimant, injury sustained by the claimant and its consequences and the justifiability of the amount claimed as compensation by the claimant. Contending further that there was no want of care on the part of the driver of the bus; that it was the rash and negligent driving of the other vehicle that came in the opposite direction that led to the unfortunate accident; that if at all the claimant is entitled to get any compensation, the same could be recovered only from the owner and insurer of the above-mentioned vehicle that came in the opposite direction and that claim petition should be dismissed in limine, as the same suffered from the defect of non-joinder of necessary parties, insofar as they were not made parties to the claim petition. Incorporating a further contention that the amount claimed by claimant was highly excessive and exorbitant, the appellant-respondent had prayed for the dismissal of the claim petition with costs. In support of the defence case of the appellant-respondent, only one witness was examined and one document was marked as Exh. R1.

6. The Tribunal, after completion of recording evidence, heard the arguments advanced on both sides, framed the necessary questions for determination, considered the records brought forth and came to the conclusion that the driver of the bus acted with rashness and negligence in driving the bus and that the same had led to the accident in which the respondent-claimant sustained

injuries. The Tribunal also found that the claimant suffered 50 per cent permanent disability as against 64 per cent certified by Medical Officer, awarded a total sum of Rs. 70,000 as the compensation and directed the appellant-respondent to pay the above said amount to the claimant along with an interest at the rate of 12 per cent from the date of claim till realization. It has also directed the appellant-respondent to pay costs.

7. The correctness and legality of the award passed by the Tribunal is under challenge in this civil miscellaneous appeal at the instance of the transport Corporation (appellant-respondent).

8. Advancing arguments on behalf of the appellant, Mr. D. Sivaraman, learned Counsel contended as follows:

Admittedly, it was an accident involving two vehicles. But the respondent-claimant chose to make the claim for compensation against one of the vehicles alone. The fact that the owner and insurer of the second vehicle involved in the accident were not made parties to the case was not properly appreciated by the Tribunal. The Tribunal ought to have sustained the contention of the appellant-respondent regarding the defect of non-joinder of necessary parties and dismissed the claim petition. The Tribunal has also committed an error in holding that the driver of the bus was at fault and in mulcting the liability solely upon the appellant-respondent. At any event, the learned Counsel contended further, the assessment of disability at 50 per cent and the award of Rs. 70,000 as compensation should be held excessive and hence deserves to be reduced in the interest of law.

9. The court heard the submissions made by Ms. Chitra Sampath, the learned Counsel for the respondent regarding the above said arguments advanced by the learned Counsel for the appellant and paid its anxious considerations to the same.

10. It is a fact not in controversy that the bus bearing registration No. TN 72-N 0287 belonging to the appellant-respondent met with an accident on the date, time and place mentioned in the claim petition. It is also not in dispute that the respondent claimant who was travelling as a passenger in the said bus at the time of accident sustained injuries. The award of the Tribunal is sought to be attacked on three grounds. They are:

- (i) There was no negligence on the part of the driver of the bus;
- (ii) The petition should have been dismissed for non-joinder of necessary parties; and
- (iii) The amount awarded as compensation is excessive.

11. According to the case of respondent-claimant, the above said bus was driven by its driver in a rash and negligent manner and the accident occurred solely due to the fact that the driver of the said bus made an attempt to overtake another vehicle and stopped the bus in the middle of the road, on seeing yet another

vehicle (van) coming from the opposite direction. Admittedly it was not a case of head-on collision. On the other hand, the van that came in the opposite direction came into contact with the rear portion of the right side body of the bus and in fact, grazing the right side body of the bus the said van did pass the accident spot. PW 1 giving a graphic picture of the occurrence, has clearly stated in his evidence that the bus was stopped by its driver in such a way that its front portion was on the left side of the road and the back portion of the bus was on the right side. The Tribunal has rightly rejected the evidence of RW 1 and preferred the evidence of PW 1 and assigned cogent and convincing reasons for such a preference.

12. On the other hand, this Court is able to find some substance in the submission made by learned Counsel for the appellant-respondent that the Tribunal has made an incorrect observation that the complaint statement recorded by the police regarding the accident was one given by RW 1 and not by PW 1. Factually, the first information report was drafted on the basis of the statement of PW 1 recorded by the police, while he was under treatment in the hospital. This is clear from the contents of Exh. R1, copy of the first information report.

