

(2010) 10 MAD CK 0345

Madras High Court

Case No: Civil Miscellaneous Appeal No. 149 of 2006

The Managing Director, Tamil
Nadu State Transport
Corporation Ltd.

APPELLANT

Vs

Santhanam

RESPONDENT

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/-
for
pain
and
suffering
Rs.
25,000/-
Rs.
18,000/-
towards
attender
charges
Rs.
18,000/-
for
transport;
Rs.
10,000/-
for
nutrition
and
aggravated
medical
expenses
Rs.
20,845/-

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.