

(2010) 06 MAD CK 0243

In the Madras High Court

Case No : C.M.A. No's. 1427 of 2001 and 763 of 2002

M. Ramkumar

APPELLANT

Vs

The Managing Director, Metropolitan Transport Corporation
Ltd. (formerly Pallavan Transport Corporation)
The
Managing Director, Metropolitan Transport Corporation Ltd.
(formerly Pallavan Transport Corporation) Vs M. Ramkumar

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Citation : (2010) 06 MAD CK 0243

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : J. Mahalingam, in CMA 1427/2001 and M. Krishnamoorthy, in CMA 763/2002, for the Appellant; J. Mahalingam in CMA No. 763/2002 and M. Krishnamoorthy in CMA 1427/2001, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—C.M.A. Nos. 1427 of 2001 and 763/2002 are filed by the claimant and the Transport Corporation respectively against the award dated 27.3.2001 made in MCOP No. 515 of 1995 by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) Chennai.

2. The Claimant as well as the Transport Corporation have filed the appeals against the same award. Hence, they are taken up together and disposed of by a common Judgment.

3. Background facts in a nutshell are as follows:

The claimant was injured in a motor vehicle accident that took place on 29.10.1994 at about 12.20 p.m., when the claimant was proceeding in his motor cycle bearing registration No. TN 07 D 2777 at Thiru Vi Ka Bridge Road from North to South, the PTC Bus bearing Registration No. TML 1521 came in a rash and negligent manner and hit against the motorcyclist whereby, the claimant sustained injuries. He claimed a sum of Rs. 6,00,000/- as compensation. The

Transport Corporation resisted the claim.

4. On the basis of the pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the Transport Corporation Bus?

2. Whether the claimant is entitled to any claim? If so, what is the amount?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of the appellant-Transport Corporation and awarded a compensation of Rs. 3,76,985.54Ps with interest at 12% per annum from the date of petition and the details of the same are as under:

Loss of earning during treatment	Rs. 1,000.00	Transport to Hospitals	Rs. 5,846.80
Damage to clothing and articles	Rs. 500.00	Medical Expenses	Rs. 2,39,638.74
Pain and suffering	Rs. 10,000.00	Continuing permanent disability	Rs. 60,000.00
Loss of earning power	Rs. 60,000.00	-----	Total Rs. 3,76,985.54
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Aggrieved by that award, the claimant as well as the Transport Corporation have filed the present appeals.

5. The learned Counsel appearing for the Transport Corporation submitted that the Tribunal went wrong in holding that the appellant's driver has driven the bus in a rash and negligent manner and was responsible for the accident. The compensation amount awarded by the Tribunal is excessive, exorbitant, without any basis and justification and that therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

6. The learned Counsel appearing for the claimant submitted that the compensation awarded by the Tribunal is very low and meagre and the Tribunal ought to have awarded compensation as claimed by the claimant and the Tribunal has not followed the principles of assessment before passing an award and seeks to enhance the compensation.

7. Heard the learned Counsel for the parties. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P30 were marked. P.W.1 is the claimant. PW2 is the doctor, who gave treatment to the claimant. Exs.P1 to P3 and P10, to P15 are the Discharge Summaries; Ex.P4 is Malar Hospital records; Ex.P5 is the Hospital Bills Series; Ex P6 and Ex P17 are the Medical receipts series; Ex P7 are the series of Medical Bills; Ex P8 is the Bills series; Ex P9 is the Photo and Negative; Ex. P16 is the Medical Slip series; Ex P18 is the X-Ray; ExP19 Ambulance receipt series; Ex P20 is the First Information report; Ex P21 Judgment copy from Criminal Court; Ex P22 are the series of Inspection report; Ex P23 is the medical bill series; Ex P24 is the injured person photos series; Ex P25 is the copy of the B.Com. Certificate; Ex P26 is the copy of the typewriting certificate; Ex P27 is the copy of driving licence; Ex P28 is the salary certificate;

Ex P29 is the call letter for written examination to the post of Sub Inspector Of Police; Ex P30 is the disability certificate and Ex P31 X-Ray. On the side of the appellant-Transport Corporation, R.W.1, Appadurai, the driver was examined and no documents were marked to substantiate their claim. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to rash and negligent driving of the driver of the bus and the finding is based on valid materials and evidence.

8. At the time of accident, the claimant was aged about 22 years. He is working as clerk in Adayar Auto Store and earning Rs. 2,500/- per month. PW1-claimant in his evidence has deposed that the accident had occurred only due to rash and negligent driving of the bus driver and a case has been registered by the Traffic Investigation Department, J-2 Adyar Police Station Madras in VAR No. 4086/AM3/94. Ex P20 First Information Report. The Criminal Court has also convicted the driver of the bus. Aggrieved against the said order, the transport corporation has filed an appeal and the same was also dismissed and the driver of the bus also paid a fine of Rs. 750/-. Due to the accident, the claimant sustained following injuries.