13. It is true that there is no clear cut evidence on the side of the respondent-claimant that the criminal case was registered based on the statement of PW 1. On the other hand, PW 1 pleaded ignorance regarding the registration of the criminal case against the driver of the van alone. But he was not confronted by showing Exh. R1. On the other hand, the appellant-respondent chose to produce Exh. R1 through RW 1 in proof of its defence case that the criminal case was registered against the van driver. RW 1 himself would admit that the respondent-claimant did not give any statement to the police, as he was quivering with pain. Therefore, the Tribunal has rightly come to the conclusion that no credence can be given to Exh. R1. Thus, the arguments advanced by the learned Counsel for the appellant that Tribunal has committed an error in not placing reliance on Exh. R1 has got to be discountenanced.

14. On the other hand, learned Counsel for the respondent-claimant in this regard would contend that even assuming negligence on the part of the driver of the van also, the same was not enough to rule out any negligence on the part of RW 1, the driver of the bus insofar as RW 1 had not taken care to leave sufficient space on the right side between his bus and the vehicles that came in the opposite direction. This Court is able to find some substance in the above submission made by the learned Counsel for the respondent-claimant. In support of his contention, learned Counsel relied on the case of *Vimla v. Moolchand* 2005 (3) ACC 72, wherein Rajasthan High Court has observed as follows:

It was the duty of the driver of the vehicle in which the passenger was travelling to ensure that adequate distance is maintained between the vehicles in which the passenger was travelling and the vehicle approaching from the opposite direction. Failure to do so would amount to negligence and lack of due care and

precaution and as such the driver of such vehicle in which the passenger was travelling and who received injury on account of impact from the vehicle approaching from the opposite direction cannot be absolved of the liability in such a case.

15. Learned Counsel for the respondent claimant has also relied on the judgment reported in Delhi Transport Undertaking v. Krishnawanti 1972 ACJ 423 (Delhi) and Kerala High Court in Kerala State Road Trans. Corporation v. Madhavi Amma 1977 ACJ 3 (Kerala), which was followed by the very same Kerala High Court in its subsequent judgment reported in Beeravu Vs. K.K. Damodaran and Others, . Therein it has been observed as follows:

The driver of the bus must ensure sufficient space between the bus and other objects. A passenger cannot be held guilty of contributory negligence when in the normal course any portion of his body is outside the bus, even in case, it is taken for arguments sake that the claimant put his hand on the side window of the bus.

16. Applying the ratio found in the above said cases to the facts of the instant case, this Court comes to the conclusion that there was negligence on the part of RW 1, the driver of the bus involved in the accident and hence the finding of the Tribunal, holding that RW 1, the driver of the bus belonging to the appellant-respondent was at fault and that his negligence had led to the accident in question, has got to be confirmed. There is no scope for interference whatsoever with the above said finding.

17. The next contention of the learned Counsel for the appellant-respondent is that the claim petition should have been dismissed for the non-joinder of necessary parties insofar as the owner and the insurer of the second vehicle involved in the accident, namely, the van that came in the opposite direction, were not made parties to M.C.O.P. The said contention does not merit acceptance in the hands of this Court. Even assuming that the accident occurred as a result of composite negligence of the driver of the bus and the driver of the van, they become joint tortfeasors. In respect of composite negligence leading to the accident, a claimant could maintain the claim petition for compensation as against all or anyone of the joint tortfeasors. The legal position in this respect has been well settled.

The Hon''ble Supreme Court has held as follows in Union of India (UOI) Vs. United India Insurance Co. Ltd. and Others, :

where accident has occurred due to negligence of the drivers of two vehicles and not due to negligence of the claimant, one of the joint tortfeasors cannot plead contributory negligence on the part of the passengers of the vehicle and qua the passengers of the bus, who were innocent. The drivers and owners of the vehicles would be joint tortfeasors. It is well settled that the liability of joint tortfeasors is joint and several and each is responsible, jointly with each and all of the others and also severally for the whole of the amount of damage caused by the tort, irrespective of the extent of his participation. The injured may sue

any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case, the judgment so obtained against all of them may be executed in full against any one of them.

