(2013) 11 MAD CK 0104

Madras High Court

Case No: C.M.A. No. 440 of 2010 and Cross Objection No. 51 of 2013

The Managing Director, Tamil Nadu State Transport Corporation Limited	APPELLANT
Vs	
Vijayalakshmi	RESPONDENT

Date of Decision: Nov. 6, 2013

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: A. Thamizharasan, for the Appellant; V. Ramesh, for the Respondent

Final Decision: Dismissed

Judgement

P.R. Shivakumar, J.

The Tamil Nadu State Transport Corporation, Villupuram which figured as the sole respondent in M.C.O.P. No. 567 of 2006 on the file of the Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Villupuram is the appellant in C.M.A. No. 440 of 2010. The claimant in the said M.C.O.P. (respondents in civil miscellaneous appeal) has filed the cross objection. The civil miscellaneous appeal has been preferred against the award of compensation passed by the Motor Accident Claims Tribunal in the above said M.C.O.P. challenging the quantum of compensation alone as excessive and exorbitant and praying for reduction of the same. The respondent in the civil miscellaneous appeal, who was the claimant in above said M.C.O.P. has preferred a cross objection in cross objection No. 51 of 2013 in C.M.A. No. 440 of 2010 claiming enhancement of compensation. Both the civil miscellaneous appeal and the cross objection are disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to in accordance with their ranks in civil miscellaneous appeal and at necessary places their ranks in the M.C.O.P. before the Tribunal shall also be referred to.

3. The respondent met with an accident on 11.8.2006 at about 7.15 a.m. at Poonakuppam Village while she was trying to get into the bus bearing Registration No. TN 32N 1609 belonging to the appellant Transport Corporation at Poonakuppam Village bus stop to go to school. Due to the said accident she suffered injuries, for which, she was given treatment in various Government Hospitals including GIPMER Hospital, Puducherry. According to the respondent/claimant, the accident took place due to the rash and negligent driving on the part of the driver of the said bus, since he suddenly moved the bus on the reverse gear while the respondent herein/claimant was stepping into the bus to board the bus.

4. Contending further that, after her fall from the bus, she was run over by the front wheel of the said bus. As a result of which, multiple grievous injuries were caused all over the body and that the same resulted in a permanent disability despite the treatment, a claim was made by the respondent, represented by her father, as the next friend as she was a minor aged about 7 years, against the appellant Transport Corporation for a sum of Rs. 5,00,000/- as compensation u/s 166 of the Motor Vehicles Act 1988. The claim was resisted by the appellant Transport Corporation both on the question of negligence and also on the reasonableness of the amount claimed as compensation.

5. In the enquiry before the Tribunal, two witnesses were examined as P.W.1 and P.W.2 and 11 documents were marked as Exs.P.1 to P.11. on the side of the respondent herein/claimant. One witness was examined as R.W.1 and no document was marked on the side of the appellant herein/respondent in M.C.O.P. before the lower Court. Further, the Tribunal, in the list of evidence annexed to the judgment, has omitted to mention the name of Ganesan, who has been examined as R.W.1 and no documents was marked on the side of the appellant herein/respondent in M.C.O.P.

6. The tribunal, after considering the evidence in the light of the arguments advanced on both sides, rendered a finding that the accident took place due to the rash and negligent act on the part of the driver of the bus belonging to the appellant Transport Corporation and that hence, the appellant Transport Corporation, as his employer, was liable to pay compensation to the respondent herein/claimant. The Tribunal awarded a total sum of Rs. 1,43,000/- as compensation and the said amount was directed to be paid along with an interest at the rate of 7.5% per annum from the date of filing of M.C.O.P till the date of deposit and also costs. The said decree passed by the Tribunal awarding the said amount as compensation, is challenged by the appellant Transport Corporation by filing C.M.A. No. 440 of 2010 on various grounds found in the memorandum of civil miscellaneous appeal. After receipt of notice in the appeal, the respondent herein has filed a cross objection in Cross Objection No. 51 of 2013 in C.M.A. No. 440 of 2010 claiming enhancement of compensation. Though the appellant Transport

Corporation would have included a ground in the memorandum of grounds of appeal challenging the finding that the accident took place due to the negligence on the part of the driver of the bus and also on the question of negligence, the cross objection has been filed for enhancement of compensation.

7. The points that arise for consideration in the appeal and in the cross objection are:

1. Whether the Tribunal has committed an error in holding that the driver of the bus bearing Registration No. TN-32-N-1609 belonging to the appellant Transport Corporation was at fault and the accident occurred due to the rash and negligent driving of the vehicle by him?

