

## **The Managing Director, Tamil Nadu State Transport Corporation Ltd. Vs Santhanam**

**Court:** Madras High Court

**Date of Decision:** Oct. 1, 2010

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

**Bench:** Single Bench

**Advocate:** Rajinish Pathiyil, for the Appellant; U.M. Ravichandran, for the Respondent

**Final Decision:** Allowed

### **Judgement**

C.S. Karnan, J.

The above appeal has been filed by the Appellant/State Transport Corporation, against the award and decree dated

10.05.2005 made in M.C.O.P. No. 193 of 2004 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore.

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

On 31.03.2001, when the Petitioner and his father were walking on the Arungunam Main Road, the Respondent's bus bearing Registration No.

TN 32 N 0877, driven by its driver in a rash and negligent manner, dashed against the Petitioner, resulting in the Petitioner sustaining grievous

injuries. Hence, he had filed the claim petition against the Respondent and had claimed a compensation of a sum of Rs. 5,00,000/- with interest.

3. The Respondent had filed a counter statement and resisted the claim petition. The Respondent denied that the driver of the Corporation bus had

committed the accident. Actually, the Petitioner and three pillion riders had travelled on the motorcycle and it was the motorcyclist, who had

caused the accident. The age, income and occupation of the claimant are denied. The Respondent further stated that the owner of the motorcycle

and the Insurance Company had not been added as necessary parties in the claim case. The compensation amount is an excessive one.

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

(i) Was the accident committed by the rash and negligent driving by the driver of the Respondent bus?

(ii) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

5. On the side of the claimant, two witnesses had been examined and nine documents were marked, namely, First Information Report, Wound

Certificate, Medical Discharge Summary, O.P. Chart, Doctor Prescription, Medical Bill Series, Disability Certificate and X-ray, etc. On the side

of the Respondent no witness was examined and no document was marked.

6. P.W. 1 had adduced evidence stating that on 31.03.2001, at around 4.45 p.m., he and his father were walking on the Arungunam main road

and at that point of time, the Respondent's bus driver had driven the vehicle bearing Registration No. TN 32 N 0877 at a high speed and in a rash

and negligent manner and dashed against the Petitioner. P.W. 1 further adduced evidence stating that his father lodged a complaint before the

Police Officer, Nellikuppam Police Station. The said F.I.R. was marked. P.W. 1 further stated that, initially he had been treated at Government

Hospital, Cuddalore and thereafter he was referred to Pondicherry Hospital, wherein he had undergone treatment from 02.04.2001 to 14.08.2001

as inpatient. He had further stated that in the said accident, he had sustained five injuries, namely, on his right leg, right hand, right chin, right of his

face. P.W. 2, the Doctor had examined the claimant and had adduced evidence stating that surgical operation had been conducted on the right leg

of the claimant and steel plates with screws had been fixed. His right thigh muscle had become constricted and his right leg was shortened by 2

cms. The fractured bone was not united. The Doctor assessed the disability at 80%.

7. On considering the evidence of the witnesses and on perusing the documentary evidence, the Tribunal had awarded a sum of Rs. 3,13,845/- as

compensation with interest at the rate of 9% per annum. Aggrieved by the said award, the Appellant/State Transport Corporation has filed the

above appeal.

8. The learned Counsel for the Appellant argued that the Doctor had assessed the disability at 80% and that this was on the higher side. The

Tribunal had awarded a sum of Rs. 18,000/- under the head of "loss of income" and this award is also improper. The Tribunal's award of Rs.

1,00,000/- under the head of "permanent disability" and Rs. 1,50,000/- under the head of "future loss of income" are redundant.

9. The learned Counsel for the claimant argued that the claimant had undergone a surgical operation on his right leg. His leg was shortened by 2

cms. He was hospitalized for a period of around four months. Hence, the Doctor's assessment of disability at 80% is proper. At the time of

accident, the claimant was a Mason and was earning a sum of Rs. 4,500/- per month and his age was 19 years. The Tribunal had not awarded

compensation under the head of "attender charges".

10. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels on either sides and ongoing through the

impugned award of the Tribunal, this Court is of the considered opinion that there is a discrepancy in the said awards under the head of "loss of

future earnings" and "loss of income due to disability", as it is redundant. Hence, this Court restructures the compensation as follows:

Rs. 1,60,000/- towards loss of income for 80% disability;

Rs. 25,000/- for pain and suffering;

Rs. 18,000/- towards loss of income during medical treatment

period and convalescent period;

Rs. 18,000/- towards attender charges;

Rs. 10,000/- for transport;

Rs. 10,000/- for nutrition and

Rs. 20,845/- against medical expenses.

In total, this Court awards a sum of Rs. 2,61,845/- with interest at the rate of 9% per annum, from the date of filing the claim petition till the date of

payment of compensation, which is fair and equitable. Therefore, this Court scales down the compensation from Rs. 3,13,845/- to Rs. 2,61,845/-

as compensation.

11. On 06.01.2006, this Court imposed condition on the Appellant/State Transport Corporation Limited, to deposit a sum of Rs. 2,00,000/- with

accrued interest to the credit of M.C.O.P. No. 193 of 2004 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court,

Cuddalore. Further, this Court permitted the claimant to withdraw 50% of the amount with accrued interest thereon. Therefore, this Court hereby

directs the Appellant/State Transport Corporation to deposit the modified compensation amount as mentioned above with accrued interest to the

credit of M.C.O.P. No. 193 of 2004 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore within a period

of six weeks from the date of receipt of copy of this order, subject to deductions, if any already deposited. After such a deposit, being made it is

open to the claimant to withdraw the balance modified compensation with accrued interest thereon lying in the credit of M.C.O.P. No. 193 of

2004 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore after filing necessary payment out of application

in accordance with law, subject to withdrawals if any made already, as per this Court order.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims

Tribunal on the file of Chief Judicial Magistrate Court, Cuddalore made in M.C.O.P. No. 193 of 2004, dated 10.05.2005 is modified. There is no

order as to costs.