

(2013) 09 MAD CK 0184

Madras High Court

Case No: C.M.A. No. 132 of 2007

Pradeep @ Dilip

APPELLANT

Vs

Sunil and Others

RESPONDENT

Date of Decision: Sept. 24, 2013

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

Bench: Single Bench

Advocate: I.C. Vasudevan, for the Appellant;

Final Decision: Partly Allowed

Judgement

C.S. Karnan, J.

The Brief facts of the case are as follows:-

When the appellant/claimant was travelling in a jeep bearing registration No. KL-09-E-5187, on 15.10.1998, at about 10.30 p.m. on the Kalingarayanpalayam main road, the driver of the jeep had driven it in a rash and negligent manner and dashed against the stationed lorry bearing registration No. TN-29-Z-1236, parked on the road. As a result, the claimant and others had sustained injuries. Hence, the claimant had filed the claim in M.C.O.P. No. 470 of 1999 against the owner and insurer of the Jeep.

The third respondent/United India Insurance Company has filed the counter statement and resisted the claim. The respondent had denied that the accident had been caused by the rash driving of the driver of the Jeep. It was submitted that the driver of the jeep did not have a valid driving licence. The averments in the claim regarding age, income, occupation, nature of injuries and disability was not admitted.

2. The 6th respondent/National Insurance Company has filed counter statement and refuted the claim. It was admitted fact that the driver of the jeep had driven it in a rash and negligent manner and hit behind the lorry and as such, the insurance company is not liable to pay any compensation to the claimant. The respondent

further denied the averments in the claim regarding age, income and occupation of the claimant.

3. On considering the averments of all the parties, the Tribunal had framed two issues, namely, (i) whether the accident had been committed by the negligence of the first respondent or was it caused due to negligence of fourth respondent? (ii) whether the claimant is entitled to get compensation?. In the said accident, another claim has been filed against the same respondents. Hence, joint trial was conducted.

4. In the present case, the claimant was examined as P.W. 1 and the Doctor was examined as P.W. 4 and 16 documents were marked, namely, First Information Report, Rough Sketch, Observation Mahazar, Motor vehicles Report for both vehicles, Accident Report, Wound Certificate, Charge Sheet, Judgment copy of criminal Court, C.T. Scan, medical bills, Doctor's report and ophthalmologist's prescription.

5. P.W. 1 had adduced evidence that on 15.10.1998, at about 10.30 p.m., when he was travelling in the jeep bearing registration No. KL-09-E-5187, the driver of the jeep drove it in a rash and negligent manner and dashed it against the lorry bearing registration No. TN-29-Z-1236, which was parked on the Kalingarayanpalayam road. Hence, both the drivers of the vehicles, owners and insurance company have been ordered as necessary parties in this case. P.W. 1 further stated that he had sustained injuries in his left eye, left shoulder, left chest, and teeth and that he was admitted at Bhavani Government Hospital. Subsequently, he was returned to Erode Government Hospital and later on undergone treatment at K.G. Hospital Coimbatore. P.W. 1 further stated that he was working as a Supervisor and was earning Rs. 7,000/- per month.

6. P.W. 4 Doctor had spoken on the same lines of P.W. 1 regarding nature of injuries and mode of treatment and certified that the claimant had sustained 35% disability as his left eye and nervous system had been affected.

7. On considering the evidence of the witnesses and on perusing the documents marked by the claimant, the Tribunal had awarded a sum of Rs. 43,900 as compensation to the claimant and directed the respondents 1 to 3 to pay the said amount. Not being satisfied with the quantum of compensation, the claimant had filed the above appeal.

8. The very competent counsel argued that the claimant had sustained multiple bone fracture injuries on his left hand, chest, and on his left eye. His left eye-brow was sutured. The ophthalmologist had certified that the claimant had sustained 35% disability. The Tribunal had not granted adequate compensation under the head of disability and pain and suffering. Further, the Tribunal had not granted compensation under the head of transport, nutrition, attender charges, loss of earning during medical treatment period. Further, the claimant underwent treatment at three different hospitals.

9. The very competent counsel for the insurance company argued that the offending vehicle i.e., jeep had been driven by the father of the claimant in a rash and negligent manner and had dashed against the lorry and as such, the entire negligence lies on the side of the father of the claimant. The learned counsel further submits that the Tribunal had assessed the compensation on the basis of medical records. The Doctor had assessed the disability at 35%, which is on the higher side.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the quantum of compensation awarded is on the lower side since the claimant had sustained injuries on his left eye and suture had been effected to set right the injuries on the left eyebrow of the claimant. Further, the Tribunal had not granted compensation under the relevant heads. Therefore, this Court re-assesses the compensation as follows:- Rs. 70,000/- is awarded for disability; Rs. 10,000/- for pain and suffering; Rs. 5,000/- is awarded for transport; Rs. 5,000/- towards nutrition; Rs. 5,000/- is awarded towards attender charges. Rs. 13,900/- towards medical expenses. In total, this Court awards Rs. 1,08,900/- as compensation. After deducting initial compensation of a sum of Rs. 43,900/- this Court awards Rs. 65,000/- as additional compensation as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% p.a. from the date of filing the claim till the date of payment of compensation.

11. This Court directs the third respondent herein/United India Insurance Company limited, to comply with this Court order within a period of four weeks from the date of receipt of a copy of this Judgment by way of depositing the amount before the Tribunal. After such deposit having been made, it is open to the claimant to withdraw the entire compensation amount, with interest thereon, lying in the credit of MCOP No. 470 of 1999 on the file of Motor Accidents Claims Tribunal (I Additional District Judge), Erode. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently, the order and decretal order made in MCOP No. 470 of 1999 on the file of Motor Accidents Claims Tribunal (I Additional District Judge), Erode is modified. No costs.