(Emphasis added)

In Karnataka State Road Transport Corporation Vs. Reny Mammen, , it has been observed as follows:

Where accident has occurred due to composite negligence of drivers of two vehicles, their liability would be joint and several and the claimant can proceed against both or any one of the joint tortfeasors and recover full compensation to which he is entitled and apportionment of negligence between the joint tortfeasor is for the benefit of the respondents to claim contribution from the other tortfeasor, if he satisfies the award against the claimant and it is open to the tortfeasor who satisfies the award to proceed against the other tortfeasor for contribution.

In Karnataka State Road Transport Corporation Vs. Arun alias Aravind, , it has been observed as follows:

In view of the aforesaid reasoning and decisions of the Supreme Court, we have no hesitation to hold that where a claim petition is filed by the injured or legal representatives of the deceased due to injury or death arising out of the use of motor vehicles due to composite negligence of drivers of the two vehicles, the claimant can recover compensation from any one of the joint tortfeasors and the just compensation to which he is entitled cannot be reduced for non-impleading of the other joint tortfeasors.

18. The above said proposition will apply with more vigour where the other vehicle could not be traced and the identity of the other vehicle was not known. For all the reasons stated above, this Court comes to the conclusion that the above said contention of learned Counsel for the appellant regarding the maintainability of the claim petition on the ground of non-joinder of necessary parties has got to be rejected as untenable.

19. In respect of third and last ground of attack, this Court is of the view that the same is liable to be discountenanced for the following reasons:

In the instant case, respondent-claimant has produced sufficient evidence to substantiate his contention that the injuries sustained by him were not fully cured and the same resulted in permanent disability. He has suffered crush injury on the right hand involving fracture of right upper hand (humerus) and compound fracture of both bones (radius and ulna) of the right forearm as evidenced by Exhs. P1 and P2, for which, he was given treatment at Tirunelveli Medical College & Hospital, Palayamkottai. PW 2, the Assistant Professor of Orthopaedics, besides issuing Exh. P3, disability certificate, has deposed in the court confirming the correctness of the assessment of disability made by him in Exh. P3. It is the clear testimony of PW 2 that there was malunion of bones on

the right hand at the point of fracture and restriction of movement of all the three joints of the right hand, namely, shoulder, elbow and wrist. It is also the clear testimony of PW 2 that respondent-claimant cannot use his right hand for doing his normal work. As a qualified Ortho-Specialist, he has assessed the disability at 64 per cent and certified the same to be permanent. The appellant-respondent who wanted to challenge the same should have made steps to get the claimant either examined by a Medical Officer of its choice or referred to a Medical Board at the instance of the appellant to correctly assess the nature and the extent of disability suffered by the claimant. But unfortunately, the appellant-respondent has not done so. Under these circumstances, the Tribunal has assessed the permanent disability suffered by the respondent-claimant at 50 per cent as against 64 per cent certified by PW 2. This, the Tribunal seems to have done, perhaps due to the fact that PW 2 did not choose to take X-ray for assessing the disability. In the absence of any contra evidence, the finding of the Tribunal that respondent-claimant has suffered a permanent disability and its assessment of disability at 50 per cent as against the certified disability of 64 per cent cannot be termed incorrect or unreasonable. This Court notices no reason, whatsoever, to differ with the Tribunal in this regard and reduce the percentage of disability.

20. There is no dispute regarding the age of the claimant. In Exh. P2, accident register, his age has been noted to be 19 years. While awarding lump sum payment for permanent disability, the age of claimant shall play an important role. The award may range from Rs. 1,000 to Rs. 2,000 per 1 per cent of disability. Maximum and minimum rate shall be applicable in case of youngsters and aged persons respectively. In spite of the fact that the claimant was admittedly aged 19 years as on the date of accident, the Tribunal has applied the minimum rate (at Rs. 1,000 per 1 per cent disability) and fixed the amount of compensation for permanent disability at Rs. 50,000. By no stretch of imagination, the same could be termed excessive. In addition to that the Tribunal has also awarded a sum of Rs. 20,000 as compensation for pain and suffering, loss of earnings during the period of treatment, mental shock, etc. The said amount will include damages for probable loss of expectation of life. The same cannot be termed excessive. Therefore, this Court comes to the conclusion that in respect of quantum also, the award of the Tribunal deserves to be confirmed.

21. For all the reasons stated above, this Court is of the considered view that there is no scope for interference with the award of the Tribunal either legally or factually and that there is no merit in the appeal and the same deserves to be dismissed with costs.

In the result, the award of the Tribunal is hereby confirmed and this civil miscellaneous appeal is dismissed with costs.