

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2009

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.867 of 2004

V.S.Krishnamurthy

...Appellant/Petitioner/
Claimant

Vs.

1.M.Thanikachalam

2.United India Insurance Company Limited,
Motor 3rd Party Claims Offices,
No.38, Anna Salai,
Chennai-600 002.

...Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree passed by the Motor Accidents Claims Tribunal (IV Judge, Fast Track Court), Chennai in M.C.O.P.No.3761 of 1999 on 20.05.2003.

For Appellant : Mr.N.M.C.Babu

For 1st Respondent : No appearance

For 2nd Respondent : Mr.C.R.Krishnamoorthy

JUDGMENT

Challenge in this civil miscellaneous appeal is to the award passed by the Motor Accidents Claims Tribunal viz., IV Judge, Fast Track Court, Chennai in M.C.O.P.No.3761 of 1999 dated 20.05.2003 awarding a total compensation of Rs.1,50,000/- together with interest at 9% per annum from the date of filing of the petition till date of payment etc. and thereby the appellant/claimant has prayed for an enhancement of compensation.

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

On 02.6.1999 at about 9.00 a.m. the appellant/ claimant was riding the scooter bearing Registration No.TN-09-7141 from north to south direction in Jawharlal Nehru Road, Guindy, Chennai-32 and at

that time a lorry bearing Registration No.T.M.P.6379 came from behind in a rash and negligent manner and dashed against his scooter causing grievous injuries. The first respondent is the owner of the offending vehicle. The second respondent is the insurer. Hence, they are jointly and severally liable to pay the compensation amount of Rs.3,00,000/- to the claimant.

3.The second respondent/Insurance Company has filed a counter inter alia stating that the claim petition is not maintainable either in law or on facts and that it denies that the lorry bearing Registration No.T.M.P.No.6379 has been validly insured with it at the time of accident and it is for the appellant/claimant to prove the same. Hence, the second respondent is not liable to pay any compensation. Further, the compensation claimed under Column 21, 21A of Part I and Part II of the claim petition is too high, excessive, arbitrary and are not in consonance with the nature of injuries sustained by the appellant. It is to be proved that the driver of the first respondent at the time of accident has a valid driving licence. Moreover, the appellant has to prove that the offending lorry has a valid permit and fitness certificate to ply on the road on the date of accident. In fact, the accident has occurred solely due to the part of the appellant/claimant, who was riding the scooter on the road without observing the traffic rules and regulations in force there is no rashness or negligence on the part of the driver of the lorry bearing Registration No.T.M.P.6379. As such, the second respondent/Insurance Company is not liable to pay any compensation to the appellant.

4.Before the Tribunal, on the side of appellant/ claimant witnesses P.W.1 to P.W.3 were examined and Ex.P.1 to P.17 were marked. On the side of respondents, no one witness was examined and no documents were marked. After trial, the Tribunal, on a consideration of oral and documentary evidence adduced, has passed an award granting a compensation of Rs.1,50,000/- together with interest at 9% per annum from the date of petition till date of payment together with costs payable by the second respondent/ Insurance Company.

5.To prove negligence, the appellant/claimant has examined himself as P.W.1 and he has deposed that on 02.06.1999 at about 9.00 a.m. in the morning, while he was riding his scooter TN-09-7141 in Jawharlal Nehru Road, Guindy, Chennai (traveling from Ashok Nagar to Guindy) at that time the lorry bearing Registration No.T.M.P.6379 came from behind and dashed against his vehicle, as a result of which he fell down and the lorry's back wheel ran over his hip and his hip and bones in three places were broken and he sustained grievous injuries on his left hand, abrasions in his right hand and other injuries all over the body and he lost his Cane Bag in which he had kept his credit card, licence and a sum of Rs.2,000/- in his hand bag and immediately he received first aid treatment at Pallavan Hospital

and later since his condition was stable he was taken to the Apollo Hospital, where he remained as inpatient for 44 days and also he underwent two surgeries and that his discharge summary is Ex.P.1 and the treatment medical bills of the Apollo Hospital is Ex.P.2 (series) and Ex.P.3 is the Apollo Hospital receipts (series) and that he prays for a compensation of Rs.3,00,000/-.

