

(2014) 03 MAD CK 0109

In the Madras High Court

Case No : C.M.A. No. 2047 of 2004 and C.M.P. No. 11884 of 2004

Tamilnadu State Transport Corporation (Madurai Dn. II) Ltd.	APPELLANT
Vs	
P. Krishnan	RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:

Citation : (2014) 03 MAD CK 0109

Hon'ble Judges : K. Kalyanasundaram, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kalyanasundaram, J.—Challenging the award passed by the Motor Accidents Claims Tribunal. (II Additional Sub Court), Tirunelveli, in M.C.O.P. No. 673 of 2001 dated 20.08.2002, the transport corporation has filed the appeal. Brief facts of the case are that on 05.04.2001, the claimant was traveling in the bus belonging to the appellant transport corporation from Tuticorin to Papanasam. When the bus was proceeding near Cheranmahadevi, the driver of the bus drove the same in a rash and negligent manner and turned the bus suddenly from the middle of the road. In that process, a Lorry which was coming from the opposite direction dashed against the rear side of the bus and in the accident, the respondent/claimant had sustained a fracture in his right hand. Contending that the accident had taken place only due to the rash and negligent driving of the driver of the transport corporation bus, the claimant filed a claim petition, claiming compensation of Rs. 3,00,000/-.

2. The appellant resisted the claim petition, stating that the accident had taken place only due to the negligent driving of the driver of the Lorry which came from the opposite direction in a rash and negligent manner and also due to the reason that the claimant was holding his right hand on the window sill.

3. To substantiate the claim, the claimant had examined himself as PW1 and also examined two witnesses namely, one Palaniammal, who is an eye-witness to the

occurrence as PW2 and Dr. Ramaguru as PW3. The claimant produced documents Ex. P1 to P4. On the side of the appellant transport corporation, no witness was examined and no document was marked.

4. The Tribunal, considering the oral and documentary evidence adduced on the side of the claimant, had come to the conclusion that the accident had taken place due to the negligent driving of the driver of the transport corporation bus and on the basis of the evidence of PW1, PW3 Doctor and Ex. P4-Disability Certificate, awarded compensation of Rs. 1,80,000/- with interest @ 9% per annum. Aggrieved by the judgment and decree, the present appeal is filed.

5. Mr. D. Sivaraman, learned counsel for the appellant submitted that the Tribunal has erred in finding that the accident occurred only due to the rash and negligent driving of the driver of the appellant transport corporation bus, based on the evidence of PWs1 and 2; that the claimant was also responsible for the accident, but the Tribunal has not considered the evidence in proper perspective. Learned counsel further submitted that even as per the case of the claimant, he had rested his hands on the window sill and therefore, the Tribunal ought to have fixed contributory negligence.

6. Learned counsel further submitted that even as per the evidence of PW3 and Ex. P4-Disability Certificate, the claimant had sustained 52% permanent disability, but the Tribunal has awarded excessive compensation of Rs. 1,60,000/-.

7. Per contra, Mr. T. Selvakumaran, learned counsel for the respondent/claimant submitted that admittedly, the claimant was a passenger in the bus belonging to the appellant corporation and he was holding his hand on the window sill. He further submitted that even if a passenger rests his hand on the window sill, it is the duty of the driver to see that there must be sufficient gap between the two vehicles while crossing each other. But, in this case, admittedly, the driver of the transport corporation bus had driven the bus very close to the Lorry and only due to that reason, the accident had taken place.

8. PW2 Mrs. Palaniammal was examined as an eye-witness to the occurrence. She has corroborated the evidence of PW1, who has categorically stated that the accident had taken place only due to the rash and negligent driving of the driver of the transport corporation bus. The appellant has not examined any witness to prove that the accident had taken place only due to the rash and negligent driving of the driver of the Lorry, which came from the opposite direction at the time of occurrence. The Tribunal has accepted the evidence of PWs1 and 2 and held that the driver of the transport corporation bus was responsible for the accident. I confirm the finding of the Tribunal.

