

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.683 of 2011

G. Vasantha
W/o Gopal
Palayam Village
Dharmapuri Dist

Now Residing at
5/431, Anna Nagar
Mamangam
Salem - 636002

Appellant/Claimant

Vs

1. S.N.T & Co
Sampu Pannai
Harur - Post, Taluk
Dharmapuri

2. M/s. The New India Assurance co Ltd
No.39 C, Bye Pass road
Dharmapuri - 636 701

Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.10.2010 made in MCOP No.214 of 2006 on the file of Motor Accidents Claims Tribunal/II Additional Subordinate Judge, Salem.

For Appellant : Mr.R.Syed Mustafa & Mr.M.R.Thangavel
For Respondents : Ms. A. Salomi

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant challenging the judgment and decree dated 18.10.2010 passed in MCOP No. 214 of 2006 on the file of Motor Accidents Claims Tribunal/II Additional Subordinate Judge, Salem.

2) For the sake of convenience, hereinafter the parties

are referred as per their status before the Tribunal. This is the case of injury. The case of the petitioner is that on 30.10.2005 at about 3.45 pm, when the petitioner travelled in the SNT Bus from Poyapatty to Sankarankoil near Palayam Village, the bus was stopped at Sankaran koil, near Palayam Village, at that time, while the petitioner was trying to get down from the bus, the driver of the bus without any signal moved the bus suddenly in a rash and negligent manner. Further he had not followed the signal given by the conductor. Due to the sudden movement of the bus, the petitioner lost her control and fell down from the bus. As a result, the petitioner sustained fracture in right leg and injuries all over the body. Immediately, after the accident, he was taken to Harur Government Hospital. From there, she has shifted to Dharmapuri Government Hospital for further treatment. According to the petitioner, the alleged accident had happened only due to the rash and negligent act of the driver of the bus owned by the 1st respondent.

3) In the Claim petition, she was claiming the compensation of Rs.3,50,000/- towards injuries sustained by her in the said accident.

4) On the other hand, opposing the claim of the petitioner by filing a counter, the 2nd respondent Insurance Company contended that during the time of occurrence, the petitioner is trying to get down from the moving bus. Only because of the said reason, she fell down and sustained injuries. The income stated by the petitioner and other expenses mentioned in the claim application are all disputed on the side of the 2nd respondent.

5) Before the Tribunal, the petitioner examined himself as PW 1 and the Doctor who issued the Disability Certificate was examined as PW 2. Further 5 documents are marked as Ex.P.1 to Ex.P.5. On the side of the respondents, none have been examined and no documents have been marked.

6) The Tribunal on the basis of available records found that the injury stated by the claimant, as well as by the Doctor is not due to the consequence of the accident stated in the application and finally dismissed the claim petition filed by the claimant.

7) Today when the appeal is taken up for consideration, the learned Counsel appearing for the appellant would contend that Ex.P.2 and Ex.P.3 are the documents issued by the Hospital Authorities. He further added that the said documents clearly establishes the details of treatment given to the claimant. But the Claim Tribunal without considering the said documents came

to the conclusion and dismissed the claim made by the claimant which is erroneous in law.

8) Per contra, the learned Counsel appearing for the 2nd respondent would contend that the documents exhibited on the side of the claimant did not establish that the injuries sustained by the claimant is due to the accident mentioned by the claimant. Further, he submitted that the claim Tribunal thoroughly considered the said aspect and came to the correct conclusion that the injuries sustained by the claimant is not due to the accident. So the order of the dismissal passed by the Claim Tribunal does not need any interference.

9) Now, considering those documents, which are referred by the appellant, Ex.P.2 is the X-ray receipt issued by the Hospital Authorities. Further, Ex.P.3 is the Discharge Summary in the name of claimant. Now on seeing those documents, the model and the style of the said document, clearly establishes that such type of documents are used only in Government Hospitals, at the time of issuing the out patient slips to the patients. Further, on close scrutiny of the said document, it was clearly mentioned about the details with regard to the admission of the claimant in the Hospital, date of discharge, serial number of X-ray and IP Number are all mentioned. Further, below the said details, the prescription issued to the claimant is also entered by the Doctor. According to the said document, the inpatient number of the patient is 27226. Further, he was admitted in the Hospital on 30.10.2005 at about 08.50 hours and discharged on 14.12.2005 at about 7.00 pm. Below the said dates, it was mentioned the X-ray number as 2489 A dated 31.10.2005. Further, below the said endorsement, the signature of the doctor also found.