6.However, the learned counsel for the second respondent/Insurance Company submits that the Tribunal has considered all the available material on record and has come to the correct conclusion in awarding a total compensation of Rs.1,50,000/- together with interest at 9% per annum from the date of filing of the petition till date of payment etc. and therefore, the same need not be interfered by this Court.

7.P.W.3 the Sub Inspector of Police in his evidence has stated that based on the complaint of one Madhavan for the accident that has taken place on 02.06.1999 at 8.30 a.m. in Jawharlal Nehru Road near Guindy SIPCOT Company involving lorry T.M.P.No.6379 and the Scooter TN-09-7141, the scooter rider has suffered grievous injuries and that the Sub Inspector-Chinnadurai has registered a case in Crime No.308/S.2/99 under Section 337 of Indian Penal Code and under Section 184 of Motor Vehicles Act and that after completion of investigation before the Saidapet IV Magistrate Court as against the lorry driver-Sekar, a case has been registered under Section 338 of I.P.C. and under Section 184 of Motor Vehicles Act and that in C.C.No.4264/99 the lorry driver has admitted his guilt and paid fine of Rs.1,200/- on 23.09.1999 and that the First Information Report is Ex.P.9 and the Rough Sketch is Ex.P.10.

8.P.W.2 the doctor in his evidence has stated that the P.W.1/appellant/claimant has suffered a total disability of 65%, as per Ex.P.16-Disability Certificate and Ex.P.17 is X-ray and that the appellant/claimant has been examined by him on 11.12.2000 and that the appellant's flat bone on the right hip joint upper portion has been broken and rods were fixed from outside and that treatment has been given for the road accident sustained and the front portion bones of the hip bone were dislocated and still it is in dislocated stage and the broken bone has been mal-united with tightened muscles and the appellant has difficulty in regard to driving of his vehicle and while sitting for which he has assessed disability at 35% and for the left side of the hip bone two cross bones were fractured and they were mal-united and the claimant walks limping and the left side hip bone part has moved lower, for which he assessed disability at 30%.

9.A perusal of Ex.P.8-FIR indicates that the complainant is Azeez Rahman and that the suspected accused is scooter driver bearing Registration No.TN-09-7141. In his complaint Ex.P.9 the complainant has stated that the scooter TN-09-7141 which was proceeding in front of him in the direction of north to south on 02.06.1999 at about 8.30

a.m. near SIPCOT in Jawharlal Nehru Road, Guindy, the lorry T.M.P.No.6379 which came in the same direction has dashed against and as a result of which, the kinetic bright scooter rider suffered injury and fell down below the lorry in an unconscious state and immediately he took him to Apollo Hospital with the help of General Public for treatment and admitted him there and that action is to be taken against the lorry driver T.M.P.No.6379, who is responsible for causing the accident.

10. Even though the complainant of Ex.P.9 has not been examined as a witness in the case yet the appellant/claimant has examined himself as P.W.1 before the Tribunal and he has spoken about the manner and mode of occurrence in a clear cut way. As a matter of fact, the evidence of P.W.3, the Sub Inspector of Police is to the effect that the offending lorry driver has admitted the offence in C.C.No.4264/99 before the criminal Court and has paid a fine of Rs.1,200/- on 23.09.1999. In view of the fact that the evidence of P.W.1/appellant/claimant is unimpeachable as to the manner and mode of occurrence and taking note of the fact that the offending lorry driver T.M.P.No.6379 has paid a fine of Rs.1,200/- before Criminal Court after admitting the offence, this Court comes to the inescapable conclusion that the driver of the offending lorry T.M.P.No.6379 is solely and squarely responsible for causing the accident and that the accident has taken place because of the negligence of the lorry driver and the point is answered accordingly.