2. Whether the amount awarded as compensation is excessive requiring downward revision?

3. Whether the amount awarded by the Tribunal as compensation is inadequate requiring enhancement?

8. It is true that the appellant has included the challenge of the finding of the Tribunal regarding negligence in the grounds of appeal. The respondent, who was aged about 7 years was a school going girl. On the fateful day, namely on 11.08.2006, the accident took place while she was boarding the bus bearing Registration No. TN 32 N 1609 belonging to the appellant Transport Corporation at Poonakuppam bus stop.

9. It is clear that the driver of the bus without considering the safe boarding of the respondent/claimant into the bus, moved the bus in the reverse gear suddenly in a rash and negligent manner, as a result of which, the respondent herein/claimant fell down and the front wheel of the same bus ran over her, causing multiple injuries. P.W.1, who is none other than the father of the respondent, acting as next friend for the respondent in making the claim, gave vivid description of the accident, in which his daughter namely, the respondent herein, sustained injuries. In his testimony, he has clearly stated that while his daughter was boarding the bus, the driver of the bus suddenly moved the bus backwards, as a result of which his daughter fell down and the front wheel of the bus ran over her.

10. Though he was cross examined suggesting that he was not an eye witness to the occurrence, he denied the suggestion and gave a clear statement in his cross examination that he actually saw the occurrence. An attempt was made on the part of the appellant to contend that P.W.1 could not have been an eye witness, since he was not the author of the complaint lodged with the police. In this regard P.W.1 has stated that one Vellian, who was also an eye an witness to the occurrence, lodged complaint for registration of a case regarding the said accident. A certified copy of the First Information Report has been produced as Ex.P.1. Ex.P.1 contains a statement as to how the accident took place and the same stand corroborated by

the testimony of P.W.1. Simply because the presence of P.W.1 in the scene of occurrence has not been stated in the complaint, the appellant Transport Corporation wanted to take a stand that P.W.1 could not have been present at the time of the accident in the scene of occurrence. But, the said suggestion was stoutly denied and refuted by P.W.1 by his assertion that he was very much present in the scene of occurrence at the time of the accident and it was one Vellian, who lodged the complaint with the police.

11. It is also obvious from Ex.P.4 that the driver was charge sheeted and the criminal Court convicted him for the offences punishable under Sections 279 and 338 IPC. Though the judgment of the criminal Court shall be irrelevant, the other evidence adduced on the side of the respondent herein is more than sufficient to prove that the driver of the bus belonging to the appellant Transport Corporation moved the bus suddenly, without noticing that the respondent was in the process of entering into the bus. A meek attempt was made by the appellant Transport Corporation by examining one Ganesan (R.W.1) as the conductor on duty in the bus involved in the accident, namely the bus bearing Registration No. TN-32-N-1609 belonging to the appellant Transport Corporation. The very nature of his testimony will show that the stand taken by the appellant regarding the cause of the accident is not probable.

12. R.W.1 in his evidence has stated that a temporary driver was on duty in the bus that was involved in the accident. It is his further version that the respondent sustained injuries in the commotion created by the attempt made by the students to enter into the bus competing with each other, and the respondent fell down on a stone. It is his further version that she came into contact with a stone and sustained only simple injury. The said theory propounded by R.W.1, in fact, has boomeranged on the appellant exhibiting the falsity in the claim of the appellant Transport Corporation. The reliability of the evidence of R.W.1 is very much questionable. That apart, during the course of cross-examination, he has admitted that he did not see the girl, who sustained injuries in the accident.

13. The Tribunal has rightly held that the evidence of R.W.1 was liable to be disregarded as the same is not a reliable piece of evidence. In the light of the fact that the accident has been clearly described in the First Information Report marked as Ex.P.1 as if the driver moved the bus while the respondent was boarding the bus and that such description is inconsonance with the averments made in the claim petition and also the evidence of P.W.1, the finding of the Tribunal that the rash and negligent driving of the bus by its driver was the cause of the accident cannot be termed either defective or infirm. Perhaps it may be the reason why the learned counsel for the appellant has submitted that without pressing the ground of challenge made to the award on the question of liability, the appellant would confine the challenge to the award on the question of quantum alone. Hence, this Court comes to the clear conclusion that the finding of the Tribunal regarding negligence has got to be confirmed.

