

(2013) 07 MAD CK 0296
In the Madras High Court
Case No : C.M.A. No. 2752 of 2007

B. Lalbhadrur

APPELLANT

Vs

The Managing Director, State Express Transport Corporation
(T.N.DN-1) Ltd.

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0296

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

Bench : Single Bench

Advocate : R. Chandrabose Chelliah, for the Appellant; B. Vijayalakshmi, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has filed claim petition in M.C.O.P. No. 1322 of 2000 against the respondent herein/transport Corporation and claimed compensation of a sum of Rs. 7,00,000/- with interest. It was submitted that when the petitioner was travelling on 18.09.1994 as a passenger in the respondent's bus and while the bus was proceeding on the G.S.T. Road, from Trichy to Chennai and when the bus was nearing Otteri Vinayagar temple, the driver of the bus had driven it in a rash and negligent manner and dashed against a stationed lorry in a reckless manner. As a result, the petitioner had sustained multiple bone fracture injuries. Hence, the claim petition is levelled against the State Express Transport Corporation. The respondent had filed a counter statement and resisted the claim petition. The respondent stated that the driver of the bus had driven the bus at a normal speed with care and caution and that the accident had occurred since the lorry was stationed without any indication in the darkness and as such it was not visible. In the said accident, no one sustained injuries. The respondent denied the age, income, occupation and nature of injuries sustained by the claimant.

2. In the said accident, three claim petitions had been filed in M.C.O.P. Nos. 1320

of 2000, 1321 of 2000 and 1322 of 2000 for the injuries sustained by the injured petitioners in the various claims. All these claims petitions have been disposed on merits and common judgments had been pronounced and this appeal pertains to the claim in M.C.O.P. No. 1322 of 2000.

3. After considering the arguments of both parties, the Tribunal had framed two issues. For this case, the below mentioned issues are as follows:-

(i) Whether the accident had been committed by the driver of bus in a rash and negligent manner at high speed?

(ii) What is the quantum of compensation the claimant is entitled to get?

4. On the side of the claimants, four witnesses had been examined and 23 documents were marked. For this claimant, the marked exhibits are as follows:-

F.I.R., medical discharge summary, medical chit, medical bills, X-ray, disability certificate and certificate issued for fixation of artificial leg to the claimant.

5. P.W. 1, the other claimant who had sustained injuries had adduced evidence that on 19.09.1994, when he was travelling from Trichy to Chennai in the respondent/Transport Corporation bus bearing registration No. TN-01-N-321 and while the bus was nearing Vandaloore Geological Park, a lorry was stationed facing Tambaram Direction and the bus driver had dashed against the lorry. He deposed that he and other passengers had sustained grievous injuries. Regarding the accident, a criminal case has been filed.

6. R.W. 1 had adduced evidence that he was the conductor of the respondent's bus. He further stated that he had seen a lorry which was stationed on the left side of the road without any indicator lights. The driver of the bus had noticed the lorry only when he was very near to it and he had immediately applied sudden brakes and tried to stop the bus, but in spite of it, the bus had dashed against the lorry. P.W. 2 claimant, viz., Subbiah and P.W. 3, viz., Lalbhadrur, the appellant herein had adduced evidence on the same lines as P.W. 1 regarding mode of accident.

7. P.W. 3, the claimant herein had adduced evidence that in the said accident, his right leg bone was fractured and severed upto thigh level. He had been hospitalized as an inpatient for 82 days and his right leg had been amputated. He had been treated at a Government Hospital. Besides this, he had also purchased medicines from pharmacies. Supporting his medical expenses, he had marked medical bill series. P.W. 3 further stated that after one year, he had been admitted at the Government hospital for a re-operation for removing steel plate with screws. He further stated that his left leg had been amputated above the knee level and a surgical operation was conducted on his left leg and a steel plate with screws was fixed in the operated area and subsequently removed through three operations. P.W. 4 doctor had assessed the disability at 80% after verification of the medical records and also noted that the claimant's left leg had been amputated.

8. On considering the evidence of the witnesses and on perusing the exhibits marked by the claimant and on hearing the arguments of the learned counsels on either side, the learned judge had awarded a sum of Rs. 1,54,775/- as compensation with interest at 9% per annum.

9. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal and is seeking additional compensation of a sum of Rs. 5,45,225/-.

