

(2010) 08 MAD CK 0507

In the Madras High Court

Case No : C.M.A. (MD) No. 284 of 2008 and M.P. (MD) No. 1 of 2008

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Deivendran, Mahalingam and The Managing Director, Tamil
Nadu State Transport Corporation Division - V Ltd.

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304(A), 337, 338

Citation : (2010) 08 MAD CK 0507

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

Bench : Single Bench

Advocate : P. Ramani, for the Appellant; Anandakumar, for R-1, Mahalingam, for R-2 and S.C. Herold Singh, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/The Oriental Insurance Company Ltd.,/2nd respondent against the award and decree passed in MCOP. No. 13 of 2005 on the file of the Motor Accident Claims Tribunal/Additional District Judge-cum-Fast Track Court, Virudhunagar, dated 30.12.2005 for awarding a compensation a sum of Rs. 1,46,356/- together with interest at the rate of 7.5% per annum, from the date of filing the claim petition till date of payment of compensation.

2. Aggrieved by the said award, the appeal has filed to set aside the same.

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

(a) On 16.11.2002 around 09.30 a.m. the claimant was travelling in the 3rd respondent's transport corporation bus, bearing Registration No. TN-29-N-6969 from Virudhunagar towards Aruppukottai on the eastern direction. When the bus was nearing Sanaurani, when at that point in time, the first respondent bus, bearing Registration No. TN -65-3666 came in the opposite direction at high speed and in a rash and negligent manner and dashed against the 3rd

respondent's bus, with the result the claimant has sustained fracture injuries on his two legs and hands. Immediately, he was rushed to the Government hospital at Aruppukottai for preliminary treatment there after he was referred and admitted at Rajaji hospital at Madurai for further treatment. Thereafter for specialized treatment he was taken to a private nursing home. During the treatment period he had undergone plastic surgical operation which necessitated the implantation of the steel plate on his bone sections.

(b) The said accident case was registered by the Aruppukottai Police Station in Crime No. 682 of 2002, an offence under Sections 279, 337, 338 and 304(A) of I.P.C. which is pending inquiry on the file of the said police station. The claimant further stated that the first respondent had driven the 2nd respondent's vehicle in a rash and negligent manner, as well as the 3rd respondent's corporation bus driver had driven the bus at a high speed in a rash and negligent manner. Hence, all the three respondents are jointly and severally liable to pay compensation to the claimant, a sum of Rs. 7,00,000/- with interest at the rate of 18% per annum, from the date of filing this petition.

4. The 2nd and 3rd respondents have filed their respective counter statements and resisted the claim petition as follows:

(i) Averments in the counter filed by the 2nd respondent:

The petition is not sustainable. The averments in the petition are not correct. The accident did not take place as alleged by the petitioner. The bus TN-65-3666 was insured with this respondent at the time of the accident. At the time of the accident the first respondent's driver drove bus carefully in slow speed on extreme left on the road. From the opposite direction the 3rd respondent's bus came in a high speed in the rash and negligent manner and dashed against the first respondent's bus. As such the 3rd respondent's bus driver was only responsible for the accident. Aruppukottai town police also registered a case only against the 3rd respondent's driver. The averments regarding the occupation income of the petitioner are not correct. Excessive amount has been claimed as compensation. The petition should be dismissed with costs of this respondent.

(ii) Statement of objections filed by the 3rd respondent:-The petition is not maintainable. The averments in the petition are not admitted. The accident did not take place as alleged by the petitioner side. The driver of the bus TN-65-3666 was responsible for the accident. At the time of the accident the driver of this respondent's bus drove the bus slowly and carefully following traffic rules. The first respondent's bus driver came from the opposite direction in a rash and negligent manner without following traffic rules and dashed against the 3rd respondent's bus by resulting in the accident. The averments regarding, age, occupation and income of the petitioner, are denied. The police have registered case against the driver died in the accident. Only the first and 2nd respondents are liable to pay compensation to the petitioner excessive amount has been claimed as compensation. The petition should be dismissed with costs

of this respondent.

5. The learned Motor Accident Claims Tribunal has perused the 4 issues, namely

(1) Whether the driver of the bus TN-65-3666 is responsible for the accident by rash and negligent driving?

(2) Whether the driver of the bus TN-29-N-6969 is responsible for the accident by rash and negligent driving?

(3) Whether the petitioner is entitled to get compensation? If so from whom? To what extent?

(4) To what relief?

6. The petitioner and one Dr. Chidambaram have been examined as P.W.1 and P.W.2 on the side of the petitioner. Further eleven exhibits have been marked as Ex.P.1 to Ex.P.11 respectively. One Chandrakumar working as Assistant Administrative Officer in the 2nd respondent insurance company has been examined as P.W.1. No evidence either oral or documentary has been adduced on the side of the 3rd respondent.

