

(2011) 04 MAD CK 0256

Madras High Court

Case No: C.M.A. No. 2422 of 2008 and M.P. No. 1 of 2008

The Managing Director Tamil
Nadu State Transport
Corporation Ltd.

APPELLANT

Vs

A. Ramasamy

RESPONDENT

Date of Decision: April 27, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 337

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

Bench: Single Bench

Advocate: B. Vijayalakshmi, for the Appellant; V. Kumaravelan, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.

The above appeal has been filed by the Appellant/State Transport Corporation Limited against the award and decree made in M.C.O.P. No. 1342 of 2006, dated 16.11.2007, on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate-II, Krishnagiri.

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

On 17.08.2005, the Petitioner was proceeding on his two wheeler, TVS Victor bearing Registration No. TN-24-4411 from Thimmasamuthiram Village to go to Naralagiri Village, on the left side of the road in Nachikkuppam to Theertham road towards Naralagiri. At about 09.40 a.m., when he was near one Jayaraman's Vazhaitthottam near Nachikuppam, a TNSTC bus bearing Registration No. TN-29-N-1385, coming from Nallor towards Krishnagiri, driven by its driver in a rash and negligent manner, came at high speed, in the opposite direction and dashed against the said two wheeler. Due to the impact, the Petitioner was thrown out and sustained fracture injuries on his head and other injuries all over his body. Hence, the Petitioner has

filed the claim petition seeking compensation of Rs. 2,50,000/- from the Respondent.

3. The Respondent, in his counter has resisted the claim and denied the averments in the claim regarding the manner of accident. It was stated that the driver of the Respondent Corporation bus drove the bus slowly on the left side of the road. The rider of the two wheeler, coming in the opposite direction, rode his two wheeler at a high speed and in a rash and negligent manner. In order to avoid collision, the driver of the bus drove his bus to the extreme left of mud-portion of road, as the road was a small one, a portion of the bus wheel came into the mud portion. But due to the high speed of two wheeler, its rider lost control and dashed his vehicle against the front portion of bus. It was also stated that as the accident involved two vehicles, the owner and insurance company of the said two wheeler should also have been impleaded as necessary parties to this claim petition. The Respondent has also denied averments in claim regarding age, income and occupation of Petitioner, nature of injuries sustained and disability caused to him. It was also pointed out that the claim was excessive.

4. On the averments of both parties, the Tribunal framed two issues for consideration, namely;

(i) Did the accident occur on 17.08.2005? and did the Petitioner sustain grievous injuries?

(ii) If so, who is liable to pay the compensation and what is the quantum of compensation?

5. On the Petitioner's side, two witnesses were examined and seven documents were marked as Exs. P1 to P7 viz., First Information Report, Wound Certificate issued by Appayya hospital, Bangalore, Medical treatment records, Motor Vehicle Inspector's Report, Medical Bills, Disability Certificate and X-rays. On the Respondents side one witness was examined and No. documents were marked.

6. PW1, had adduced evidence which was in consonance with the statements in the claim regarding the manner of the accident. He also deposed that after the F.I.R., was filed the Reppanapalli Poilce had registered a criminal case against the driver of the bus in Crime No. 95 of 2005 under Sections 279 and 337 of I.P.C. The conductor of the Respondent/transport Corporation, Madhappan was examined as RW1. He adduced evidence stating that the accident occurred at 09.40 a.m., but stated that he did not see the vehicles coming in front or behind the bus; that he did not know the name of the driver of the bus; that he was aware that the F.I.R., had been filed against the driver of the bus; that he was not aware of the proceedings of the criminal case filed against the driver. He further adduced evidence that the driver was appointed on a temporary basis; that after the accident, the driver had not turned up for work. On considering the evidence of PW1, RW1 and after scrutiny of F.I.R., the Tribunal held that the accident happened due to rash and negligent driving of the Respondent bus driver.

7. PW1 had further adduced evidence that immediately after the accident, he had taken first aid at St.John's Medical College Hospital, Bangalore; that he had subsequently taken treatment at Appayya hospital, Bangalore as inpatient from 17.08.2005 to 29.08.2005 and during this period, surgical operation was done and steel plates were fixed in the fractured bone of his right leg, thigh and knee. Subsequently, he had gone to this hospital, once a week and taken treatment. He further adduced evidence that before the time of accident, he was engaged as a vegetable vendor and earning Rs. 5,000/-and subsequent to the accident, he was not able to do his business and earn as before. He stated that he was not able to stand up or sit down and that he was not able to do any hard work, because of his disability.