11. In regard to the quantum of compensation to be awarded, it is to be pointed out that the appellant/claimant in his claim petition has made the following claim under different heads claiming different amounts and the same is as below:

Amount of compensation claimed : Rs.3,00,000/-

Part I

- | | |
|-------------------------------------|-----------------|
| (a) Loss of earning from | : Nil |
| to | |
| (b) Partial loss of earning from | : Nil |
| to | |
| (c) At the net rate of Rs. | : Nil |
| (d) Transport to Hospital | : Rs. 3,000/- |
| (e) Extra nourishment | : Rs. 4,000/- |
| (f) Damage to clothing and articles | : Rs. 3,000/- |
| (Rs.1000/- for dress damage) | |
| (Rs.2000/- towards loss of cash) | |
| (g) Medical Expenses | : Rs.1,00,000/- |
| Loss of earnings | : Rs. 75,000/- |

Part II

(h) Compensation for pain and suffering	: Rs. 15,000/-
(i) Compensation for continuing or permanent disability if any	: Rs.1,00,000/-
(j) Compensation for the loss of earning power	:

Total	: Rs.3,00,000/-

12.The tribunal in respect of transportation expenses, nourishment and medical expenses has awarded a total sum of Rs.1,00,000/- under these heads, it has granted a sum of Rs.10,000/- towards pain and suffering, towards disability it has awarded a sum of Rs.20,000/-, in respect of loss of income it has granted Rs.20,000/- and in all thus awarded a total sum of Rs.1,50,000/- as compensation to the appellant/ claimant.

13.According to the evidence of P.W.1(appellant/ claimant), he has remained as an inpatient for 44 days at the Apollo Hospital, where he underwent two surgical operations and that in the pelvis region two rods have been fixed and that his discharge summary is Ex.P.1, Ex.P.2 (series) is the inpatient medical bills and Ex.P.3 is the deposit receipt (series), Ex.P.4 is the payment and outpatient counter cash bill and that he has spent a sum of Rs.5,000/- towards body exercise by engaging a doctor and that he is unable to walk continuously and that he cannot travel more than two hours and he has been advised by the Apollo Hospital authorities that he should undergo third surgery and that he is an income tax assessee and Ex.P.8 is the Xerox copy of permanent account number card and because of the accident he could not commence the security printing press commencing job and look after the same and he has incurred a loss of Rs.15,00,000/- by means of paying interest to the bank and that he has visited may foreign countries in connection with the business and earlier he has been employed in Muscat as per Ex.P.6.

14.P.W.2-the doctor in his evidence has stated that he examined the appellant/claimant on 11.12.2000 and has issued Ex.P.16- disability certificate in and by which he has assessed the total disability of appellant/claimant at 65% and that there will be a difference of 5% in regard to the disability assessment from one doctor to another.

15.It is the evidence of appellant/claimant as P.W.1 to the effect that he has lost his Cane Bag, where he has kept his credit card, licence and a sum of Rs.2,000/- in hand bag and that immediately after the accident he has received first aid treatment from the Pallava Hospital. Ex.P.1 is the discharge summary shows that the appellant/claimant has alleged history of R.T.A. On 2.6.99 while travelling on two wheeler and complaints of pain over the right hip

and pelvis and he is not able to stand or walk and that he has been admitted on 2.6.99 and discharged on 14.7.99. Further, on clinical examination it is found that there is tenderness over the right hip and pelvis of the appellant, abrasion over the right hip, both knees and right ankle and pelvic compression painful and further that right hip movement painful restricted and large haematoma around right hip and in right thigh and left hip movements possible and both knee and ankle within normal limits and in lumbar spine-tenderness low back region SI joint bilaterally painful etc. In short, in Ex.P.1-discharge summary it is mentioned that the appellant/claimant was diagnosed to have fracture pelvis with public rami disruption and that he was taken up for surgery on 3.6.99 and external fixator pelvis and tension band wiring public rami done and soft tissue injury debridement done and post operative period daily dressing has been done, bladder, bowel care, back care and physiotherapy have been given and on 22.6.99 implant and external fixator has been removed and the patient (appellant) has been mobilized with L.S. Corset, walker support, right thigh wound healed well and no distal N.V. Deficit and it has been advised on discharge to take normal diet and to have mobilization with lumbosacral corset and walker support and limited activities for one month and after one month through O.P. The ortho has to be done.

