

(2010) 09 MAD CK 0179

Madras High Court

Case No: C.M.A. No. 2669 of 2007

The Managing Director
Tamilnadu State Transport
Corporation Ltd., Villupuram
Division

APPELLANT

Vs

P. Nithyanandham

RESPONDENT

Date of Decision: Sept. 23, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304(A)

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

Bench: Single Bench

Advocate: N. Anand, for the Appellant; No appearance, for the Respondent

Final Decision: Allowed

Judgement

C.S. Karnan, J.

The above Civil Miscellaneous Appeal has been filed by the Appellant/respondent against the Award and Decree, dated 29.03.2006, made in M.C.O.P. No. 487 of 2004, on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur, awarding a compensation of Rs. 1,25,000/- together with 7.5% interest per annum, from the date of filing the claim petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the Appellant/respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

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

On 20.09.2004, at 03.30 p.m. the Petitioner along with his friend Sylash were travelling on the Hero Honda Splendor motorcycle bearing registration No. TN23 K5266 as a pillion rider in the Tirupattur to Elagiri Hills main road. The said motorcycle was driven by his other friend Dinesh Kumar in the extreme left side of

the road. While they were nearing Pavendhar Circle the Respondent Corporation bus bearing registration No. TN23 N1203, driven by its driver, came without following traffic rules and in a very rash and negligent manner and dashed against the motorcycle. In the result, the Petitioner and his friends fell down and the front right wheel of the bus had crushed Dinesh Kumar's head and he had died on the spot and the Petitioner's left shoulder was also crushed out. Immediately after the accident, he was admitted in the Government Hospital, Tiruppattur. Thereafter he was admitted in the bone hospital. During the treatment period, two surgeries were conducted. Regarding the said accident, a criminal case has been registered by the Elagiri Hill Police Station in Crime No. 38/2004, under Sections 279 & 304(A) I.P.C. He was hale and healthy at the time of the accident. He was working as an Instructor in a Typewriting Institute, a private institute and getting a salary of Rs. 6,000/-per month. Due to the said accident, his future has been disrupted. The accident had occurred only due to the rash and negligent driving of the driver of the Respondent's Corporation bus. As such, he claimed a compensation of Rs. 5,00,000/- with interest before the Tribunal.

4. The Respondent, in their Counter, had resisted the claim petition. The Respondent had denied that the Corporation bus had been driven by its driver at a high speed and in a rash and negligent manner and dashed against the motorcyclist. The accident had actually happened on 20.09.2004, the bus bearing registration No. TN23 N1209 was driven by its driver from Tirupattur towards Elagiri Hills in a cautious and normal speed. While the bus was nearing Pavendar Curve, the passengers had quarrelled, so immediately the driver stopped the bus and noticed the motorcyclist carrying three persons had fallen on the right side of the bus. The rider of the motorcycle had overtaken the bus and dashed against the bus and in this manner the accident took place. The claimant's age, income, medical treatment particulars and loss of earning capacity is denied by the Respondent. The claimant had not included the owner of the motorcycle and the insurer of the motorcycle as necessary party in the claim petition. As such, the claim petition is not maintainable. The Respondent prayed accordingly.

5. The other claimants had also filed M.C.O.P. No. 473 of 2004 and claiming compensation against the Respondent. So, the learned Tribunal had passed a common judgment after framing the following issues for the consideration namely:

(i) Who is responsible for the said accident?

(ii) Whether the Respondent is liable to pay compensation?

6. On the Petitioner's side, the claimant in M.C.O.P. No. 473 of 2004 was examined as PW1 and the claimant in M.C.O.P. No. 487 of 2004 was examined as PW2, and Dr. P.G. Elango was examined as PW3 and seven documents were marked as Exs.P1 to P7 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Xerox copy of the Post-mortem report of Dinesh Kumar, Ex.P3-Xerox copy of the Salary Certificate of

Dinesh Kumar, Ex.P4-Discharge Summary of Nithyanandam, Ex.P5-Xerox copy of the Wound Certificate of Nithyanandam, Ex.P6-Medical Bills of Nithyanandam, Ex.P7-Permanent Disability Certificate of Nithyanandam. On the Respondent's side one Gokulan, the driver of the bus, was examined as RW1 and no documents were marked.

