

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2019
PRONOUNCED ON : 09.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.718 of 2007
and
M.P.No.3 of 2007

1. Govindappa
2. Chandrappa ...Appellants / Defendant

Vs.

P.V.Chinnana ...Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.10.2005 passed in A.S.No.20 of 2004 on the file of the I Additional District Judge, Dharmapuri at Krishnagiri and judgment and decree dated 07.10.2002 passed in O.S.No.409 of 1996 filed on the file of the Sub Court, Hosur.

For Appellants : Mr.M.V.Krishnan.

For Respondent : Mr.P.Mani.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 25.10.2005 passed A.S.No.20 of 2004 on the file of the I Additional District Court, Dharmapuri at Krishnagiri modifying the judgment and decree dated 07.10.2002 passed in O.S.No.409 of 1996 on the file of the Subordinate Court, Hosur.

2. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

3. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

4. The defendants who have lost in both the courts have come forward with the present second appeal.

5. Shorn of unnecessary details, it is seen that the plaintiff has come forward with the suit against the defendants stating that on account of the previous enmity, the defendants attacked the plaintiff with sticks and thereby caused fracture on his right hand and injuries on his head and the other parts of the body, consequently, the plaintiff has suffered permanent disability and thereby, he had been forced to incur various expenses towards the treatment and on account of the disability sustained by the plaintiff, he is unable to continue his avocation and thereby sustained monetary loss and, in all, claiming a compensation of Rs.95,000/- from the defendants, the plaintiff has laid the suit.

6. The defendants resisted the plaintiff's case contending that they had not attacked the plaintiff as put forth and the plaintiff had not sustained any injury or disability as claimed in the plaint and it is stated that, out of enmity and ill feeling between the parties, the plaintiff has come forward with the false case and hence the suit is liable to be dismissed. Further according to the defendants, the claim of compensation made by the plaintiff is on the higher side.

7. In support of the plaintiff's case P.Ws.1 to 6 were examined and Exs.A1 to A26 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B6 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to hold and determine that the plaintiff had sustained serious injuries on account of the attack inflicted on him by the defendants and further considering the nature of the injuries sustained by the plaintiff and the permanent disability incurred by him with reference to the same and the expenses incurred by the plaintiff towards the same, in all, found that the plaintiff is entitled to receive a sum of Rs.30,000/- as compensation and accordingly disposed of the suit in favour of the plaintiff directing the defendants to pay the abovesaid sum with future interest.

9. Aggrieved over the abovesaid determination of the trial court, it is found that the plaintiff preferred the first appeal seeking enhanced compensation as prayed for in the suit and the defendants also preferred the first appeal contending that the trial court had erred in granting the compensation in favour of the plaintiff as determined by it and the same is liable to be set aside. The first appellate court, on a consideration of the materials placed on record and the submissions made, was pleased to dismiss the appeal preferred by the defendants and allowed the appeal preferred by the plaintiff and thereby held that the plaintiff is entitled a compensation of Rs.95,000/- with

interest as determined by it and accordingly disposed of the said appeal preferred by the plaintiff.

10. As against the dismissal of the appeal preferred by them in A.S.No.5 of 2003, the defendants have not preferred any second appeal, however, as against the judgment and decree passed in the appeal preferred by the plaintiff in A.S.No.20 of 2004, the present second appeal has been preferred.

11. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

"1. Whether the courts below have committed an error of law in applying the provisions of the Workmen's Compensation Act when admittedly the plaintiff / respondent is not a workman as defined in the said Act?

2. Whether the Courts below have applied the correct principles of law in quantifying the damages claimed by the respondent / plaintiff?

12. During the course of the hearing of the second appeal, the defendants' counsel has not made any submission as regards the determination of the courts below that only on account of the attacks made by the defendants, the plaintiff has sustained injuries and permanent disability. Therefore, the abovesaid aspects of the matter determined by the courts below and accordingly thereby the determination of the courts below that the defendants are liable to pay a suitable compensation to the plaintiff for the injuries and disability sustained by him on various counts as such, do not warrant any interference.