Point 1 and 2:

7. The fact of occurrence of the accident, the fact of involvements of involvement of buses TN-65-3666 and TN-29-N-6969 in the accident and the fact of the petitioner sustaining injuries in the accident are proved by oral as well as documentary evidence adduced on the side of the petitioner. There is no contra evidence. These facts are not denied on the side of the respondents. As such this Court need not go meticulously into the above aspects. The question is as to who was responsible for the accident.

8. It is the case of the petitioner that the drivers of both buses drove the bus in a rash and negligent manner and dashed against the each other resulting in the accident and that both drivers were responsible for the accident. In his evidence also P.W.1(Petitioner) has deposed that both drivers drove in a rash and negligent manner and dashed against each other resulting in the accident. While so, the case of the 2nd respondent is that the driver of the first respondent's bus drove the bus slowly and carefully after following traffic rules and the 3rd respondent's bus came in a rash and negligent manner and dashed against the first respondent's bus. On the contrary the case of the 3rd respondent is that the first respondent's bus driver drove the bus in a rash and negligent manner and dashed against the 3rd respondent's bus which was coming carefully and slowly after following traffic rules. No doubt the Aruppukottai town police have registered a case in Cr. No. 682 of 2002 only against the driver of the 3rd respondent's bus TN-29-N-6969 and filed charge sheet only against the said driver. It is clear from Ex.P.1, certified copy of FIR and Ex.P.2 certified copy of charge sheet. It is seen from the available records, that the driver of the first respondent's bus died in the accident. The criminal case has been registered on

the complaint given by one passenger who traveled in the first respondent's bus at the time of the accident. It appears that the police have preferred to file a case only against the 3rd respondent's bus driver for the reason that the driver who drove the first respondent's bus died in the accident. In this regard Ex.P.3 and P.4 are note worth Ex.P.3 is the certified copy of M.V.I. report for the 3rd respondent's bus and Ex.P.4 is certified copy of MVI report for the first respondent's bus. On meticulous perusal of these documents it is seen front side body. Both vehicle appear to have dashed against each other in a head on collision. Both the vehicles are heavy vehicles. On perusal of the records it is seen that some persons who traveled in both vehicles sustained injuries and some passengers died. Photographs of any authenticated sketch of the scene of the occurrence are not available before us. This Court has to come to an independent conclusion based on evidence available in this case. Even though the police have filed charge sheet only against the driver of the evidence available in this case. Considering the evidence available in this case this Court is of the opinion that the drivers of both vehicles are equally responsible for the accident by rash and negligent driving resulting in head on collision. As such it is decided that the driver's of the both buses are equally responsible for the accident by rash and negligent driving and the points are answered accordingly.

Point 3:

9. We have already seen that both the drivers are equally responsible for the accident by rash and negligent driving. As such the first respondent being the owner of the bus TN-65-3666 and 2nd respondent being its insurer on the one part and the 3rd respondent being the owner of the bus TN-29.6969 on the other part are liable to pay compensation each 50%.

10. P.W.1 has deposed that he sustained multiple fractures and other injuries. Ex.P.5 is the wound certificate issued by Government Hospital, Aruppukottai. Ex.P.6 is Accident Register issued by Dr.Chidambaram of MIOT hospital, Madurai. Ex.P.8 is a bunch of bills for Rs. 1,03,356/-. Ex.P.10 is X-rays for the petitioner and Ex.P.11 is case sheet maintained by MIOT, hospital. These document go to show that the petitioner sustained fractures in both bones of both legs and fracture in the Ulna in both hands and that he took treatment for a considerable period of time by involving considerable amount of expenditure. While so, P.W.2 Dr.Chidambaram attached to Government Rajaji Hospital, Madurai, has deposed that the treated the petitioner in the MIOT Hospital, Madurai and he was operated upon and he was given treatment as outpatient. P.W.2 has further deposed that he examined the petitioner on 28.11.2005 and issued disability certificate to the extent of 39%. The disability certificate issued by him and x-rays taken during his examination have been marked through him as Ex.P.9 and P.10. Reduction in rotation of the left ankle, reduction of the right hand, reduction in muscle strength and pain are the reasons given by the doctor for issuing disability to the extent of 39%. However, considering the age of petitioner and nature of injuries and other circumstances it appears to the court that the

disability of 39% issued by P.W.2 appears to be excessive. According to this Court, the disability to the extent of 20% would be appropriate in this case. Accordingly the disability suffered by the petitioner is fixed at 20%.

11. It is the case of the petitioner that he was aged about 58 years and has been working as accountant and earned a sum of Rs. 6,000.00. In Ex.P.2 and P.6 his age has been noted as 58 years. As such the age of the petitioner is fixed as 58 at the time of the accident.