9. In The Managing Director, Tamil Nadu State Transport Corporation, (VPM DVN.1), Ltd. Vs. Dr. S. Rajendran, , this Court after considering the decisions in Smt. Sushma Mitra Vs. Madhya Pradesh State Road Transport Corporation and Others, , Sydney Victor and Another Vs. Janab S. Kader Sheriff and Others, , and

The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, has held as follows:-

14. Even assuming that the respondent/claimant has kept his arm on the window sill, the fact that two vehicles have crossed so close to each other, would prove that the buses were driven by its driver rashly and negligently without giving sufficient gap. It is the duty of the driver to drive cautiously while crossing the other vehicle. He should leave sufficient gap between the vehicles. The driver has not taken sufficient care to avoid the accident.

16. Under the circumstances, the argument of the leaned counsel for the appellant that there was contributory negligence on the part of the respondent/claimant is rejected. The findings of the Tribunal regarding negligence are based on evidence and also supported by the legal principles and therefore, it is confirmed.

10. Further, it is well settled that in claims cases, the test to prove negligence is only preponderance of probability and strict proof of evidence as required in criminal proceedings, is not necessary. Applying the above test to the case on hand and in view of the judgment of this Court, I do not find any infirmity or perversity in the finding of the Tribunal regarding negligence. Accordingly, the finding regarding negligence is confirmed.

11. Immediately after the accident, the claimant was admitted in Government Hospital on 05.04.2001 and he was discharged on 03.05.2010. Ex. P4-Disability Certificate shows that the claimant had sustained a fracture on the right hand and PW3 Doctor had assessed the permanent disability sustained by the claimant at 52%. The evidence of PW1 shows that he took treatment as inpatient for a period of one month in Government Hospital and also sustained fracture. Considering the fact that the claimant would have experienced considerable pain, the Tribunal has awarded Rs. 15,000/- towards pain and suffering. The amount is reasonable, so it is confirmed. The Tribunal has also awarded Rs. 5,000/- towards extra nourishment and Rs. 1,60,000/- towards permanent disability. Considering the nature of the injury and the period of hospitalization, the award of Rs. 5,000/- towards extra nourishment is enhanced to Rs. 10,000/-. With regard to the award of Rs. 1,60,000/- towards permanent disability, following the judgment of this Court in Prahalath Jasmithiya Vs. V. Sankaran and United India Insurance Co. Ltd., No. 38, Anna Salai, Chennai - 2 and Krishnamoorthy v. S. Karupannan & the New India Assurance Company Limited reported in 2009 (2) TN MAC 269, a sum of Rs. 2,000/- is awarded for each percentage of disability that comes to Rs. 1,04,000/-(Rs. 2,000 x 52). The fracture sustained by the claimant shows that he would not have been engaged in any employment for four months. Therefore, Rs. 30,000/- is awarded towards loss of income during treatment period. The claimant had been hospitalised for a period of one month and certainly, he would have been attended by somebody. Therefore, a sum of Rs. 11,000/- is awarded towards attendant charges. The injury would have caused discomfort to the claimant. Therefore, Rs. 10,000/- is awarded under the

head loss of amenities. Rate of interest awarded by the Tribunal at 9% is retained.

12. In the result, the claimant is entitled to compensation of Rs. 1,80,000/- with interest @9% per annum from the date of petition to till the date of realisation as apportioned hereunder:-

13. Even though the compensation has been apportioned under different heads, the award of the Tribunal remains confirmed. The appellant transport corporation is directed to deposit the entire award amount with proportionate accrued interest and costs to the credit of M.C.O.P. No. 673 of 2001 on the file of the Motor Accidents Claims Tribunal, (II Additional Sub Court), Tirunelveli, if already not deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same, by making necessary application before the Tribunal. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, CM. P. No. 11884 of 2004 is closed. No costs.