

(1979) 03 KL CK 0004

In the High Court Of Kerala

Case No : M.F.A. No's. 63 and 291 of 1978

Kerala State Road Transport Corporation

APPELLANT

Vs

M. Thomas

RESPONDENT

Date of Decision : 23-03-1979

Acts Referred:

Kerala Motor Accidents Claim Tribunal Rules, 1977 — Rule 22
Motor Vehicles Act, 1939 — Section 110D

Citation : (1980) ACJ 417

Hon'ble Judges : V. Balakrishna Eradi, J;K.K. Narendran, J

Bench : Division Bench

Advocate : George Mathew Kalapurackkal, for the Appellant; C.K. Sivasankara Panikar, P.G.P. Panikar, K.S. Radhakrishnan and K.S. Balakrishnan, for the Respondent

Judgement

Balakrishna Eradi, J.—These two appeals filed u/s 110-D of the Motor Vehicles Act, 1939 and Rule 22 of the Kerala Motor Accidents Claims Tribunals Rules, 1977 arise out of a claim petition? M.A.C.C. No. 2 of 1977?filed before the Motor Accidents Claims Tribunal, Trivandrum (hereinafter referred to as the Tribunal) for recovery of compensation for injuries sustained by the claimant as the result of an accident met with bus No. A. 576 having registration No. KRT 2863 belonging to the Kerala State Road Transport Corporation (hereinafter referred to as the Corporation) while the claimant was travelling in the said bus on 11-1-1977. In the petition the claimant prayed for an award of special damages amounting to Rs. 8,836/- and general damages to the extent of Rs. 3,17,836/-. The lower court upheld the case of the claimant that the accident was caused as a result of rash and negligent driving by its driver (2nd Respondent in the claim petition) and that the injuries suffered by the claimant which necessitated the amputation of his right leg below the knee were the direct consequence of the accident It was further found that as a result of those injuries the claimant has suffered a permanent total disability rendering him incapable of pursuing his calling as an advocate or engaging himself in any other social or political work as

he had been doing prior to the accident. The lower court accordingly awarded to the claimant Rs. 8,540/- as special damages and Rs. 1,78,800/- by way of general damages. A total compensation of Rs. 1,87,340/- was thus awarded to the claimant by the Tribunal. M.F.A. No. 63 of 1978 has been preferred by the Corporation challenging the finding of the Tribunal that the accident was caused as a result of the negligence of the driver of the Corporation's bus and contending that in any event the damages awarded are highly excessive. M.F.A. No. 291 of 1978 has been filed by the claimant complaining that the quantum of damages fixed by the Tribunal is unduly low and praying that a further sum of Rs. 1,30,495/- should also be awarded to him by way of compensation. The opposing parties will hereinafter be referred to as the claimant and the corporation respectively.

2. The facts of the case present a very distressing picture. The claimant Sri M. Thomas was practising as an advocate-in the courts at Kottayam. He was also a member of the Kerala Legislative Assembly. At a very tender age he had suffered an attack of poliomyelitis as a result whereof his right hand had become completely paralysed. Undaunted by this handicap little Thomas bravely pursued his studies and finally graduated in law and entered the legal profession. He was also active in politics and was elected to the Legislative Assembly from the Kottayam constituency. He enjoyed a fairly lucrative practice on the criminal side in the courts at Kottayam. On 11th January, 1977 the claimant was travelling from Kottayam to Trivandrum in bus No. A-576?KRT. 2863 ?belonging to the corporation to attend a meeting of the committee on subordinate legislation. At about 12.30 noon while the bus was proceeding from north to south along the Main Central Road between Karetu and Pulimathu near the 34th milestone from Trivandrum it collided with another bus KLV 2107 coming in the opposite direction from south to north. That was also a bus belonging to the corporation. As a result of the collision between the two buses the claimant who was seated immediately behind the driver in the bus KRT 2863 suffered from severe injuries. His right leg was caught in between the two buses and it could be extricated only after a delay of more than one hour. In the meantime, there had been profuse bleeding from the open wound and because he was throughout conscious he was undergoing excruciating pain and agony. After the leg was extricated by cutting the steel frame of the seats the claimant was rushed to the Medical College Hospital, Trivandrum and since it was found by the doctors that the only way to save the life of the patient was to amputate the leg and thereby avoid gangrene the claimant's leg was immediately amputated below the knee. Above the amputated portion of the leg there was a serious fracture which also took a very long J- me to heal. Since the claimant was already a handicapped person whose right arm had been paralysed by polio the loss of the lower limb on the same side was a most serious calamity so far as he was concerned. The result of the amputation was to leave the claimant completely disabled and he had to depend wholly on external help even for moving about inside a room. Profession, politics and social life of any kind were thus rendered beyond his reach forever.

