

(2011) 03 MAD CK 0521

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1643 of 2008

The State

APPELLANT

Vs

R. Jegadeesan

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2012) 1 TAC 827

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

Bench : Single Bench

Advocate : R. Muthaian, G.A, for the Appellant; A.A. Venkatesan, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/Commissioner for Police for State against the award and decree passed in M.C.O.P. No. 2207 of 2000, dated 09.01.2007 on the file of the Motor Accidents Claims Tribunal(IV Judge, Court of Small Causes), Chennai, awarding a compensation of Rs. 6,65,000/- with interest at the rate of 7.5% per annum.

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

On 02.05.1997 at about 14.00 hours while the Petitioner was travelling as a passenger along with other passengers in the Respondent Police Van bearing Registration No. TN 07-0920 from Madurai to Rameswaram when the van was nearing Paramakkudi, at that point of time, the driver had driven the Van in a rash and negligent manner and dashed against the road side tree, resulting which, the claimant had sustained grievous injuries including bone fractures. Hence, he filed the claim petition against the Respondent claiming a compensation for Rs. 12,42,616/- with interest.

3.The Respondent filed a counter statement and resisted the claim petition stating that the accident had not been committed by the driver of the van. The Respondent further stated that the claimant has to prove his case after producing

the driving licence of the driver and vehicle particulars before the Tribunal. The Respondent further submitted that the claim amount is an excessive one.

4. On considering the plea of both parties the Tribunal framed two issues as follows:

i) Who was responsible for the accident?

ii) Whether the claimant is entitled to receive compensation? If so what is the quantum of compensation?

5. On the side of the claimant, two witnesses have been examined , viz., P.W.1, the claimant himself and P.W.2 Dr. N. Sai Chandran. Fourteen documents have been marked, namely Hospital discharge summaries, Scan report, prescription of the Doctor, Wound Certificate, Salary Certificate, Leave Certificate, Doctor's report, Doctor's Certificate, Pension particulars, Photo with negative, X Ray, First Information Report and Disability Certificate. On the side of the Respondent, no witnesses have been examined and no documents have been marked.

6. P.W.1 had adduced evidence stating that on 02.05.1997, at about 2.00 p.m., he was travelling in the Police Van bearing Registration No. TN 07-0920 from Madurai to Rameswaram. When the Van was nearing Paramakkudi, at that point of time, the driver of the Van had driven the vehicle in a rash and negligent manner and dashed against the road side tree. In the result, the claimant had sustained grievous injuries including bone fractures.

7. P.W.1 further adduced evidence stating that he had sustained three bone fractures and injuries on his skull. His neck bone had also been fractured. In the spinal cord, three bones had been fractured and in his left hand, three fingers were cut off. Besides, he had sustained injuries on his left hand, left shoulder and bodily injured. Immediately after the accident, he was taken to Madurai Government Hospital, wherein he had undergone treatment as inpatient from 2.5.1997 to 13.5.1997. Thereafter, he had taken treatment at Government General Hospital, Chennai from 14.5.1997 to 9.6.1997, wherein he had undergone three surgical operations. Besides, he had taken treatment as outpatient at Vijaya Hospital, Chennai. After the accident, he was unable to do his duty as Head Constable in the Respondent Department for the past four years approximately and as such, he lost his salary. P.W.1 further adduced evidence that he had taken treatment at his residence with private nursing. Due to the accident, he is unable to attend natural call.

8. P.W.2 Doctor had assessed the disability of the claimant at 80%. The claimant's both legs and both hands have become inactive. As such, the physical condition of the claimant is vigitative. P.W.1 further adduced evidence that after the accident, he is unable to perform his duty as Head Constable. Hence, he constrained to tender for voluntary retirement. For his regular retirement, there is more than 7 years.