10) In the said circumstances, on go through the Ex.P.2 X-ray receipt, the same IP NO, name of the patient are all clearly mentioned. Thereby, Ex.P.2 is the corresponding document to Ex.P.3. Those documents clearly prove that on the date of accident, within 5 hours from the time of occurrence, the claimant was admitted in the Government Medical College Hospital, Dharmapuri. Accordingly, the evidence given by PW 1 is reliable one. But the claim Tribunal without noticing those aspects dismissed the claim made by the claimant, which needs to be changed. As per the above discussions, this Court came to the conclusion that the details of fracture mentioned in Ex.P.2 happened to the claimant is only due to the accident alleged in this case.

11) In otherwise, in respect to the negligence committed by the bus driver, the evidence given by the claimant is cogent one. In order to dispute the evidence given by PW 1, with regard to the negligence committed by the bus driver, none

have been examined on the side of the respondents. Accordingly, I am of the view that on 30.10.2005, at about 3.45 pm, the accident had been occurred as stated by the PW 1, due to which, he sustained fracture. Furthermore, it is concluded that since the 1st respondent is the owner of the offending vehicle and the 2nd respondent is the insurer, both of them are jointly and severally liable to pay the compensation. Furthermore, in order to deny the liability, the 2nd respondent had not raised any objection specifically.

12) Now coming to the point of disability, in the the Claim Tribunal, the Disability Certificate issued by PW 2 dated 04.10.2010 is marked as Ex.P.5. In respect to those document, the learned Counsel appearing for the 2nd respondent would contend that the disability was fixed after the period of 5 years from the date of accident. So, the evidence given by PW 2 cannot be looked into for calculating the percentage of disability.

13) On considering the submission made by the Counsel appearing for the respondent, it is true after 5 years from the date of accident, only in the year of 2010 the disability of the claimant was calculated. However, on go through the Ex.P.2 X-ray report, it was clearly mentioned that the petitioner sustained a fracture in lateral malleolus. With regard to the said fracture, PW 2 has stated due to the said injury, the movements of the claimant are reduced to the level of 20 degree. Further he has stated that as of now, the petitioner's movement is restricted to some extent. Hence, considering the said circumstances, even though PW 2 calculated the percentage of disability as 25%, I am of the opinion that it would be appropriate to fix the 20% of the disability for calculating the compensation.

14) During the time of giving evidence, the claimant has stated that prior to the accident, she was a Tailor and earned Rs.3,000/- per month. But the said evidence is not supported through the documents. So this Court decided to award Rs.2,000/- per percentage. Accordingly, he is entitled to Rs.40,000/- under the head of disability.

15) In respect to the loss of earnings, she was taking treatment in the Hospital for a period from 30.10.2005 to 14.12.2005, which shows that the claimant took treatment for a period of 2 months. So in my view, allowing Rs.3,000/- per month is an appropriate amount for loss of income. Accordingly, under the head of loss of income, the petitioner is entitled to Rs.6000/-.

16) With regard to the pain and sufferings, it is proved that the petitioner is taking treatment for a period of 45 days. So considering the period of treatment taken by the

claimant, it would necessary to award Rs.30,000/- under the head of pain and sufferings. Further, with regard to other aspects, Rs.5,000/- each is awarded towards transport expenses, extra nourishment and attender's charges. Accordingly, the appellant is entitled to the compensation as follows.

SL.NO	PARTICULARS	AMOUNT (IN.RS)
1.	Towards Pain and sufferings	30,000.00
2.	Towards Loss of income (Rs.3,000 x 2 months)	6,000.00
3.	Towards Permanent partial disability 20% x Rs.2,000/-	40,000.00
4.	Towards Transport expenses to Hospital	5,000.00
5.	Towards Extra nourishment	5,000.00
6.	Towards Attender's Charges	5,000.00
	Total	91,000.00

17) In the result, the dismissal order passed by the Claim Tribunal is set aside and on considering the above facts of the case, this Court is awarded a just and reasonable compensation of Rs.91,000/- (Rupees Ninety One Thousand Only) to the appellant. The 2nd respondent is directed to deposit the said compensation to the appellant within two months from this date with subsequent interest at 7.5% per annum from the date of petition till the date of realization. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.

18) In the result, the appeal is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrn

To

1. The Motor Accidents Claims Tribunal/
II Additional Subordinate Judge,
Salem.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.M.R.Thangavel, Advocate in sr.no.61070

+1cc to Mr.C.Ramesh, Advocate in sr.no.61107

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CS/13/12/2018



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