10. The learned counsel further argued that the claimant's age is 30 years and he is working as a telephone mazdoor, attached to the B.S.N.L., Karaikudi. At the time of accident his salary was Rs. 6,000/-. The claimant had been hospitalized for 92 days as an inpatient on the two spells. During the medical treatment period two surgical operations were conducted on his right leg since he had sustained multiple bone fracture injuries and that his left leg had been amputated upto hip level. A steel plate was fixed with screws in the operated area and the same was removed by way of re-operation. Therefore, the claimant is entitled to receive double compensation in all the relevant heads especially, considering that multiple operations had been done to set-right his fractured bone and that his left leg had also been amputated and as such, he had gone through a lot of pain and suffering. The claimant had not attended the office for several months, therefore, he is entitled to receive adequate compensation under the head of "loss of earning during the medical treatment period". The learned counsel further contended that the claimant lost his opportunity for his promotion since he has now become handicapped. The doctor had assessed the disability as 85%, hence the claimant's right leg bone had been fractured upto the hip level and his left leg had been amputated upto thigh level. The Tribunal had not granted adequate compensation under the heads of transport, nutrition, medical expenses and pain and suffering. The Tribunal had not granted compensation under the heads of disfigurement, loss of amenities, loss of comfort and attender charges, which are also relevant heads in the instant case. The learned counsel pointed out that the claimant's age was 30 years at the time of accident and as one of his legs had been amputated and the other leg had been fractured upto hip level, the claimant has now been reduced to the status of physically handicapped person and the artificial leg has to be fixed periodically. Hence, the learned counsel entreats the Court to award Rs. 1,54,775/- as compensation with interest @ 9% per annum from the date of claim petition till date of payment of compensation.

11. The learned counsel for the Transport Corporation vehemently argued that the Tribunal had awarded adequate compensation under the relevant heads, viz., disability, pain and suffering, transport, nutrition, attender charges, medical expenses and also towards amputation including loss of earning during the medical treatment period. As such there is no lacuna in the impugned award passed by the Tribunal. The award is a comprehensive one. The learned counsel pointed out that the claim petition had been filed in the year 2000 and for the

relevant period, the compensation amount of a sum of Rs. 1,54,775/- with interest @ 9% is appropriate. The claimant is an employee in the Central Government, as such his income has not been affected and he has joined the same Department and continuing his service. Therefore, his avocation has not been affected; therefore loss of earning does not arise in the instant case and also the claimant's promotional prospects had not been affected since the promotion is on the basis of educational qualification and not physical condition. Therefore, the learned counsel requests the Court to dismiss the case.

12. Per contra, the learned counsel for the claimant argued that the Tribunal had awarded a sum of Rs. 1,000/- for transport, Rs. 1,000/- towards attender charges and Rs. 10,000/- for amputation for the left leg which are on the lower side. The learned counsel further pointed out that the claimant has now become a physically challenged person, therefore, he is entitled to receive compensation on the basis of multiplier method.

13. On 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 does not find any shortcomings in the conclusions arrived at regarding negligence and liability. However, the quantum of compensation is on the lower side since the claimant's left leg had been amputated above the knee level and his right leg bone had been fractured upto thigh level, therefore, this Court is inclined to grant additional compensation and reassesses the compensation as follows:-

Rs. 1,27,500/- towards disability; Rs. 50,000/- towards pain and suffering; Rs. 30,000/- towards attender charges; Rs. 10,000/- towards nutrition; Rs. 50,000/- towards transport; Rs. 50,000/- towards loss of earning during the medical treatment period, Rs. 1,00,000/- under the head of artificial leg (including alignments) Rs. 82,500/- towards loss of amenities and Rs. 2,00,000/- under the head of "loss of comfort due to disfigurement which are of a permanent nature. In total, this Court awards Rs. 7,00,000/- as total compensation, as it is found to be appropriate in the instant case. After deducting initial compensation of a sum of Rs. 1,54,775/-, this Court awards Rs. 5,45,225/- as additional compensation and this amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation. Therefore, this Court directs the respondent herein/transport Corporation to deposit the said compensation amount with interest as per this Court's findings within a period of 8 weeks from the date of receipt of a copy of this order. After such a deposit having been made, it is open to the claimant to withdraw the said additional compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 1322 of 2000, on the file of Small Causes Court, Fast Track Court-III, Chennai, after filing a memo along with a copy of this order.

In the result, the above appeal is allowed. Consequently, the award and decree passed in M.C.O.P. No. 1322 of 2000, on the file of Small Causes Court, Fast Track Court-III, Chennai, dated 31.08.2006, is modified. Accordingly ordered.