14. Ex.P.2, the accident register also confirms the case of the respondent herein that the front wheel of the bus ran over her. A consideration of Ex.P2, certified copy of wound certificate would show that the petitioner sustained multiple injuries due to the fall from the bus and due to the fact that the front wheel of the bus ran over her and that there was a fracture on the hip joint. Ex.P.5 to P.9 show that for other injuries she was treated at JIPMER Hospital, Puducherry, Children''s Hospital, Egmore Chennai, Stanley Hospital, Chennai and Government General Hospital, Chennai. From Ex.P10-X-ray and Ex.P11-Permanent Disability Certificate and from the evidence of P.W.2, who issued disability certificate, it is quite obvious that despite treatment, there is a malunion of the fractured pieces of bone resulting in permanent disability, which was assessed by P.W.2 at 25%. Such a functional disability at 25% causing restriction in the movement of hip joints will also, according to the opinion of the Medical Officer, namely P.W.2, result in complication for giving normal delivery of a child. A girl of 7 years has sustained such an injury leading to such type of functional disability, which has been assessed by a qualified Medical Officer at 25%.

15. The Tribunal chose to assess the compensation on the impression that the same would not have resulted in loss of earning capacity as the respondent was only a school going girl aged 7 years. Of course the disability being one that may not reduce the earning capacity as the minor would get trained to live with it and do any job suitable for her with such disability and hence, the Tribunal''s selection of the lump sum method can be justified. As the disability has been assessed at 25%, considering the age of the respondent/claimant, the amount awarded by the Tribunal for permanent disability can be increased to Rs. 50,000/- from Rs. 25,000/-. For Pain and suffering the Tribunal has awarded a sum of Rs. 20,000/- which amount also can be increased to Rs. 25,000/-. Having awarded separate amount for pain and suffering and for permanent disability, the Tribunal ought not to have awarded any amount for the grievous injury, which resulted in permanent disability. So a sum of Rs. 25,000/- awarded on the head of compensation for grievous injuries has got to be disallowed. Similarly a sum of Rs. 25,000/- awarded for Mental agony after having awarded a separate amount towards Pain and suffering cannot be justified and the same has got to be disallowed. Though the respondent/claimant is found to have taken treatment in the hospitals run by the Government, we cannot assume that all the medicines would have been available there, namely, the hospitals run by the Government. Certain medicines which were not available in the said hospitals could have been purchased from the private medical shops for which, a sum of Rs. 10,000/- awarded by the Tribunal shall be reasonable. It is a fact not in dispute that the respondent/claimant took treatment in a number of hospitals i.e. at least in three hospitals in Chennai and one hospital in Puducherry. Towards Transport expenses for going to the hospitals a considerable amount could have been spent. The Tribunal has chosen to award only a sum of Rs. 3,000/-, which can be termed a pittance. The same deserves to be increased to Rs. 10,000/-. The Tribunal has chosen

to award a sum of Rs. 25,000/- towards future Loss of comforts. If the fact that the respondent/claimant is a girl and she has suffered a disability which will make it difficult for her to give normal delivery to a child after she grows up and the further fact that such disability will result in a set back in her prospects of getting a suitable life partner, a considerable amount should have been awarded towards Future loss of amenities and comforts and loss of prospects of happy married life. Under this head, awarding a sum of Rs. 1,00,000/- shall be reasonable. A sum of Rs. 5,000/- can be added towards Medical attendants. If such a calculation is made, the total amount to which the respondent/claimant is entitled shall come to Rs. 1,95,000/-.

16. At the cost of repetition, the break up particulars are furnished hereunder:

17. For the reasons stated above, this Court comes to the conclusion that though there are duplication and repetition of various heads of compensation in the judgment of the Tribunal, if proper assessment of compensation is made it will come to Rs. 1,95,000/- as against Rs. 1,43,000/- awarded by the Tribunal. Therefore, the claim of the appellant that the amount awarded by the Tribunal as compensation is excessive and exorbitant deserves rejection and on the other hand, the claim made by the respondent/claimant for enhancement has to be allowed to the extent indicated supra. The award of the Tribunal is liable to be modified by enhancing the compensation from Rs. 1,43,000/- to Rs. 1,95,000/-. Subject to the above said modification regarding quantum, the award of the Tribunal has to be confirmed in all other respects. In the result, the appeal is dismissed with costs. The cross-objection is allowed in part and the award of the Tribunal is modified by enhancing the compensation from Rs. 1,43,000/- to Rs. 1,95,000/-. In all other respects, including the rate of interest, the award of the Tribunal shall stand confirmed subject to the above modification indicated above. Consequently, connected M.P. No. 1 of 2010 is closed. The appellant shall deposit the award amount as modified by this Court after deducting the amount already deposited to the credit of the M.C.O.P within four weeks from today.