

(2009) 09 MAD CK 0150

Madras High Court

Case No: C.M.A. No. 588 of 2003

The Managing Director, Tamil
Nadu State Transport
Corporation

APPELLANT

Vs

Manickam

RESPONDENT

Date of Decision: Sept. 9, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 338

Hon'ble Judges: P.P.S. Janarthana Raja, J

Bench: Single Bench

Advocate: M. Krishnamoorthy, for the Appellant; No Appearance, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

The appeal is preferred by the Transport Corporation-appellant against the Judgment and decree made in M.A.C.T.O.P. No. 244 of 2000 by the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Nagapattinam dated 15.09.2001.

2. Background facts in a nutshell are as follows:

On 23.03.2000 at about 22.00 hrs., the injured Mankickam was proceeding in his bicycle at the Thivanbalpuram main road. At that time, a bus bearing Registration No. TN-49-N-0674 belonging to the appellant/Transport Corporation came in a rash and negligent manner and dashed against the cyclist. Due to the same, the claimant sustained grievous injuries. Immediately after the accident, he was taken to Government Hospital, Thiruthuraipoondi. The claimant claimed a sum of Rs. 3,00,000/- as compensation. The appellant-Transport Corporation resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the bus driver or not?

2. What is the compensation the claimant is entitled to? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and awarded a compensation of Rs. 1,10,980/- with interest at 12% per annum from the date of petition and the details of the same are as under:

Loss of earning power	Rs. 1,00,980/-
Medical expenses	Rs. 1,500/-
Extra nourishment	Rs. 1,000/-
Transport charges	Rs. 2,000/-
Attendar charges	Rs. 500/-
Pain and suffering	Rs. 5,000/-

Total . . .	Rs. 1,10,980/-

Aggrieved by that award, the Transport Corporation has filed the present appeal.

3. The learned Counsel appearing for the appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. He further contended that the Tribunal ought not to have adopted the multiplier method in computing the loss of earning power and also submits that the interest also awarded excessive. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. In spite of the notice, there is no representation on behalf of the respondent.

5. Heard the counsel. The claimant himself examined as P.W.1. P.W.2 is Doctor Rajagopal. On the side of the claimant, P.W.1 & P.W.2 were examined and documents Exs.P1 to P10 were marked. Ex.P.1 is the First Information Report. Ex.P.2 is the copy of the accident register. Ex.P.3 is the wound certificate. Ex.P.4 is the Motor Vehicles Inspector's report. Ex.P.5 is the charge sheet. Ex.P.6 is the discharge summary. Ex.P.7 is the series of medical bills. Ex.P.8 is the medical bills. Ex.P.9 is the disability certificate. Ex.P.10 is the X-ray. On the side of the appellant-Transport Corporation one Mr. Murugaiyan, driver of the bus was examined as R.W.1 and no document was marked to support their claim. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the bus and the finding is based on valid materials and evidence.

6. At the time of accident, the claimant was aged about 27 years. He is an agriculture coolie and earning a sum of Rs. 3,000/- per month. In his evidence, he stated that

the accident had occurred only due to the rash and negligent driving of the bus driver belonging to the appellant/Transport Corporation. The driver of the bus charge sheeted for offences under Sections 279 & 338 of IPC in Cr.No.158/2000 by Thiruthuraipoondi Police Station. Immediately after the accident, he was taken to Government Hospital, Thiruthuraipoondi. Later, he was transferred to Thanjavur Medical College Hospital, Thanjavur for better treatment and admitted as inpatient. Further, he has taken treatment in a private hospital. Due to the accident, he sustained fracture of tibia in the right leg. P.W.2 is the Doctor, who examined the claimant. In his evidence, he stated that the claimant sustained five injuries. Ex.P.2 is the wound certificate, in which he assessed the disability at 33%. Further, the Doctor stated that due to the injury, the injured unable to stand, sit and walk substantially. After considering the above oral and documentary evidence, the Tribunal fixed the disability at 33%. Ex.P.3 is the wound certificate, in which, it is stated that the age of the injured was 27 years old at the time of accident. Taking consideration of Ex.P.3 (wound certificate), the Tribunal fixed the age of the injured at 27 years at the time accident. The claimant being an agriculture collie, he would have not worked 30 days in a month. Taking into consideration of this, the Tribunal fixed the monthly income at Rs. 1,500/- per month and adopted the multiplier of "18" and awarded a sum of Rs. 1,00,980/- towards loss of earning power. The learned Counsel appearing for the appellant/Transport Corporation vehemently contended that the Tribunal ought not to have adopted the multiplier method. In this present case, the Tribunal should have adopted percentage method in awarding the compensation in respect of the loss of earning power due to the disability. Normally the Courts used to award Rs. 1000/- to 2000/- for each percentage of disability. After considering the above oral and documentary evidence, it is reasonable and appropriate to take Rs. 1,750/- for each percentage of disability. Hence, the loss of earning power works out as follows;

$\text{Rs. } 1750 \times 33\% = \text{Rs. } 57,750/-$

Therefore, the loss of earning power is modified to Rs. 57,750/- as against Rs. 1,00,980/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 1,500/- towards medical expenses, Rs. 1,000/- towards extra nourishment, Rs. 2,000/- towards transport charges, Rs. 500/- towards attendar charges and Rs. 5,000/- towards pain and suffering. The learned Counsel appearing for the appellant/Transport Corporation have not raised any dispute regarding the above compensation. The award passed by the Tribunal for the above are very reasonable and the same are hereby confirmed. The Tribunal also awarded interest rate at 12%. Taking into consideration of the date of accident, it is reasonable to award the interest rate at 9%. The details of the modified compensation as per the above discussion are as under:

Loss of earning power	Rs. 57,750/-
Medical expenses	Rs. 1,500/-

Extra nourishment		Rs. 1,000/-
Transport charges		Rs. 2,000/-
Attendar charges		Rs. 500/-
Pain and suffering		Rs. 5,000/-

Total	...	Rs. 67,750/-

Therefore, the claimant is entitled to the modified compensation of Rs. 67,750/- with interest rate at 9% from the date of petition.

7. The learned Counsel appearing for the appellant-Transport Corporation has submitted that already entire award amount has been deposited as per order of this Court. The claimant is permitted to withdraw the modified award amount of Rs. 67,750/- with interest at 9%p.a. from the date of petition, after adjusting the amount, if any, already withdrawn. The appellant-Transport Corporation is also permitted to withdraw the balance amount on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.