

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.Nos.341 & 342 of 2018

Govindarajulu ...Appellant / Claimant (in CMA No.341 of 2018)

Sujatha ...Appellant / Claimant (in CMA No.342 of 2018)

v.

Regional Manager
Andhra Pradesh State Transport ,
Corporation Ltd., Kuppam Depot,
Chittoor District,
Andhra Pradesh. ...Respondent / Respondent (in both CMA's)

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree of the Tribunal in MCOP Nos.85 & 86 of 2014 dated 30.10.2015 on the file of the Motor Accident Claims Tribunal / Additional District Cum Sessions Court, Hosur, Krishnagiri District.

For Appellant : Mr.P.A.Sudesh Kumar

(in both appeals)

For respondent: M/s.G.V.Shoba, (in both appeals)

COMMON JUDGMENT

The claimants in MCOP No.85 of 2014 and MCOP No.86 of 2014 who had suffered an order of dismissal in the aforesaid Motor Accident Original Petitions by a judgment dated 30.10.2015 passed by the Motor Accident Claims Tribunal / Additional District and Sessions Court, Hosur, Krishnagiri District are the appellants herein.

2.CMA No.341 of 2018 had been preferred against the dismissal of MCOP No.85 of 2014, which MCOP had been filed by the K.Govindarajulu S/o.Kannaia who was said to be residing at Nayanoor Village, Chittoor District and at the time of filing the petitioner claimed that he was residing at Mookandapalli

Village, Hosur Taluk, Krishnagiri District.

3.CMA No.342 of 2018 had been preferred against the dismissal of MCOP No.86 of 2014, which MCOP had been filed by the wife of Govindarajulu by name Sujatha who also affirmed that she was residing in the same addresses as Govindarajulu.

4.The necessity for filing two separate claim petitions arose owing to the fact that on 20.03.2009 at around 8.00 a.m., Govindarajulu was riding a motorcycle bearing Registration No.TN-25-F-5634 towards Kangundi and his wife Sujatha was the pillion rider. They were going to Padipathakam where Sujatha was working as a Cooli from their native village, Nayanur. They were proceeding from Nayanur in Kuppam - Nayanur Road. A APSRTC bus bearing Registration No.AP-11-Z-2628 said to have been driven in a rash and negligent manner dashed against the motorcycle and caused an accident. Both Govindarajulu and Sujatha fell down and sustained injuries.

5.Govindarajulu had sustained the following injuries,

(i)Tenderness Right U/s of shaft of femur with deformity. Unable to move right lower limb.

(ii)A CLW 7 x 3 cms right fore arm and over right elbow joint 8 x 4 cms.

(iii)Multiple abrasions over forehead, Right side upper eye lid (Right) and Right cheek.

(iv)X-ray shows: Fracture Right intertrochanteric femur.

6. His wife Sujatha had suffered the following injuries,

(i)Laceration 1 x 2 cms over lateral side of right eyebrow.

(ii)Laceration over cheek in front of right ear 1 x 1 cm.

(iii)Haematoma with CLW 2 x 2 cms over left parietal region.

(iv)Swelling of right cheek and swelling of right eye.

(v)CT Brain shows (1) # Right Maxilla (Comminuted).

(2)#Lateral Wall of Orbit.

(3)#Right Zygomatic arch.

(vi)CT Mandible show: # Mandible.

7.Govindarajulu was admitted as an inpatient and took treatment on 20.03.2009 and was discharged on 11.04.2009. He was again admitted on 22.05.2009 and once again admitted on 27.12.2010 and discharged on 07.01.2011. He was again admitted on 10.01.2011 for suture removal. He claimed compensation for the injuries suffered and sought a total amount of Rs.10,00,000/- towards compensation.

8.His wife Sujatha was admitted on 20.03.2009 and was again admitted on 21.03.2009 and discharged on 31.03.2009. She

was again admitted on 08.05.2009 and also on 13.09.2010, 15.09.2010 and 22.09.2010 for removal of multiplates and screws. She was also admitted on 23.09.2010 and 29.09.2010. She claimed a compensation of Rs.10,00,000/- for the injuries suffered.

