

(2013) 09 MAD CK 0294

In the Madras High Court

Case No : C.M.A. No. 43 of 2012 & C.M.A.No. 43 of 2012

A. Mariappan

APPELLANT

Vs

Metropolitan Transport Corporation

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 TNMAC 862

Hon'ble Judges : Mr. P.R. Shivakumar, J.

Bench : Single Bench

Advocate : Mr. V. Mohan Choudary, Advocate, for the Petitioner; Mr. S. Sivakumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. P.R. Shivakumar, J.—The claimant before the Motor Accident Claims Tribunal is the appellant in the Civil Miscellaneous Appeal. The appeal has been preferred seeking enhancement of the compensation awarded by the Tribunal in its award dated 25.07.2011 made in M.C.O.P.No.2145 of 2004 for the injuries sustained by the appellant in the accident that took place on 13.03.2004, which according to the appellant resulted in permanent disability with consequential loss of earning and loss of future earning capacity.

2. The appellant herein preferred an application under Section 166 of the Motor Vehicles Act on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Track Court II, City Civil Court), Chennai making a claim against the respondent Corporation and prayed for an award directing the respondent herein to pay a sum of Rs.3,50,000/- as compensation for the injuries sustained by him in a road accident that took place on 13.03.2004 on the Arcot Road, opposite to Priya Hospital, Valasarawakkam, Chennai -87 together with interest and cost. It was contended therein that while the petitioner was riding his bicycle slowly and consciously from East to West on the Arcot Road, at about 22.40 hours on 13.03.2004, the bus bearing Registration No.TN-01-N1935 belonging to the respondent Corporation came there driven by its driver rashly

and negligently in the very same direction, as a result of which the petitioner along with his cycle was knocked down resulting in grievous injuries to the petitioner. Contending that the injuries, despite treatment resulted in permanent disability, the appellant had made the above said claim for compensation.

3. The respondent Transport Corporation resisted the claim contending that the bus belonging to the Respondent Corporation was not involved in the accident on the premise that the bus crew did not inform the management of the respondent Transport Corporation regarding the involvement of the above said bus on the date and time mentioned in the claim petition. It was further contended that the injuries sustained by the appellant / petitioner were simple in nature and the appellant was not even entitled to claim compensation under the no-fault liability clause found in Section 140 of the Motor Vehicles Act and that unless the appellant could prove that the accident occurred due to the negligence on the part of the driver of the bus, he was not entitled to recover any amount as compensation. Besides the above said pleadings, the respondent Transport Corporation also chose to contend that the amount claimed as compensation was highly excessive, arbitrary and exorbitant. Based on the above said averment made in the counter, the respondent Corporation wanted the Tribunal to dismiss the claim preferred by the appellant herein.

4. The petitioner figured as PW1 and Dr. Saichandran deposed as PW2. A copy of FIR, discharge summary, medical bills, medical prescriptions, x-ray film and disability certificate were produced and marked as Exs.P1 to P6. On the side of the respondent Corporation, only one witness was examined and no document was produced.

5. Though the respondent had contended that the bus belonging to the respondent Transport Corporation bearing Registration No. TN-01-N-1935 was not the one involved in the accident in which the petitioner sustained injuries, the petitioner, who figured as PW1, made a clear assertion in his testimony that it was the above said bus which caused the accident. In addition, a copy of the FIR has been produced and marked as Ex.P1. From the said document it is clear that the criminal case was registered against the driver of the bus belonging to the Respondent Corporation bearing Registration No.TN-01-N1935. Without producing any evidence to show that the bus bearing the said Registration Number did not belong to the Respondent Corporation, it has chosen to examine one Jaishankar as the conductor, who was allegedly on duty in the above said bus. The very stand taken by the respondent Transport Corporation that the said bus in which RW1 was on duty as a conductor did not involve in the accident will show that the above said bus belongs to the respondent Transport Corporation. In fact, the respondent Transport Corporation has not come forward with a clear averment that it is not the owner of the bus bearing Registration No. TN-01-N1935. It is also not the case of the respondent that the said bus was not plied on the Arcot road at the time and date of accident. On the other hand, the respondent Transport Corporation has tried to contend that the bus, on the

particular trip, did not meet with any accident and that the petitioner, who could have sustained injury in any other accident, has chosen to make a claim against the Corporation as if the above said bus was the one which hit him and caused the accident. As against the clear testimony of PW1 which is corroborated and strengthened by the fact that a criminal case was registered against the driver of the bus belonging to the Respondent Transport Corporation bearing Registration No. TN-01-N1935, there is no acceptable or reliable evidence either to disprove the plea of the appellant or to support the defence plea of the Respondent Transport Corporation.

6. The Tribunal, on appreciation of evidence, came to the correct conclusion that the above said bus belonging to the respondent was the one which caused the accident in which the appellant sustained injuries. In the same way, the Tribunal has come to the conclusion that the accident occurred due to rash and negligent driving of the bus belonging to the respondent Transport Corporation by its driver. Such a finding rendered by the Tribunal has not been challenged by the respondent Transport Corporation either by filing a separate appeal or taking a cross-objection. The said finding of the Tribunal has become final and what remains to be considered in this appeal is whether the amount awarded by the Tribunal is inadequate warranting enhancement.