9. After considering the evidence of the witnesses and on perusing the

documentary evidence, the Tribunal awarded the compensation under various heads, which are as follows:

Loss of income for the period of three years

Rs. 80,000/-

Transportation

Rs. 5,000/-

Extra Nutrition

Rs. 5,000/-

Loss of amenities

Rs. 25,000/-

Pain and suffering

and mental agony

Rs. 25,000/-

Partial permanent disability Loss of income and loss of earning capacity

Rs. 5,25,000/-

Total

Rs. 6,65,000/-

10. In total, the Tribunal awarded a sum of 6,65,000/- with interest at the rate of 7.5% per annum.

11. Aggrieved by the said award, the Appellant has preferred the above appeal for scaling down the compensation.

12. The learned Counsel for the Appellant argued that it is an admitted fact that the claimant had sustained grievous injuries including bone fractures and even though he was granted medical leave, he was paid regular salary without any loss. The learned Counsel further argued that after the accident, even though the claimant became unfit to serve in the Police Department, the Department never asked the claimant to tender for voluntary retirement from service.

13. The learned Counsel for the Appellant further argued that without any loss of income, the claimant was paid regular salary when he was on medical leave during treatment, so the claimant did not incur any pecuniary loss. 14. The learned Counsel for the claimant argued that the claimant had sustained bone fractures on his head. Besides, his left hand's three fingers were cut off and his

spinal cord bone and his neck bone were also fractured. Both legs and hands have become inactive, as such, the condition of the claimant is vigitative. In order to prove the same, he marked the Medical Certificate. The Appellant has also categorically admitted that the claimant was unable to perform his normal duty as Head Constable in the Police Department. However, the Appellant granted medical leave to the claimant for a period of three years. During the medical treatment period as he was paid regular salary, it is clearly proved that the claimant has become vigitative condition. Therefore, he is unable to perform his normal duty. Hence, he tendered for voluntary retirement to the Appellant Police Department. After the accident, the claimant is unable to walk and work as before and unable to sit normally. Hence, he always requires one physical assistant.

15. The learned Counsel for the Respondent/claimant further argued that the claimant is still on vigitative condition and he requires one person's help. At the time of the accident, the claimant's age was 52. He served as Head Constable in the Police Department. The learned counsel for the Respondent/claimant further argued that there was possibility of promoting the claimant to higher rank, but there is a loss due to the accident. The claimant is entitled to receive the compensation under two categories, namely the pecuniary loss and non pecuniary loss. The claimant lost his shape while he was in service, as such, he is entitled to receive compensation under the head pecuniary loss. Besides, he had sustained multiple bone fracture injuries including fingers cut, spinal card fracture, neck bone fracture and skull fracture, as such, he is entitled to receive additional compensation as claimed before the Tribunal. But, the learned Motor Accidents Claims Tribunal awarded Rs. 6,65,000/-.

16. In view of the facts and circumstances of the case, the arguments submitted by the learned Counsel on either side and on going through the impugned award passed by the learned Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai, this Court is of the considered opinion that it is an admitted fact that the claimant served in the Appellant Police Department as Head Constable. At the time of the accident, he was 52 years old. After the accident, he was unable to perform his normal duty. So, he was on medical leave for more than three years. Further, the considered opinion of this Court is that the physical condition of the Respondent/claimant does not permit him to perform his duty as Head Constable in the Police Department. Hence, he tendered for voluntary retirement from service, as such, he lost his pecuniary benefits. Besides, the claimant has become vigitative condition. Therefore, this Court is not inclined to interfere with the quantum of compensation as decided by the learned Motor Accidents Claims Tribunal. Therefore, the compensation of Rs. 6,65,000/- awarded by the learned Motor Accidents Claims Tribunal with interest at the rate of 7.5; per annum is fair and equitable. Hence, the award is confirmed.

17. Now, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 2207 of 2000 on

the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai, after filing a memo along with this order subject to withdrawals if any, made already.

18. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the award and decree passed by the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai in M.C.O.P. No. 2207 of 2000 dated 9.1.2007 is confirmed. There is no order as to costs. Consequently, connected Miscellaneous Petition No. 1 of 2008 is closed.