According to the claimant, even with the aid of the artificial limb and with the assistance of some one to help him to keep the balance he is not able to climb any steps or walk for some distance at a stretch and he is unable to get into a train or bus. It is further stated that he has been completely deprived of all the amenities and comforts of life which he was previously enjoying.

3. The first point urged on behalf of the corporation in its appeal is that the finding entered by the Tribunal that the accident was caused as a result of rash and negligent driving of the driver of bus KRT. 2863 is incorrect and unwarranted by the evidence. We see no merit at all in this contention. From the mahazar Exhibit A-5 prepared by P.W. 2, the Head Constable, who inspected the scene of accident immediately after the collision it is seen that the collision had taken place at a place 143 metres south-east from the 34th kilometre stone on the Main Central Road and that the collision had taken place practically in the middle of the road whose tarred portion alone was 7 metres wide. Both the buses involved in the accident belonged to the corporation. After the collision the front portion of bus KLV. 2107 was found embedded in the right side body of bus KRT. 2863 wherein the claimant was travelling. From the measurements given in the mahazar it is very clear that there was ample space on the eastern and western sides of the road for such of the buses to have moved to its left hand side so as to avoid a collision. The claimant in his testimony as P.W. 3 has sworn that the driver of the bus in which he was travelling was driving the vehicle at a very high speed and even though there was a bend and also a slope near the place of the accident the driver did not either reduce the speed or sound the horn. It is further stated by P.W. 3 that the bus coming from the opposite direction was visible even at a distance of 60 feet from the bus where he was travelling so much so that both the vehicles had ample opportunity to avoid a collision with the bus approaching from the opposite direction. The testimony of P.W. 3 has been believed by the Tribunal and we see no reason not to act upon it. From the evidence of PWs. 2 and 3 read along with the contents of the mahazar Exhibit A-5 it is clear beyond doubt that the accident had occurred as a result of rash and negligent driving by the drivers of the two buses, both of which belonged to the corporation. The corporation is, therefore, liable to compensate the claimant by way of general and special damages for the injuries, disability and loss caused to the claimant as a result of the accident.

4. On the further question relating to the quantum of damages the contentions raised in both the appeals can be considered together. Under the head "special damages" the Tribunal has allowed to the claimant the expenses relating to his journey from the spot of the accident to the hospital immediately after the occurrence, the expenses incurred for, the claimant's wife's journey from Kottayam to the Medical College Hospital, Trivandrum and also the charges incurred by the claimant for his journeys from Kottayam to Trivandrum and back for a check-up in July. 1977 and for fitting and testing the artificial limb. P.W. 1 is Dr. T.C. Joseph who performed the surgical operation on the claimant and under whose treatment and care the claimant continued until the artificial limb was

fitted to his leg stump. From the testimony given by P.W. 1. and the claimant's own deposition as P.W. 3 it is amply proved that the aforesaid journeys had necessarily to be undertaken by the claimant in connection with his treatment in the hospital and its follow-up culminating in the fitting of an artificial limb. The Tribunal was, therefore, perfectly right in awarding to the claimant the sum of Rs. 1,355/- in repaying the expenses incurred by him for those journeys. The other count on which special damages has been awarded to the claimant is the expenditure incurred by way of rent for the room in the special ward in the Medical College Hospital, Trivandrum and the cost of the treatment itself involving the purchase of various medicines etc. That the expenses were actually incurred have been proved by the testimony of P.Ws. 1 and 3 and the bills Exhibits A-7 to A-7 (k). In the light of the said evidence we have no hesitation to confirm the finding of the Tribunal that the claimant is entitled to recover from the corporation Rs. 1,155/- towards expenses incurred in the hospital by way of rent etc. during the period from 11-1-1977 to 23.4.1977 on which date alone the claimant was discharged as well as a further sum of Rs. 626/- towards the cost of medicine and treatment including the cost of the artificial limb.

