

(2012) 04 MAD CK 0048
In the Madras High Court
Case No : C.M.A. No. 1654 of 2002

D. Sundaram

APPELLANT

Vs

Metropolitan Transport Corporation Ltd.

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Citation : (2012) 04 MAD CK 0048

Hon'ble Judges : R. Karuppiah, J

Bench : Single Bench

Advocate : T.M. Swaminathan, for the Appellant; S.S. Swaminathan, for the Respondent

Judgement

Honourable Mr. Justice R. Karuppiah

1. The appellant has filed this civil miscellaneous appeal for enhancement of compensation as against the award and decree dated 5.11.2001

made in MACT.OP.No.3387/1998 on the file of the Motor Accidents Claims Tribunal (3rd Judge, Small Causes Court) Chennai. The claimant

has filed claim petition for compensation of Rs. 1,00,000/- for injuries sustained by him by stating that on 3.4.1998 at about 7.15 hours, while the

petitioner was riding his cycle from north to south at the extreme left side of Old Mahabalipuram Road, near Hyundai Service Centre,

Kottivakkam, the respondent-MTC Bus bearing Registration No.01 N 2332 driven by its driver in a rash and negligent manner endangering the

public safety came at a dangerous speed from the opposite direction on the wrong side of the road and dashed against the petitioner and he

sustained grievous injuries and was taken treatment as in-patient at Royapettah Government Hospital from 3.4.1998 to 7.4.1998 and also

continuously taking treatment as out patient and thus he sustained permanent disability and the age of the petitioner was 54 years and he was

working as worker in Brll Ink and earning Rs. 3,450/- per month and therefore claimed compensation as stated above from the respondent.

2. On the side of the respondent, has contended before the Tribunal that the petitioner was coming from opposite side almost in the middle of the

road and on seeing the respondent bus approaching him, suddenly tried to swear his left and having failed, grazed with the right corner of the bus

with his cycle handle bar and fell down and sustained minor injuries and also contended that the age, occupation, income, nature of injuries,

treatment and permanent disability etc have to be proved by the claimant and the compensation claimed by the petitioner is excessive.

3. Before the Tribunal, on the side of the appellant/claimant, has examined the injured-claimant himself as PW.1 and also examined one Dr.

N.Saichandiran as PW.2 and marked Ex.P1-discharge summary, Ex.P2- salary certificate, Ex.P3-disability certificate, Ex.P4- X ray, Ex.P5-copy

of FIR, Ex.P6-rough sketch and Ex.P7-copy of chargesheet and on the side of the respondent, has examined driver of the bus viz. R.

Chandrasekaran as RW.1 and no document was marked.

4. Considering the abovesaid oral and documentary evidence, the Tribunal has held that the accident was occurred only due to rash and negligent

driving of the driver of the respondent-bus and therefore the respondent is liable to pay compensation.

5. On the side of the respondent/Transport Corporation has not filed any appeal or cross-appeal as against the abovesaid award. Only the

appellant/claimant alone has filed this appeal for enhancement of compensation.

6. On perusal of oral evidence of PW.1, Ex.P5-copy of FIR, Ex.P6-rough sketch and Ex.P7-copy of chargesheet reveal that the accident was

occurred only due to rash and negligent driving of the driver of the respondent as stated in the petition. As already discussed by the Tribunal,

RW.1 has not deposed correctly about the manner of accident and only to escape from criminal proceedings he has falsely deposed and therefore

the accident was occurred only due to rash and negligent driving of the driver of the respondent-bus and therefore respondent is liable to pay

compensation as rightly held by the Tribunal.

7. As already stated, the appellant/claimant alone has filed this appeal only for enhancement of compensation amount.

8. The learned counsel for the appellant has contended that the Tribunal has awarded very low compensation of Rs. 37,200/- as against total

compensation of Rs. 1,00,000/- and the Tribunal has awarded meagre amount of Rs. 5000/- for pain and suffering and the Tribunal ought to have

awarded Rs. 48000/- under the head of permanent disability and the amount of Rs. 5000/- awarded for loss of earning power is very low and the

Tribunal ought to have awarded interest at 12% per annum and hence filed the appeal for enhancement of compensation.

9. The learned counsel for the respondent has contended that the Tribunal has discussed in detail about oral and documentary evidence and

correctly awarded compensation on various heads and therefore no need to interfere with the abovesaid finding.