8. The doctor Ashok kumar, who had medically examined the Petitioner was examined as PW2. PW2 adduced evidence that on 08.10.2007, he had inspected the X-rays taken of the Petitioner's fractured bones and found that the right thigh bone had been broken and the fractured bone had joined in an improper manner; that due to this the flesh in the Petitioner's leg had become compressed and hence the Petitioner was able to bend his leg only by 45°. Due to this, the Petitioner would not be able to sit or squat, would not be able to drive or do his normal work. Hence, the doctor had assessed the disability sustained in the right leg of Petitioner as 50% and in support of this had marked disability certificate Ex.P6 and X-rays as Ex.P7.

9. The Tribunal on consideration of evidence of PW1, Doctor's evidence and other documentary evidence awarded a compensation of Rs. 2,40,000/-together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation. The breakup of compensation is as follows:

Transport expenses	..	Rs. 5,000/-
Nutrition	..	Rs. 3,000/-
Damage to clothes	..	Rs. 500/-
Loss of income for five months	..	Rs. 12,500/-
Medical expenses	..	Rs. 70,000/-
Hospitality expenses during visit of relatives and friends to see the Petitioner at hospital	..	Rs. 5,000/
For pain and suffering	..	Rs. 37,000/-
Loss of earning due to disability at 50% (20,000 x 50 / 100 x 15)	..	Rs. 1,50,000/

(taking monthly salary as Rs. 2,500/- and deduction of 1/3rd of income for personal expenses)

In total, this amount comes to Rs. 2,83,000/-. But as the Petitioner has restricted his claim to Rs. 2,50,000/- taking into account, the Court fees paid by Petitioner, the Tribunal awarded Rs. 2,40,000/- as compensation.

10. Aggrieved with the award, the Respondent/transport corporation has filed the present appeal to set-aside the award passed by the Tribunal.

11. The learned Counsel for the Appellant has argued that the claimant did not file his driving licence to prove that he is the owner of the two wheeler. It was stated that the Tribunal's adoption of multiplier method for 50% disability was not correct and hence the assessment was excessive. It was also argued that the other awards granted under various heads were erroneous. The learned Counsel for the Appellant argued that the Tribunal had awarded a sum of Rs. 37,000/- under the head of "pain and suffering", which is on the higher side and Rs. 1,50,000/- had been awarded under the head of "loss of income due to disability" after adopting multiplier method, which is not pertinent in this case. The doctor had assessed the disability as 50%, which is on the higher side.

12. The learned Counsel for the claimant argued that the claimant's age was 44 years and he was engaged in agricultural operations before the accident. In the said accident, his right thigh bone had been fractured and malunited. The claimant had undergone treatment at two different hospitals, wherein a surgical operation was conducted and steel plate was fixed in the operated area. After the accident, he is not able to perform his normal work as an agricultural coolie as well as a vegetable vendor. The Tribunal had not considered compensation under the head of "attender charges".

13. 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 is of the considered opinion that the Tribunal had awarded a sum of Rs. 37,000/- under the head of "pain and suffering" and this is on the higher side. Hence, this Court scales down the compensation from Rs. 37,000/- to Rs. 15,000/-. The Tribunal had awarded Rs. 3,000/- under the head of "nutrition". This Court enhances the award granted under this head to Rs. 5,000/-. The Tribunal had not considered compensation under the heads of loss of comfort and amenities. This Court awards Rs. 12,500/- under the head of "loss of amenities" and comfort. For the award granted under other heads a slight modification is required. Hence, this Court modifies compensation as follows:

Rs. 1,00,000/-	towards loss of income due to disability;
Rs. 70,000/-	towards medical expenses;
Rs. 5,000/-	for transport;

Rs. 5,000/-	for nutrition;
Rs. 1,000/-	for damage to clothes;
Rs. 12,500/-	towards loss of income during medical treatment period;
Rs. 15,000/-	towards pain and suffering;
Rs. 12,500/-	towards loss of amenities and comfort;
Rs. 4,000/-	for attender charges;

In total, this Court awards Rs. 2,25,000/- as compensation. Therefore, this Court has scaled down the compensation from Rs. 2,40,000/- to Rs. 2,25,000/- which is fair and justifiable in the instant case.

14. On 07.08.2008, this Court imposed a condition on the Appellant/State Transport Corporation to deposit a sum of Rs. 2,25,000/- to the credit of M.C.O.P. No. 1342 of 2006, on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate-II, Krishnagiri. Now, it is open to the claimant to withdraw the modified compensation amount as fixed by this Court i.e., Rs. 2,25,000/- with accrued interest thereon lying in the credit of M.C.O.P. No. 1342 of 2006, on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate-II, Krishnagiri, after filing a Memo along with this order.

15. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 1342 of 2006, dated 16.11.2007 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate-II, Krishnagiri is modified. There is No. order as to costs. Consequently, connected miscellaneous petition is closed.