9.Govindarajulu filed MCOP No.85 of 2014 and his wife Sujatha filed MCOP No.86 of 2014. The respondent / Regional Manager, Andhra Pradesh State Transport Corporation Ltd., had filed counters and they questioned negligence alleged as against the driver of the bus. They also stated that since two vehicles had been involved in the accident, contribution of both the vehicles should be analysed and determined. They also challenged the fact that Govindarajulu had a valid driving license. They also questioned the treatments alleged to have been given to both the claimants. In paragraph 23, they stated that the claimants are natives of Nayanur Village, Andhra Pradesh and that the accident took place at Andhra Pradesh and that therefore that Court has jurisdiction. It can be reasonably presumed that by such vague pleadings, the jurisdiction of the Court to examine the issues raised was questioned. They also disputed the address given by the claimants at Mookandapalli Village, Krishnagiri, Tamil Nadu.

10.Both the claim petitions were taken up for consideration by the Motor Accidents Claims Tribunal / Additional District and Sessions Court, Hosur, Krishnagiri District. On the basis of the averments made in the claim petition and in the counter, three issues were framed for consideration. The first issue was with respect to the jurisdiction of the Court, the second issue was with respect to determination of negligence and the third issue was with respect to determination of compensation payable.

11.It would have been advantageous to the litigants, had the Tribunal taken up the first issue for consideration in the first instance. On the other hand, the Tribunal commenced to examine the issue of negligence as the first point for consideration and after examining the records had attributed negligence only on the driver of the Andhra Pradesh State Transport Corporation Ltd.

12.In this connection, the Tribunal had the benefit of examining the First Information Report, which had been marked as Ex.P1 and also the copy of the final report filed by the police officials as Ex.P2. The nature of the accident and the nature of the injuries were also examined and finally, the Tribunal came to the conclusion it was purely due to the negligence of the driver of the Andhra Pradesh State Transport Corporation Ltd., that the accident took place. I would affirm the said finding.

13. Thereafter, the Tribunal proceeded to determine the compensation to be granted. It must be kept in mind that the Tribunal even at that stage did not examine its jurisdiction to determine the issues at all.

14. With respect to the compensation, the Tribunal in MCOP No.85 of 2014 filed by the Govindarajulu had determined the disability at 48 % and determined that a sum of Rs.3,000/- per percentage of disability can be granted and therefore granted a sum of Rs.1,44,000/- towards permanent disability and thereafter had also granted a sum of Rs.30,000/- towards pain and suffering and a sum of Rs.10,000/- towards expenses incurred for transportation and a sum of Rs.10,000/- towards attender charges and a sum of Rs.5,000/- towards extra nourishment and a sum of Rs.4,720/- towards medical bills. A total compensation of Rs.2,03,720/- was granted for the injuries suffered by Govindarajulu.

15. With respect to the compensation, to be granted in MCOP No.86 of 2014 filed by the Sujatha, the Tribunal had determined the disability at 43 % and determined that a sum of Rs.3,000/- per percentage of disability can be granted and therefore granted a sum of Rs.1,29,000/- towards permanent disability and thereafter also granted a sum of Rs.30,000/- towards pain and suffering and a sum of Rs.10,000/- towards expenses incurred for transportation and a sum of Rs.10,000/- towards attender charges and a sum of Rs.5,000/- towards extra nourishment and a sum of Rs.400/- towards medical bills. A total compensation of Rs.1,84,400/- was granted for the injuries suffered by Sujatha.

16. After proceeding to such an extent, namely determining negligence and determining the compensation payable, the Tribunal then took up the issue of jurisdiction and observed that the accident took place in Andhra Pradesh and that the claimants have not produced any documentary evidence to show their actual residence in Hosur and therefore, proceeded to dismiss the claim petitions. The Civil Miscellaneous Appeals have been filed by both the claimants questioning that particular decision taken of the Tribunal.

17. Heard arguments advanced by Mr.P.A.Sudesh Kumar, learned counsel for the appellant in both the appeals and Ms.G.V.Shobana, learned counsel for the respondent in both the appeals.