7. The claimant, PW2 had adduced evidence stating that on 20.09.2004 at about 03.30 p.m. the Respondent's Corporation bus driven, by its driver on the Tiruppattur Hills main road, in a rash and negligent manner and at high speed. On the same road the rider of the motorcycle i.e. the deceased Dinesh Kumar had driven the vehicle on the left side of the road. While the bus nearing Pavender Curve, the bus had hit against the motorcyclist. The rider of the motorcyclist had succumbed to his injuries and died on the spot itself. Due to the said accident the claimant had sustained injuries on his left hand, left shoulder and also sustained bone fractures. Further, the claimant adduced evidence stating that at the time of accident he was aged about 25 years and he was working as a Supervisor in a private typewriting institution and was earning a sum of Rs. 6,000/- per month. One Dr. P.G. Elango was examined as PW3. He has also adduced evidence related to the evidence of the claimant. The driver of the bus was examined as RW1. He had adduced evidence stating that the rider of the motorcycle and two pillion riders had travelled on the motorcycle and they attempted to overtake the bus. As a result, the motorcyclist dashed against the bus. He was admitted and the FIR was registered against him and subsequently he was punished by the Judicial Magistrate No. II, Tiruppattur.

8. After considering the evidence of PW1, PW2 and PW3 and documents, which were marked by the claimant, the learned Tribunal had come to the conclusion that the driver of the Respondent Corporation bus had committed the accident, therefore the Respondent/Transport Corporation Ltd., is liable to pay compensation and awarded the compensation as follows:

- i. Rs. 50,000/- under the head of loss of income,
- ii. Rs. 5,000/- under the head of transport expenses,
- iii. Rs.4,000/- under the head of nutrition,
- iv. Rs. 1,000/- under the head of damages to clothes,
- v. Rs. 20,000/- under the head of medical expenses,
- vi. Rs. 10,000/- under the head of pain and suffering,
- vii. Rs.35,000/- under the head of 30% disability,

In total, the Tribunal awarded a sum of Rs. 1,25,000/- as compensation to the Petitioner, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the Respondent to deposit the compensation amount of

Rs.1,25,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, within a period of sixty days from the date of its order. In turn, the said amount to be deposited, under a fixed deposit scheme, in a nationalised bank for a period of three years. Accordingly ordered.

9. Aggrieved by the said Award and Decree, the Appellant/respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

10. The learned Counsel appearing for the Appellant argued that the Tribunal awarded a sum of Rs. 50,000/- under the head of loss of income, which is not pertinent in the instant case. Further, the learned Counsel argued that the award granted without scrutinising the medical records, the Tribunal had awarded a sum of Rs. 20,000/- under the head of medical expenses. Further, the learned Counsel argued that the rider of the motorcycle lost his control and dashed against a rock on the road side and then hit the bus. As a consequence the accident occurred. Further, the Tribunal awarded a sum of Rs. 35,000/-under the head of disability, which is also not pertinent to the instant case. Therefore, he submitted that the award passed by the Tribunal is an excessive and exorbitant one. Hence, he prays to scale down the compensation amount awarded by the Tribunal.

11. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing for the Appellant and the award and decree passed by the Tribunal, this Court is of the view that considering the nature of injuries, the quantum of compensation of Rs. 1,25,000/- is an excessive one.

Hence, this Court decided to restructure the compensation as follows:

- i. The Tribunal awarded a sum of Rs. 35,000/-under the head of 30% disability, this Court enhances it to Rs. 60,000/-,
- ii. The Tribunal awarded a sum of Rs. 5,000/-under the head of transport expenses, this Court confirms the same as it is pertinent,
- iii. The Tribunal awarded a sum of Rs. 4,000/-under the head of nutrition, this Court confirms the same as it is pertinent,
- iv. The Tribunal awarded a sum of Rs. 10,000/-under the head of pain and suffering, this Court confirms the same as it is pertinent,
- v. The Tribunal awarded a sum of Rs. 20,000/-under the head of medical expenses, this Court confirms the same as it is pertinent,
- vi. The Tribunal awarded a sum of Rs. 50,000/- under the head of loss of income, this Court reduces the same to Rs. 10,000/-,
- vii. The Tribunal awarded a sum of Rs. 1,000/-under the head of damages to clothes, this Court confirms the same as it is pertinent, In total, this Court awards a sum of

Rs. 1,10,000/- as compensation to the claimant, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, which is fair and equitable.

12. On 24.10.2007, this Court directed the Appellant to deposit the entire award amount together with interest and costs, into the credit of the M.C.O.P. No. 487 of 2004, on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur.

13. As the accident had happened in the year 2004, the claimant/respondent is at liberty to withdraw the entire compensation amount with accrued interest thereon and costs, lying in the credit of the M.C.O.P. No. 487 of 2004, on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur, by making proper payment out application, subject to the deduction of withdrawals, if any, in accordance with law. Likewise the Appellants is also at liberty to withdraw the excess compensation amount with accrued interest thereon, after observing necessary formalities in accordance with law.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 29.03.2006, made in M.C.O.P. No. 487 of 2004, passed by the Motor Accident Claims Tribunal, Sub Court, Tirupattur is modified. No costs.