16.It is pertinent to point out that it is trite law that an individual is required to prove his case, which he sets up. As a matter of fact, in civil cases, the claimants can succeed on the basis of preponderance of probabilities only. In motor accident claim cases, the claimants are required to establish their cases on the basis of preponderance of probabilities.

17.Generally speaking, the law as to General nature of Damages is the ascertainment of the considerations which will make good to the affected, as far as a sum can do, the loss which he has suffered as a natural result of the wrong done. Indeed, if the affected cannot be put back to the earlier position as in the case of personal injury, as it cannot obviously be the law as to make an attempt to grant atleast reasonably a fair amount, so far as the sum can be envisaged as an equivalent to make good the loss and rightly it is termed as 'damages'. To recall the words of Lord Morris of Borth-y-Gest:

"To compensate in money for pain and for physical consequence is invariably difficult but... no other process can be devised than that of making a monetary assessment."

18.It is to be noted that Damages ought to be adequate and full. In this connection, it is not out of place to quote the decision Phillips V. South Western Railway Company (1874) 4 QBD 406 which runs as below:

"You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants, and you must take care to give him full and fair compensation for that which he has suffered."

19. Moreover, in the decision *Fair V. London and North Western Railway Co.*, (1869) 21 LT 326 it is held as follows:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by accident; secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income."

20. Continuing further, in *The Mediana*, (1900) Apex Court 113, Lord Halsbury has observed as follows:

"Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in money counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... but, nevertheless, the law recognises that as a topic upon which damages may be given."

21. Be that as it may, in *Baker V. Willoughby*, 1970 ACJ 259 (Halsbury's Law of England) it is observed as follows:

"A man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he use to earn or could have earned."

22.The learned counsel for the appellant/claimant cites the Judgment of Hon'ble Supreme Court in Civil Appeal Nos.7320-7321 of 2008 (arising out of SLP (C) No.23471-24472 of 2004) between G.Gnanam @ Gnanamoorthy V. Metropolitan Transport Corporation wherein the Hon'ble Supreme Court has inter alia observed that '... In a situation to this nature and keeping in view of the age of the appellant, which on the date of accident was 29 years, if only a sum of Rs.500/- per month was considered just for the purpose of awarding compensation totalling a sum of Rs.1,50,000/- only we do not see any reason as to why the High Court should have deferred there with. We have noticed the reasonings of the High Court. There is no basis for arriving at the said findings. No reason was assigned in support of the inferences drawn etc.'

23.As far as the present case is concerned, the appellant/claimant has incurred an expense of Rs.1,49,033/- as per Ex.P.2-Bills (5 in series) and hence, the appellant/ claimant is entitled to claim the said sum of Rs.1,49,033/- and this Court awards the same. In Ex.P.16-disability certificate, the appellant/claimant has suffered a permanent disability of 65%, as certified by P.W.2-Doctor. In Ex.P.16 the disability certificate, the doctor has stated that there is a fracture in pelvis @ Pelvic bone at S.I. Joint (R) etc. and there is a fracture of pubic rami (L) superior and inferior and internal fixation has been done and 35% difficulty to sit continuously and bend and to ride vehicles and there is a mal-union of pubic rami fracture superior and inferior and the claimant walks with limping and this is assessed at 30% and totally the disability has been assessed at 65%.

24.Admittedly, the appellant/claimant has not filed account details in regard to the loss sustained by him in regard to the commencement of business. In fact, for commencement of the business in 1997, he has not filed any documents. P.W.2-the doctor in his cross examination has stated that in regard to an assessment of disability there will be a variation of 5% from one doctor to another. Hence, giving a margin of 5% as spoken to by P.W.2 the doctor, this Court fixes the disability suffered by the appellant/claimant at 65% (which is a permanent one) and accordingly, awards a sum of Rs.60,000/-. Towards pain and suffering, this Court grants a sum of Rs.10,000/-. Though the appellant/claimant has claimed a sum of Rs.3000/- towards hospital transportation expenses

in the absence of proof this Court grants a sum of Rs.1,000/-. Notwithstanding the fact that the appellant/claimant has claimed a sum of Rs.3,000/- towards damage to clothing and articles, there is no semblance of proof in this regard and hence, this Court has not awarded any amount in this regard. Likewise, though the appellant/claimant has claimed a sum of Rs.4000/- towards extra nourishment expenses in the absence of satisfactory proof, this Court is not awarding any sum. Though the appellant/claimant as P.W.1 has deposed that he has lost Rs.2000/- which he has kept in his hand bag at the time of accident, there is no acceptable satisfactory proof in this regard on the side of appellant/claimant and therefore, this Court is not awarding any amount towards that head.

