(2011) 03 MAD CK 0578

Madras High Court

Case No: C.M.A. No"s. 4016 of 2008 and 2571 of 2010 and M.P. No. 1 of 2008

Andhra Pradesh State Road Transport Corporation		APPELLANT
	Vs	
M. Chennakesavalu M. Chennakesavalu Vs Andhra Pradesh State Road Transport Corporation		RESPONDENT

Date of Decision: March 28, 2011

Citation: (2011) 03 MAD CK 0578

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

Bench: Single Bench

Advocate: M. Sriram, in C.M.A. No. 4016 of 2008 and Joseph Mathew, in C.M.A. No. 2571 of 2010, for the Appellant; Joseph Mathew in C.M.A. No. 4016 of 2008 and M. Sriram in C.M.A. No. 2571 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.

The Civil Miscellaneous Appeal No. 4016 of 2008 has been filed by the Appellant/Andhra Pradesh State Road Transport Corporation against the judgment and decree dated 23.03.2007 made in M.C.O.P. No. 1847 of 2000 on the file of the Motor Accidents Claims Tribunal, IInd Small Causes Court, Chennai.

2. The Civil Miscellaneous Appeal No. 2571 of 2010 has been filed by the Appellant/Chennakesavalu against the judgment and decree dated 23.03.2007 made in M.C.O.P. No. 1847 of 2000 on the file of the Motor Accidents Claims Tribunal, IInd Small Causes Court, Chennai.

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

On 24.06.1999 at around 02.30 p.m., the Petitioner was riding on a motorcycle bearing Registration No. AP26-K-3118 on the road Chillavaripalli Village, Kadapha District, Andhra Pradesh. At that point of time, a Government bus bearing Registration No. AP9-Z-2632 came at high speed in a rash and negligent manner and dashed against the motorcyclist. As a result, he had sustained multiple bone fracture injuries. Hence, he had filed the claim petition for compensation a sum of Rs. 20,00,000/- with interest.

4. The Respondent had filed a counter statement and resisted the claim petition. The age, income and occupation of the claimant was denied. Actually, the bus had been driven by its driver with moderate speed and due caution. The rider of the motorcycle had ridden the vehicle in a rash and negligent manner and dashed against the bus, besides the claim amount is excessive.

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

(i)Whether the claimant is entitled to receive compensation?

(ii)If so, what is the quantum of compensation?

6. On the side of the claimants three witnesses had been examined and fifteen documents were marked, viz., discharge medical summaries, charge sheet, wound certificate, medical bills, disability certificate, driving licence, FIR and salary certificate and etc.

7. PW1 had adduced evidence stating that on 24.06.1999 at around 02.30 p.m., he was riding the motorcycle bearing Registration No. AP26-K-3118 on the road, when at that point of time, the Respondent bus bearing Registration No. AP9-Z-2632 driven by its driver in a rash and negligent manner and dashed against the motorcyclist. In the result, he had sustained injuries on his legs and on his body. Immediately, he was taken to the Government Hospital, Kadapah for preliminary treatment, thereafter he was referred to Ramachandra Hospital, Porur. During the medical treatment period his left leg was amputated upto knee level and right leg bone had sustained bone fracture injuries. In order to prove the accident and medical treatment he had marked the above mentioned documents, the below mentioned periods, the claimant had undergone treatment at Ramachandra Hospital, Porour i.e., 27.06.1999 to 26.07.1999, 30.08.1999 to 14.09.1999, 18.11.1999 to 10.12.1999, 19.01.2000 to 24.04.2000 and 21.06.2000 to 08.07.2000 respectively as an inpatient subsequently as outpatient. Before the accident he was a Welder by profession and earning a sum of Rs. 2,000/-per month. PW2 doctor had assessed the disability as 90%. He further stated that the claimant''s left leg was amputated upto his knee and his right leg had sustained multiple fractures.

8. On considering the evidence of the witnesses and documentary evidence, the Tribunal had awarded a sum of Rs. 7,24,780/-. The breakup of this compensation are as follows:

Rs. 4,08,000/-, Rs. 10,000/-, Rs. 15,000/-, Rs. 1,66,780/-, Rs. 1,00,000/-, Rs. 25,000/-granted towards permanent disability, transport, attender charges, pain and suffering and medical expenses, loss of amenities and mental agony and future medical expenses respectively, together with interest at the rate of 7.5% per annum.

9. Aggrieved by the said award, the Appellant/Andhra Pradesh State Road Transport Corporation has filed the above appeal in C.M.A. No. 4016 of 2008 for scaling down the compensation.

10. Now being satisfied with the award, the claimant has filed the above appeal in C.M.A. No. 2571 of 2010 for additional compensation a sum of Rs. 12,75,220/- with interest.

11. The learned Counsel for the Andhra Pradesh State Road Transport Corporation argued that the driver of the motorcycle had committed the said accident as such contributory negligence is attributed. The Tribunal had awarded a sum of Rs. 4,08,000/-under the head of ''loss of earning'' which is an arbitrary one. Further, the Tribunal had awarded under the heads of future medical expenses, pain and suffering Rs. 25,000/-and Rs. 1,00,000/-respectively are on the higher side.

12. Learned Counsel for the claimant argued that the claimant''s left leg had been amputated upto knee level at the youthful age of 30 years and he was a Welder by profession at M/S.T.I. Cycles of India, Ambattur. Due to the amputation the claimant is unable to perform his normal avocation as a Welder. Medical expenses alone is about Rs. 2,00,000/-. The Tribunal had not considered the compensation under the head of ''nutrition''. The claimant had undergone treatment as inpatient as well as outpatient for a period of more than one year, he is unable to move from place to place without the support of others, he has suffered permanent disability and discomfort respectively. Therefore, the claimant is entitled to receive an additional compensation.

13. 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 claimant''s age was 30 years and his left leg was amputated upto knee level, he had undergone prolonged medical treatment i.e., more than one year, besides he lost his personality and permanently going through partial routines, he can walk on the leg, which unfortunately sustained multiple fracture as well, therefore, this Court does not find any valid grounds for interference with the learned Tribunal order. Hence, the award is confirmed as fair and justifiable.

14. On 23.12.2008, this Court imposed a condition on the said transport Corporation to deposit a sum of Rs. 6,50,000/-together with proportionate interest and entire costs. After such a deposit being made, the claimant is permitted to withdraw a sum of Rs. 2,00,000/-with proportionate interest. Therefore, this Court directs the Appellant/Andhra

Pradesh State Road Transport Corporation to comply with the entire award as granted by the Tribunal by way of balance compensation with accrued interest thereon within a period of six weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying to the credit of M.C.O.P. No. 1847 of 2000 on the file of the Motor Accidents Claims Tribunal, IInd Small Causes Court, Chennai after filing a Memo along with this order subject to deductions of withdrawals if any made already, as per the Court order.

15. Resultantly, the Civil Miscellaneous Appeal No. 4016 of 2008 filed by the Andhra Pradesh State Road Transport Corporation is dismissed and the Civil Miscellaneous Appeal No. 2751 of 2010 filed by the claimant is also dismissed. Consequently, the Award and Decree, passed in M.C.O.P. No. 1847 of 2000 on the file of the Motor Accidents Claims Tribunal, IInd Small Causes Court, Chennai, dated 23.03.2007 is confirmed. There is No. order as to costs. Consequently, connected miscellaneous petition is closed.