13. From the materials placed on record, it is found that on account of the attack inflicted on the plaintiff by the defendants, it is found that the plaintiff has sustained 35% permanent disability, accordingly, the trial court on an appreciation of the materials available on record, considering the nature of the injuries sustained by the plaintiff, in all, the treatment taken by the plaintiff with reference to the same in the hospitals accordingly held that the plaintiff is entitled to the sum of Rs.2,000/-, in all, towards the medical expenses and, for the permanent disability sustained by him and the loss of income thereby, fixed the compensation of Rs.15,000/- and towards pain and sufferings fixed a sum of Rs.10,000/- as compensation, towards the transport expenses and extra nourishment fixed a sum of Rs.2,000/- and Rs.1,000/- respectively and accordingly held that, in all, the plaintiff is entitled to a sum of Rs.30,000/- as compensation.

14. However, the first appellate court on assessing the injuries sustained by the plaintiff in toto considering the permanent disability sustained by the plaintiff amounting to 35% and thereby the plaintiff has been incapacitated to work and earn due income in future hitherto earned by him and accordingly further noting that the plaintiff had taken treatment at Bangalore private hospital and noting that the pain and suffering sustained by the plaintiff for various injuries sustained by him would be on the higher side, in all, noting that the plaintiff would have earned a monthly income of Rs.1,500/- as put forth by the plaintiff, accordingly finding that the plaintiff had taken treatment in the hospital for more than two months and thereafter, would have also been laid to bed rest for more than three months, accordingly determined that the plaintiff would have sustained loss of income for a period of six months, fixed the loss of income for six months at the rate of Rs.1,500/- per month, amounting to Rs.9,000/- and for pain and suffering suffered by the plaintiff due to the various injuries sustained in his body, the first appellate court is found to have fixed the compensation under the abovesaid heading at Rs.25,000/- and in my considered opinion, the said sum is not on the higher side. Furthermore, the first appellate court, considering the nature of the treatment by the plaintiff at Bangalore hospital and the transport expenses, which would have been incurred by the plaintiff, accordingly, determined the transport expenses at Rs.5,000/- and medical expenses at Rs.1,919.85. Noting the permanent disability sustained by the plaintiff at 35%, determined that on that heading, the plaintiff is entitled to receive Rs.35,000/- as compensation and as still the plaintiff is unable to extend his hand in the usual fashion and thereby prevented from carrying on his avocation and do his job independently, determined that the loss of future income thereby sustained by the plaintiff at the rate of Rs.35,000/- and in all determined that the plaintiff is entitled to the compensation of Rs.1,10,919.85, however, restricted the same to the suit claim as put forth by the plaintiff at Rs.95,000/-.

15. Considering the reasonings of the first appellate court in awarding the compensation to which the plaintiff is entitled to particularly on the right appreciation of the materials placed on record, the nature of the injuries sustained by the plaintiff, the loss of income sustained by him during the period of treatment and post treatment, the pain and sufferings he had incurred and the loss of future income due to the permanent disability inflicted on the plaintiff, in all, it is found that the amount of compensation determined by the first appellate court to which the plaintiff is entitled to, is found to be not on the higher side, on the other hand found to have been rightly determined in the light of the factual materials placed on record and in such view of the matter, in my considered opinion,

the amount of compensation determined by the first appellate court as payable to the plaintiff at Rs.95,000/- does not warrant any interference.

16. The first appellate court has, while determining the compensation to which the plaintiff is entitled to, drawn strength from the provisions contained in the workmen's Compensation Act and though the plaintiff is not a workman but only an agriculturist, however, considering the injuries suffered by the plaintiff, the first appellate court, had determined the compensation based on factual matrix, it is seen that the first appellate court has not committed any error in determining the compensation payable to the plaintiff as Rs.95,000/- which is found to be the just compensation and therefore, the same does not warrant any interference.

17. In view of the abovesaid facts and reasons, the determination of the first appellate court fixing the compensation to the which the plaintiff is entitled to at Rs.95,000/- is found to be based on the factual appreciation of the materials placed on record, hence, it is seen that no substantial question of law is found to be involved in the second appeal as such. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiff.

18. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

bga
To

Sub Assistant Registrar

1. I Additional District Court, Dharmapuri at Krishnagiri
2. Subordinate Court, Hosur.

Copy to: The Section Officer,
V.R.Section, High Court, Madras

+1 cc to M/s.P.Mani, Advocate, S.R.No.34934

S.A.No.718 of 2007
and
M.P.No.3 of 2007

SKV(CO)
SSM(26/08/2019)