25. In regard to the plea that the appellant/claimant has suffered a loss in business in the year 2000 because of the accident that has taken place on 02.06.1999, it is to be pointed out by this Court that the appellant/claimant after his admission on 2.6.1999 into the hospital has been discharged on 14.7.1999 and therefore, because of the disability sustained in the accident, he was prevented from discharging his duties properly resulting in loss to the company cannot be accepted by this Court for the simple reason, the reason assigned by the appellant is unconvincing. In fact, the company which has been registered and commenced on 22.7.1996 as per Ex.P.12 is said to have incurred a loss in 2000-2001 as per Ex.P.15 to an extent of Rs.4,05,981/- as claimed by the appellant cannot be accepted by this Court. Inasmuch as the appellant /claimant has failed to prove the nexus between the accident and the alleged loss suffered, suffice it for this Court to point out that the loss sustained by the appellant/claimant in the business has no bearing on the accident that has taken place on 02.06.1999 in which the appellant/claimant has sustained a disability and therefore, the appellant/claimant is not entitled to claim compensation in regard to the loss sustained by him in the business. Admittedly, the appellant/claimant has not filed his Income Tax Return before the Tribunal. Moreover, in Ex.P.15- Income Tax Clearance Certificate, the income of appellant/claimant's Company Pan Hind Business Forms Private Limited is not mentioned, but the loss of Rs.4,05,981/- is mentioned for the year 2000-2001. Added further, the appellant/claimant as P.W.1 has categorically admitted in his cross examination that at the time of commencement of his company, his share relates to Rs.1000/- only.

26. In the light of detailed discussions and on consideration of available material evidence on record and on complete and comprehensive assessment of the facts and circumstances of the present case on hand, this Court is of the considered view that the appellant/claimant is entitled to receive a total compensation of Rs.2,20,033/- (Rs.1,49,033 + Rs.60,000 + Rs.10,000 + Rs.1000) along with interest at 9% per annum from the date of filing of the petition till date of payment, payable by the second respondent/Insurance Company to prevent aberration of justice. The lawyer's fee is fixed

at Rs.7,400/- by this Court. The second respondent/Insurance Company is directed to deposit the balance of amount of Rs.1,400/- (Rs.7,400-Rs.6,000 = Rs.1,400) as lawyer's fee before the Tribunal to the credit of M.C.O.P.No.3761 of 1999 on the file of the Motor Accidents Claims Tribunal (IV Judge, Fast Track Court), Chennai and on such deposit, the appellant/claimant is entitled to receive the same.

27.In fine, this Court awards a sum of Rs.2,20,033/- (Rupees Two lakhs twenty thousand and thirty three only) along with interest at 9% per annum from the date of filing of the petition till date of payment as total compensation to the appellant/claimant and consequently, the award of Rs.1,50,000/- passed by the Tribunal together with interest at 9% per annum with default interest clause at 3% over and above 9% is not correct and this Court allows the Civil Miscellaneous Appeal in above terms, leaving the parties to bear their own costs in this appeal. The second respondent/Insurance Company is directed to deposit the balance sum of Rs.70,033/- together with interest at 9% per annum from the date of filing of the petition till date of deposit before the Tribunal within 30 days from the date of receipt of copy of this Judgment. On such deposit, the appellant/claimant is entitled to receive his due balance amount by filing necessary application before the Tribunal as per Civil Rules of Practice and as per Law. The Tribunal is directed to ensure that the appellant/claimant pays the necessary Court fee for the enhanced compensation awarded.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

sgl

To

The IV Judge,
Fast Track Court,
Motor Accidents Claims Tribunal,
Chennai.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras.

Judgment in
C.M.A.No.867 of 2004

RSM (CO)
GSK 04.03.2009.