12. Ex.P.7 is a letter issued by one varatharajan of Varatharajan rice and oil mills, Aruppukottai, stating that the petitioner was working in his oil mill and was paid a sum of Rs. 6,000/- p.m. Neither this Varatharaj nor any authenticated person has been examined in this regard. Registers maintained under the Factories act or under the Labour laws have not been marked to show that the petitioner was accountant in the mill and he was paid a sum of Rs. 6,000/-. Ex.P.7 has not been properly proved. The claim of the petitioner that he earned a sum of Rs. 6,000/- p.m by working as accountant is not acceptable.

13. Under the above circumstances a sum of Rs. 30,000/- is fixed for future disability. Further a sum of Rs. 10,000/- for pain and sufferings, Rs. 2,000/- for transport charges, Rs. 1,000/- for extra nourishment are fixed. Ex.P.8 is a bunch of bills for Rs. 1,03,356/-. The bills appear to be genuine and acceptable. The petitioner is entitled to get this amount also. In total the petitioner is entitled to get a sum of Rs. 1,43,356/- as compensation, 50% from the 1st and 2nd respondents and 50% from the 3rd respondent and the point is answered accordingly.

Point - 4

14. In view of the findings arrived at the point 1 to 3 the 1st and 2nd respondents, jointly and severally on the one part and the 3rd respondent on the other part are directed to pay to the petitioner a sum of Rs. 1,46,356/- equally within two months from this date with interest at 7.5% p.a. from the date of petition till the date of deposit and proportionate costs. On such deposit the petitioner shall withdraw interest and costs in the first instance. The award amount shall be deposited in any Nationalised bank for three years and the petitioner shall withdraw interest once in 6 months directly from the bank. Excess court fee, if any, shall be refunded to the petitioner.

15. The learned Counsel has argued that the Motor Accident claims Tribunal filed to consider the oral and documentary evidence of the parties. Actually the accident had happened due to the rash and negligent driving of the driver of the corporation. As per the First Information Report the liability has to be levied on the 2nd respondent. The Tribunal has fixed 50% negligence on the part of the 2nd respondent which is erroneous. The learned Counsel further argued that the medical bills to the tune of Rs. 1,03,356/- were not clearly proved. The learned Counsel further argued that the Tribunal awarded a total compensation of Rs. 1,46,356/-, which is on the higher side, since the age of the claimant was 58

years at the time of the accident. Hence, the learned Counsel for the appellant prays that to set aside the award passed by the Motor Accident claims Tribunal Tribunal.

16. Per contra, the learned Counsel for the respondent argued that the medical expenses alone which is a sum of Rs. 1,03,356/- granted on the basis of medical bills i.e., Ex.P.8. The balance compensation amount a sum of Rs. 43,000/- is on the lower side. Considering the nature of the injuries sustained by the claimant who underwent treatment in three hospitals. The Tribunal awarded Rs. 2,000/- towards transport charges, Rs. 1,000/- for extra nourishment, which are on the lower side. The claimant underwent plastical surgery operation including fixation of steel plate. The plate has to be removed through a re-operation, for which future medical expenses will be incurred. The said accident was a head-on collusion hence, the Tribunal fixed the liability on both offending vehicle drivers. The learned Counsel for the respondents further argued that the learned Motor Accidents Claims Tribunal finding on both issues, namely liability and quantum of compensation is fully justified. As such the above civil miscellaneous appeal is not sustainable. Hence, the learned Counsel prays that the case is dismissed.

17. Considering the facts and circumstances of the case, the learned Counsels arguments for their respective parties, and of the findings of the learned Motor Accident Claims Tribunal, the court is of the view that the claimant, who sustained 39% disability as assessed by the Dr.Chidamparam, Reduction in rotation of the left ankle, reduction in rotation of right ankle, reduction in rotation of right wrist, reduction of rotation of the right hand, reduction in muscle strength. Further the claimant underwent a major surgical operation. Hence this Court confirms the award passed by the Motor Accident Claims Tribunal, Fast Track Court, Virudhunagar in MCOP. No. 13 of 2005 dated 2312 of 2005 awarding a total compensation a sum of Rs. 1,46,356/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation is equitable and fair.

18. This Court enforced a condition on the appellant to deposit their liability i.e., 50% of the total compensation with accrued interest there on to the credit of MCOP. No. 13 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Virudhunagar within a period of four weeks. This order passed on 25.02.2008.

19. As the accident had happened on 16.11.2002, hence, it is open to the claimant to withdraw the compensation amount with accrued interest thereon, lying in the credit of MCOP. No. 13 of 2005, on the file of the Motor Accident Claims Tribunal/Fast Track Court, Virudhunagar after filing necessary application in accordance with law and subject to deduction of withdrawals, if any.

20. In the result, the above Civil Miscellaneous Appeal No. 284 of 2008 stands dismissed. Consequently, the award and decree passed by the Motor Accident Claims Tribunal/Fast Track Court, Virudhunagar in MCOP. No. 13 of 2005 dated

30.12.2005 is confirmed. Connected miscellaneous petition is closed. There is no order as to costs.