5. It is proved by the evidence that as a result of the injuries caused by the accident and the amputation of the right leg the claimant was not in a position to move about without help. It was, therefore, absolutely necessary for him to have the constant help of an assistant near his bed side in the hospital. The Tribunal was, therefore, fully justified in allowing to the claimant the expenses incurred for keeping an assistant in the hospital amounting in all to Rs. 1,097.50 (Rs. 1,030+Rs. 15+ Rs. 52 50). What we have stated above applies equally in respect of the claim for reimbursement of the wages subsequently paid by the claimant to an assistant for the period of five months preceding the date of petition. The continued service of an assistant has become indispensable for the claimant for the rest of his life. The Tribunal held that since the expenditure incurred on keeping an assistant for the period till 23-4-1977 (the date of discharge of the claimant from the hospital) had already been taken into account, provision remained to be made for such expenditure incurred by the claimant only for the remaining period of about two months that preceded the institution of the claim. On this basis the Tribunal awarded Rs. 300/- to the claimant under this head. We fully agree with the conclusion reached by the Tribunal. We are also of opinion that the Tribunal was perfectly right in allowing to the claimant a further sum of Rs. 507/- by way of cost of the artificial limb especially in the light of the evidence given by P.W. 1 that the fitting of this new artificial limb was absolutely necessary.

6. The last item in respect of which special damages have been awarded by the Tribunal is the loss of income from profession sustained by the claimant from the date of the accident till the date of institution of the claim. The evidence adduced in the case discloses that the claimant was having a fairly lucrative practice especially in criminal courts at Kottayam. He was also getting a monthly remuneration of Rs. 300/- in his capacity as member of the Legislative Assembly.

Exhibit A-6 is the certificate issued by the income tax Officer, A-Ward, Kottayam showing the income in respect of which the claimant was assessed to tax for the years 1965-66 to 1976-77. It is seen therefrom that the average monthly income earned by the claimant from his profession during the years 1974-75 to 1976-77 was about Rs. 645/-per month while his corresponding average monthly income for the three years from 1971-72 to 1973-74 was about Rs. 690/-per month. The claimant has given evidence as P.W. 3 that even though there was a slight reduction in his professional income during the period when he was a member of the Legislative Assembly there was every prospect of his being able to increase his professional earnings by concentrating more on the profession especially after the expiry of his then current term as member of the Legislative Assembly. Having regard to all the facts and circumstances of the case brought out in the evidence we consider that the Tribunal has acted rightly in estimating the loss of professional income suffered by the claimant at Rs. 700/- a month and in awarding Rs. 3,500/- as compensation for the loss so suffered by him during the period of five months preceding the institution of the claim.

7. Accordingly we confirm the finding entered by the Tribunal that the claimant is entitled to recover a total sum of Rs. 8,540.50 from the corporation by way of special damages.

8. We now pass on to the question as to what would be the reasonable amount to be allowed to the claimant by way of general damages. The main item to be considered under this head is the compensation awardable on account of loss of future earnings and shortened expectation of life of the claimant. It has been very well established by the evidence that notwithstanding the physical handicap caused on account of the attack of polio which had rendered his right hand paralysed the claimant was carrying on a very active life and that he was commanding a lucrative practice before the criminal courts in and around Kottayam. Ext. A-6 is the certificate issued by the income tax Officer, A Ward, Kottayam, showing the figures of the total income assessed in respect of the claimant for the assessment years 1965-66 to 1976-77. It shows that during the years 1974-75 to 1976-77 the claimant was assessed to income tax on a total income of Rs. 11,600/-, Rs. 12,140/- and Rs. 10,880/-respectively. The shortfall during 1976-77 must have been due to the fact that the accident in question occurred on 11-1-1977 and thereafter the claimant was completely disabled from doing any active work during the rest of the financial year. The claimant in his testimony as P.W. 3 has sworn that his income in the profession was steadily on the increase and that on the average he was earning a gross income of about Rs. 1,000/-from his practice as an advocate and, besides, he was also getting his allowance as a Member of the Legislative Assembly. Excepting for the physical handicap brought about by the attack of polio during childhood the claimant was in a sound state of health and he was not suffering from any chronic ailment. He was only 56 years old at the time of the accident and having regard to his general state of health and history of longevity of life in the family brought out in the evidence the claimant could in the ordinary course of things have carried on

his active professional life for at least a further period of 20 years had it not been for the unfortunate accident. Taking into account the likelihood of fluctuations in income and all the other uncertainties of life we consider that the Tribunal was fully justified in estimating the loss of income suffered by the claimant as a result of the accident at Rs. 700/- per mensem and in capitalising it at fourteen times for the purpose of quantification of damages allowable on this count. We do not find it possible to accede to the prayer in M.F.A. No. 291 of 1978 filed by the claimant for enhancement of the quantum of damages allowed by the Tribunal under this head. Accordingly we confirm the finding of the Tribunal that the claimant is entitled to recover a sum of Rs. 1,17,600/- from the corporation by way of damages for the loss of future earnings and shortened expectation of life.