7. According to the appellant/claimant, he was aged about 24 years as on the date of accident and he was self-employed as a Mason earning a sum of Rs.200/- per day. So far as the avocation of the appellant is concerned, except the interested oral testimony of PW1, there is no other evidence. However, the Tribunal chose to hold that either as a construction worker or a cooli, he would have been earning a sum of Rs.150/- per day and on that basis, the Tribunal arrived at the figure "Rs.3,750/-" as the monthly income of the appellant prior to the date of accident on the assumption that he would have worked for 25 days alone in a month. Considering the nature of injuries and the nature of treatment, the Tribunal also assumed that the appellant would not have been able to do his work for three months resulting in total loss of earning for those three months. On that account, the Tribunal has awarded a sum of Rs.11,250/-. It also opined that the nature of injuries would suggest that no future loss of earning capacity could be inferred. The Tribunal accepted the assessment of permanent disability made by PW2 under Ex.P6 to be 30%. Based on the above said findings, the Tribunal chose to award a lump sum payment for the permanent disability at the rate of Rs.1500/- per 1% of disability. The Tribunal also awarded a sum of Rs.43,224/- towards medical expenses and a further sum of Rs.15,000/- towards pain and suffering, extra nourishment etc., Thus, the Tribunal arrived at a figure Rs.1,14,474/- as the reasonable amount of compensation as the amount the appellant/petitioner would be entitled to claim from the respondent transport corporation. The learned Tribunal in its award directed the respondent transport corporation to pay the said amount with an interest at the rate of 7.5% per annum from the date of presentation of the M.C.O.P before the Tribunal till the date of deposit.

8. As pointed out supra, the finding of the Tribunal regarding negligence has not been challenged. The Tribunal has also accepted the evidence of PW2 and Ex.P6 as sufficient evidence to prove that the appellant has suffered 30% permanent disability due to the fracture of left patella. The said finding of the Tribunal has not been challenged by the Respondent Corporation. As such, this Court has to consider whether the amounts awarded under various heads are inadequate requiring enhancement. Mr. V. Mohan Choudary, learned counsel for the appellant, would fairly concede that even though functional disability might have been assessed at 30%, the finding of the Tribunal that it did not result in the loss of future earning capacity cannot be successfully challenged and that the decision made by the Tribunal that the petitioner's case was a fit case for awarding a lump sum compensation for the permanent disability has got to be sustained. However, the learned counsel would submit that considering the age of the appellant, who was just 24 years old on the date of accident, the rate at which the lump sum compensation for the discomfort caused by the functional disability should be marginally increased and that since the appellant was in his prime youth, the lump sum amount should have been calculated at the rate of Rs.2000/- per 1% of disability.

9. The above said contention of the learned counsel for the appellant is quite reasonable and in tune with the earlier pronouncement of this Court. Hence, this Court is of the view that the lump sum compensation for the permanent disability suffered by the appellant, which has been assessed at 30% has to be increased from Rs.45,000/- to Rs.60,000/-. The Tribunal has awarded a consolidated sum of Rs.15,000/- for pain and suffering, extra nourishment and transport expenses. This Court is of the view that the said amount will be reasonable only for pain and suffering and for extra nourishment and expenses for transport to and from the hospital, separate amounts are to be awarded. For Transport to and from the hospital, a sum of Rs.5,000/- and a further sum of Rs.5,000/- towards extra nourishment can be awarded. So far as the medical expenses are concerned, the learned counsel for the appellant does not express any grievance over the amount awarded by the Tribunal. Similarly, the amount awarded towards the loss of earning for three months from the date of accident is also reasonable which does not call for any interference.

10. In view of the above said discussion, this Court comes to the conclusion that the appellant/petitioner shall be entitled to enhancement of compensation and the total compensation amount that can be reasonably computed shall be as follows:

Lump sum compensation towards permanent disability assessed at the rate of 30% (30 x 2000)

:

Rs.60,000.00

Medical Expenses

:

Rs.43,224.00

Pain and Suffering

:

Rs.15,000.00

Transport, to and from the hospital

:

Rs. 5,000.00

Expenses towards Nutritious food

:

Rs. 5,000.00

Loss of income for three months from the date of accident

:

Rs.11,250.00

Total

:

Rs.1,39,474.00

Rounded off to

:

Rs.1,39,500/-.

So far as the rate of interest is concerned, the award of the Tribunal does not need any interference.

11. In the result, the Civil Miscellaneous Appeal is allowed in part and the award of the Tribunal is modified by enhancing the amount of compensation awarded by the Tribunal from Rs.1,14,474/- to Rs.1,39,500/-. Subject to the above said modifications, the award of the Tribunal shall stand confirmed. The appellant is also entitled to recover cost of the appeal from the respondent.