10. Admittedly, the petitioner has sustained grievous injury in Ex.P3-disability certificate reveal that the petitioner has sustained 35% disability due

to injuries sustained by him. Further Ex.P1- discharge summary reveals that the petitioner has taken treatment as in-patient from 3.4.1998 to

7.4.1998 and also from the petitioner evidence, he was taking further treatment as out-patient for several days and inspite of that, he has sustained

35% disability.

11. On careful perusal of the award passed by the Tribunal, it is seen that the compensation awarded on various heads are very low as rightly

contended by the learned counsel for the appellant. The Tribunal has awarded compensation on various heads as under:-

Loss of income during treatment period .. Rs. 6,900.00

Transportation .. Rs. 100.00

Extra-nourishment .. Rs. 100.00

Medical expenses .. Rs. 100.00

Pain and suffering .. Rs. 5,000.00

Disability .. Rs. 20,000.00

Loss of future income .. Rs. 5,000.00

37,200.00

12. As already stated, the petitioner has sustained grievous injury and the

Doctor assessed 35% disability. Considering the nature of injuries, treatment, disability, age of the petitioner, avocation and loss of income etc, I am of the view that the compensation awarded by the Tribunal is considered as low and therefore it has to be enhanced as rightly contended by the learned counsel for the appellant.

13. From the oral evidence of injured PW.1 and PW.2-doctor's evidence and Exs.P1 to P4, I am of the view that the compensation awarded by the Tribunal is to be modified and enhanced as follows. For loss of income during treatment period, the Tribunal has awarded Rs. 6,900/-.

Considering the period of treatment, I am of the view that no need to enhance the abovesaid amount since it was correctly assessed by the

Tribunal. With regard to transportation and extra nourishment, the Tribunal has awarded Rs. 100/- each totally Rs. 200/-. It is very low and

therefore it has to be enhanced as Rs. 1000/- for transportation and Rs. 1100/- for extra-nourishment. With regard to damage to cloth, the

Tribunal has not passed any award and therefore Rs. 1000/- is to be awarded for damage to cloth. For medical expenses, the Tribunal has

awarded only Rs. 100/-. Considering the period of treatment, nature of injuries, disability etc, I am of the view that it is to be enhanced as Rs.

1000/-. With regard to pain and suffering, the Tribunal has awarded only Rs. 5000/-. Considering the nature of injuries, period of treatment and

other factors, this Court is of the view that the abovesaid amount fixed by the Tribunal is just and reasonable compensation and therefore no need

to enhance the abovesaid amount.

14. With regard to permanent disability, the Tribunal has awarded only Rs. 20,000/- and the learned counsel for the appellant has mainly

contended that the petitioner has sustained 35% disability due to injuries and he was taking treatment for long period and considering the

petitioner's age viz. 54 years and was worker in Brill Ink Company and due to the abovesaid disability he was unable to work as before and the

doctor has assessed the disability as 35%, the Tribunal ought to have awarded higher amount for the abovesaid head.

15. On perusal of oral evidence of PW.1, who is injured petitioner and PW.2-Doctor, who has given disability certificate and Ex.P1-discharge

summary and Ex.P3-disability certificate reveal that the petitioner has sustained

grievous injury and due to injuries, he suffered 35% permanent disability and the abovesaid disability certainly affected certain extent the avocation of the petitioner and therefore considering the nature of injuries and disability of 35%, Rs. 70,000/- is to be awarded on the head of permanent disability. The Tribunal has passed award of Rs. 5000/- for loss of earning capacity. Considering the injuries and disability, I am of the view that the abovesaid amount need not be enhanced.

17. Therefore, as already discussed in detail, the appeal filed by the appellant is to be partly allowed and the award passed by the Tribunal is to be modified and enhanced as under:-

Loss of income : Rs. 6,900.00

Transport expenses : Rs. 1,000.00

Extra-nourishment : Rs. 1,100.00

Damage to clothes : Rs. 1,000.00

Medical expenses : Rs. 1,000.00

Pain and suffering : Rs. 5,000.00

Permanent disability : Rs. 70,000.0

Loss of earning capacity : Rs. 5,000.00

Rs, 91,000.00

17. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is enhanced from Rs. 37,200/- to Rs. 91,000/-

with interest at 7.5% per annum. Both sides admitted that the entire award passed by the Tribunal with interest has been already deposited and the

appellant/petitioner has also withdrawn the same. Therefore, the balance amount of Rs. 53,800/- with 7.5% interest per annum from the date of

claim petition till the date of payment is to be deposited by the respondent Corporation within a period of four weeks from the date of receipt of

copy of this Judgment and the appellant/petitioner is permitted to withdraw the abovesaid amount. No costs.