9. The Tribunal has awarded to the claimant a sum of Rs. 10,000/- by way of damages for the pain and suffering and for the loss of amenities caused on account of the accident. We find no substance at all in the contention urged on behalf of the corporation in M F.A. No. 63 of 1978 that the amount of compensation awarded by the Tribunal is excessive. On the other hand, for the reasons presently to be indicated we have come to the conclusion that the claimant is well-founded in his contention that the compensation awarded to him by the Tribunal under this head is inadequate and that it calls for enhancement. It has come out in evidence that in the collision between the two buses the claimant's right leg was caught in between parts of the two vehicles and that for extricating the limb from its jammed position the steel frame of the seat of one bus had to be cut and removed. That could be done only after a delay of more than one hour after the occurrence of the accident. During the interval the claimant who was fully conscious had to endure indescribable and excruciating pain and agony. He was profusely bleeding all the time with people merely helplessly looking on. After the leg was extricated and the claimant was ultimately removed to the hospital his right leg had to be amputated. The result was that he was rendered a total invalid inasmuch as he had lost the facility of his right hand even during childhood on account of an attack of polio. The evidence also discloses that for several weeks after the operation the claimant had to be an inpatient in the Medical College Hospital and that during that period also he had to suffer severe pain and discomfort. To make matters worse, the claimant's testimony as well as the evidence given by the Doctor examined as P.W. 1 shows that the claimant is suffering from a condition called "phantom limb" on account of which the stump of his right leg [the amputated limb] goes into a kind of uncontrolled conclusive tremor when he is asleep with the result that the claimant immediately wakes up and he is unable to have even sound sleep. Thus, apart from the pain and suffering which the claimant had to undergo immediately after the accident and also during the course of the treatment in the hospital he is having to endure agony and suffering even now on account of the aforesaid condition of "phantom limb". In our opinion, the pain and suffering endured by the Petitioner is of such enormity that he should be awarded at least a sum of Rs. 20 000/- by way of compensation under this head. We accordingly

enhance the compensation recoverable under this head from Rs. 10,000/- fixed by the Tribunal to Rs. 20,000/-.

10. As regards the loss of amenities the claimant has been reduced to a condition where he is unable to freely move about by himself and even with the aid of an assistant, which he must have at all times, the claimant is able to walk only very short distances at a time. The Tribunal awarded to the claimant only a sum of Rs. 1,000/- on the ground of loss of enjoyment in life. We consider that this is unreasonably low. The claimant who was very active in social and political life has been completely deprived of all participation in any such activity by reason of the injuries caused to him in the accident. He has nothing to look forward to except to grim days of lonesome existence in the house. We consider that it will be reasonable to allow to the claimant a sum of Rs. 10,000/- as compensation for his being deprived of all social activity and enjoyment in life. The compensation of Rs. 1,000/- awarded by the Tribunal under this head is, therefore, enhanced to Rs. 10,000/-.

11. The Tribunal was, in our opinion, perfectly justified in allowing to the claimant a sum of Rs. 25,200/- as the capitalised amount necessary for meeting the expenses of keeping a full-time assistant without whose services the claimant cannot move about at all nor carry out even basic essential functions like bathing, eating etc. The award made by the Tribunal of Rs. 25,200/- under this head is confirmed.

12. We do not, however, think that the Tribunal was justified in allowing the claimant Rs. 25,000/- by way of capital expenditure for the purchase of a motor-car. The evidence shows that the claimant already owns a car. Due provision has already been made for the maintenance of an assistant who can be so selected as to be able to function also as a driver. Having regard to the circumstance that it is impossible for the claimant to carry on any normal professional, social or political activity, the possession and maintenance of a car cannot, in our opinion, be regarded as absolutely essential. Hence we are unable to uphold the finding of the Tribunal that the claimant is entitled to get Rs. 25,000/- by way of provision for the purchase of a motor vehicle. The said finding will stand set aside.

13. To sum up, we hold that the claimant shall be entitled to recover from the corporation a sum of Rs. 8,540.50 by way of special damages and also an aggregate amount of Rs. 1,72,800/- only by way of general damages. These amounts will carry interest at 6% per annum from the date of institution of the petition before the Tribunal. The claimant will be entitled to realise from the corporation proportionate costs on the aforesaid amount in respect of the proceedings before the Tribunal. The decision of the Tribunal will stand modified accordingly.

14. The appeals are disposed of as above. The parties will bear their respective costs in these two appeals.