

(2013) 09 MAD CK 0157
In the Madras High Court
Case No : C.M.A. No. 3164 of 2009

B. Rahamathulla

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport
Corporation

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0157

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

Bench : Single Bench

Advocate : I. Syed Sibghatulla, for the Appellant;

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 19.06.2009, made in

M.A.C.T.O.P. No. 1225 of 2006, on the file of the Additional District Court, Motor Accident Claims Tribunal, Fast Track Court No. II, Salem.

The short facts of the case are as follows:-

The claimant was working as a Conductor at Hosur Mofussil Branch of the respondent Corporation and he earned a sum of Rs. 11,000/- per

month as salary at the time of the accident. That on 13.09.2005 the claimant was on duty in a bus bearing registration No. TN29 N1565, which

was plying between Bangalore and Thiruvannamalai. At about 04.00 a.m., on 14.09.2005, when the bus had reached near Chinnamanur, Paichal,

the driver of the bus drove the bus in a rash and negligent manner and hit the bus against a stationed lorry in front, which was parked on the left

side of the road. Due to the said accident, he sustained grievous injuries in his

left hand and right thigh and he was admitted in Government

Hospital, Thiruvannamalai and further he referred to C.M.C. Hospital, Vellore and then he was referred to I.R.T. Perundurai Medical College

Hospital and took treatment for more than one month as inpatient. Due to the said accident, he is unable to attend duty and he got permanent

disability. Therefore, he filed a claim petition, against the respondent Corporation, in M.A.C.T.O.P. No. 1225 of 2006, on the file of the

Additional District Court, Motor Accident Claims Tribunal, Fast Track Court No. II, Salem, claiming a sum of Rs. 15,00,000/- as compensation.

2. The respondent Corporation had filed a counter statement and resisted the claim petition. The respondent had denied the accident, nature of

injuries sustained by the claimant, mode of treatment and income of the claimant. Further, the respondent had stated that the driver of the bus had

not driven the bus in a rash and negligent manner and the accident had occurred only due to the negligence on the part of the driver of the lorry

bearing registration No. TN31 Q3234, who had parked the lorry in the middle of the road, as the tyre was punctured, without putting any

indicator light. Therefore, the owner and insurer of the lorry are necessary parties.

3. On considering the averments of both sides, the Tribunal had framed three issues namely:

i. Whether the driver of the bus bearing registration No. TN29 N1565 had driven the bus in a rash and negligent manner?

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

iii. To what other relief is the claimant entitled to get?

4. On the petitioners' side two witnesses were examined as P.Ws. 1 and 2 and 15 documents were marked as Exs. P1 to P15 namely FIR,

Medical Discharge Summary, Wound Certificate, Medical Treatment Particulars, Salary Particulars, Medical Bills, X-rays and Disability

Certificate. On the respondent's side one witness was examined as R.W. 1 and one document was marked as Ex. R1 namely salary certificate.

5. P.W. 1 the claimant had adduced evidence that he was working as a Conductor at Hosur Mofussil Branch of the respondent Corporation and

he earned a sum of Rs. 11,000/- per month at the time of the accident. Further,

he had stated that on 13.09.2005 he was on duty in a bus bearing registration No. TN29 N1565, which was plying between Bangalore and Thiruvannamalai. At about 04.00 a.m., on 14.09.2005, when the bus had reached near Chinnamanur, Paichal, the driver of the bus drove the bus in a rash and negligent manner and hit the bus against a stationed lorry in front, which was parked on the left side of the road. Further, he had stated that due to the said accident, he sustained grievous injuries on his left hand, right thigh and left knee joint.

6. P.W. 1 had further adduced evidence that he had been hospitalized for a period of 15 days as an inpatient and he had again been hospitalized for a period of one month as inpatient at I.R.T. Perundurai Medical College. During the medical treatment, a surgical operation had been conducted on his thigh and a steel plate was fixed.

7. P.W. 2 had adduced evidence on the same lines of P.W. 1 regarding nature of injuries and mode of treatment and assessed the disability at 60%. Further, he had stated that scar injuries were found on the claimant's right thigh, measuring an extent of 12 cms., and that the fractured bone had been mal united..

8. R.W. 1 had adduced evidence that the lorry bearing registration No. TN31 Q3234 was parked without putting on red signal indication due to repair being inoperative and at that point of time, the bus had come from the opposite direction suddenly and in order to avoid collusion, the bus had been turned to the left side and as a result, the accident had occurred.

9. After recording the evidence of the witnesses and on scrutinizing the documents marked by them, the Tribunal had granted a sum of Rs.

2,05,650/- with interest at the rate of 7.5% per annum as compensation.

10. Not being satisfied with the quantum of compensation, the claimant has filed the present civil miscellaneous appeal and he has sought for additional compensation of a sum of Rs. 2,00,000/-.

11. Notice had been served on the respondent Corporation. But, in spite of that no one had appeared on behalf of them. Hence, this Court is constrained to pass a final order on the basis of the available records, since the appeal is pending for about four years on the Court's file.

12. The learned counsel appearing for the appellant has submitted that the

claimant had spent a sum of Rs. 60,000/- for medical expenses and he had sustained 60% disability. Further, the claimant has been hospitalized for about two months as inpatient at various hospitals. During medical treatment period, a surgical operation had been conducted. The claimant did not attend his duty for a long time and therefore he is entitled to receive adequate compensation under the head of loss of earning during medical treatment period.

13. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel for the appellant and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy on the conclusions arrived at regarding negligence and liability.

However, the claimant had spent a sum of Rs. 59,000/- towards medical expenses as per exhibits and he had sustained 60% disability as per

Doctor's evidence and he had undergone medical treatment at various hospitals as per evidence. Hence, this Court reassesses the compensation

as follows:

- i. Rs. 59,000/- is awarded towards medical expenses,
- ii. Rs. 1,20,000/- is awarded towards disability,
- iii. Rs. 15,000/- is awarded towards pain and suffering,
- iv. Rs. 10,000/- is awarded towards transport,
- v. Rs. 10,000/- is awarded towards nutrition,
- vi. Rs. 10,000/- is awarded towards attended charges,
- vii. Rs. 20,000/- is awarded towards loss of earning during medical treatment period, and
- viii. Rs. 60,000/- is awarded towards loss of amenities, loss of comfort since a surgical operation had been conducted on the claimant's right thigh and steel plate was fixed.

In total, this Court awards a sum of Rs. 3,04,000/- as compensation, as it is found to be appropriate to the instant case. After deducting the

compensation amount of Rs. 2,05,650/- fixed by the Tribunal, this Court grants a sum of Rs. 98,350/- 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 the date of payment of compensation.

14. This Court directs the respondent Corporation to comply with this Court's

Order, within a period of eight weeks from the date of receipt of a copy of this order, by way of depositing the compensation amount, to the credit of M.A.C.T.O.P. No. 1225 of 2006, on the file of the Additional

District Court, Motor Accident Claims Tribunal, Fast Track Court No. II, Salem.

15. After such a deposit having been made, it is open to the appellant/claimant to withdraw the compensation amount with accrued interest

thereon, after filing a memo along with a copy of this Order. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and

decree dated 19.06.2009, made in M.A.C.T.O.P. No. 1225 of 2006, on the file of the Additional District Court, Motor Accident Claims

Tribunal, Fast Track Court No. II, Salem, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.