18. It had been pointed out by Mr.P.A.Sudesh Kumar, learned counsel for the appellants that the claim petitions had been filed under Section 166 of the Motor Vehicles Act, 1988 and

the learned counsel stated that under Section 168 of the Motor Vehicles Act, 1988, the enquiry should be conducted in a summary manner and under Section 169 of the Motor Vehicles Act, 1988, the Tribunal is vested with the powers of a Civil Court, which naturally indicates it has power to summon the witnesses and also to record evidence. The power to summon witnesses is granted, to also enable witnesses who might reside outside the jurisdiction to also come forward to tender evidence.

19. Further under Section 166(2) of the Motor Vehicles Act, 1988, the place to file a compensation petition has been given, namely, the place where the accident took place or where the claimants normally resides or where the respondent resides or carries on business. Therefore, the place of filing the petition has been widened and not restricted to one particular place.

20. The claimants had given a particular address at Mookandapalli Village. If the Tribunal had, entertained doubts about that particular address, then since under Section 169 of the Motor Vehicles Act, 1988, the Tribunal is vested with the powers of the Civil Court during trial proceedings, then it automatically follows that the Tribunal is also vested with the power under the Evidence Act, 1872, to seeking explanations with respect to any aspect stated either by the claimants or by the respondents. The Tribunal had power to put questions under Sections 165 of the Evidence Act, 1872, regarding any fact stated and seek clarifications. It is also for that particular reason, to deter any frivolous statement being made that the Tribunal is vested with the powers of the Civil Court under Section 169 of Motor Vehicles Act, 1988 to enquire deeply into the every statement made either by the claimant or by the respondent.

21. In the instant case, even if it is to be taken that the claimants are actual residents of Andhra Pradesh, then that particular issue should have been taken up in the first instance and if answered so, then instead of dismissing the claim petitions, the claim petitions should have been returned back to the claimants and the same may be presented before the Tribunal which has competent territorial jurisdiction. Dismissing of the petitions, after examining the issue of negligence and after determining the compensation to be granted, is perverse attitude by the Tribunal. It has to be interfered with.

22. After applying its mind to the facts of the case, the Tribunal has also now placed an embargo on the competent Tribunal, even if this Court were to direct the claimants to present the application before the competent Tribunal in Andhra

Pradesh, from determining the issues afresh since the findings would still play on the minds of the Tribunal were the trial might once again take place or if arguments were to be advanced on the basis of the evidence already recorded. The quantum of compensation determined will play on the minds of the Tribunal, since they are both Courts of equal jurisdiction.

23. Therefore, I would interfere with the orders now under appeal and set aside that particular finding on the issue of territorial jurisdiction and hold that the Tribunal has jurisdiction, in view of the fact that the claimants had given a specific address at Hosur which has not been challenged during cross-examination and would confirm the compensation granted.

24. The Civil Miscellaneous Appeals are allowed. No order as to costs. The compensation granted is confirmed. The negligence is confirmed. The respondent should deposit the compensation amount within a period of eight weeks from the date of receipt of a copy of this order together with interest at 7.5% per annum from the date of filing the claim petition. On such deposit, the appellants are permitted to withdraw same.

25. With respect to the interest, Ms. G.V. Shobana, learned counsel pointed out that the appeals have been filed with a delay of 114 days. Naturally, interest cannot be mulcted on the respondent for that particular period of delay in filing the appeals. Therefore, while calculating interest, which is to be calculated from the date of filing of the claim petitions, the interest for 114 days may be deducted and for the balance number of days or years, the interest may be granted to the appellants herein. Interest is to be granted at 7.5% simple interest.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

smv

To:-

The Motor Accident Claims Tribunal /
Additional District & Sessions Court,
Hosur, Krishnagiri.

+2cc to M/s. G.V. Shoba, Advocate SR.No.19241, 19242

+2ccs to Mr. P.A. Sudeshkumar, Advocate SR.No.19087

CMA.Nos.341 & 342 of 2018

VBM(CO)

GMV(21/07/2022)