Fracture of left femur, fracture of left leg and other serious multiple injuries all over the body.

Immediately he was admitted on 29.10.1994 at Malar Hospital and treated as in patient till 2.12.1994 and again he was admitted as inpatient from 15.12.1994 to 30.1.1995 for infected wound at the fracture sight and again he took treatment in Malar Hospital from 7.4.1995 to 27.6.1995. Exs P1 to P3 are the discharge summaries. Due to prolonged treatment at private Hospital, the petitioner incurred expenditure to the tune of Rs. 77,906/- and Exs P5 and P8 are the medical bills. In total the petitioner has spent a sum of Rs. 1,99,297/- at Malar Hospital. Again the petitioner was admitted in A.K.N. Nursing Home on 27.5.1995 for malunion of femur and he was discharged on 19.7.1995. Again, he was treated from 10.8.1995 to 5.4.1996 for malunion of femur and screw was fixed at the time of treatment. Ex P17 is the medical bills for the amount paid by the petitioner in A.K.N. Hospital. Exs.P.10,P11,P12,P13,P14 and P15 are the medical bills in respect of treatment taken in the said hospital. Exs 10 to 15 are the discharge certificates issued on various dates. Exs.P6,P7,16,17,and 23 are the medical bills and the claimant has spent a sum of Rs. 2,39,638.74ps for purchase of medicines. It is an actual expenditure incurred by the claimant. Hence the amount awarded under this head is confirmed. PW2-Dr.Saichandran, who examined the claimant, has issued Ex.P29 disability certificate to the extent of 65% and deposed that the claimant has sustained fracture in left femur, fracture of left leg and due to surgery, the length of the leg reduced to 1.5 inches. After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs. 1000/- towards loss of earning during the treatment period which is very reasonable and the same is confirmed. Towards Transport charges, the tribunal has awarded a sum of Rs. 5,846.80. It is also not disputed and as

the claimant was treated in various hospitals, he would have necessarily incurred expenses. Therefore, the amount awarded under this head is very reasonable and the same is confirmed. Even though, the claimant has claimed a sum of Rs. 2,000/- towards extra nourishment, the Tribunal has not awarded any amount under this head. No doubt, the claimant was admitted in various hospitals and taken treatment. Hence it would be very reasonable, to award a sum of Rs. 5,000/- towards extra nourishment. The claimant claimed a sum of Rs. 5,000/- towards damage to the motorcycle. Though the claimant has not claimed any amount towards damage to the clothing, the Tribunal has awarded a sum of Rs. 500/- towards damage to the clothing and the same is not disputed by other side. Hence the same is confirmed. The claimant has claimed a sum of Rs. 7,500/- towards loss of earning for three months. It is clear from the discharge summary and other records that the claimant was admitted in the hospital on various dates and at that time, he could not have attended the office. Taking into consideration the above facts, I feel that it would be reasonable to award a sum of Rs. 7,500/- towards loss of earning for three months. Under the head of pain and suffering, the claimant claimed a sum of Rs. 12,500/-. But the Tribunal has awarded a sum of Rs. 10,000/- towards pain and suffering. Taking into consideration the nature of the injuries sustained i.e. Fracture of his left femur, fracture of his left leg and multiple injuries all over the body, the claimant would have suffered pain and suffering. Hence I feel that it would be reasonable to award a sum of Rs. 12,500/- as claimed by the claimant. P.W.2 Dr. Saichandran, who examined the injured, has assessed the disability 65%. In his evidence, he has stated that the injured sustained fracture of right femur and also right leg and other serious multiple injuries. Therefore, a plate has been fixed and also he has undergone surgery later. Further he stated in his evidence that the right leg of the injured shortened by one and half inch and he is unable to do his normal work. Ex P29 is the disability certificate and Ex P31 X ray. But the Tribunal, considering the facts and circumstances of the case has determined disability at 60% and awarded a sum of Rs. 60,000/- under this head. In the present case, after taking into consideration of the nature of the injuries sustained and the evidence of P.W.2 Doctor, it would be reasonable to fix the disability at 65%. Normally, the Courts award a sum of Rs. 1000/- to Rs. 2,000/- per percentage of disability. If Rs. 2000/- is awarded per centage of disability, the award amount works out to Rs. 1,30,000/- (65% x 2000) towards permanent disability as against the award of Rs. 60,000/- awarded by the Tribunal. The Tribunal has also awarded a sum of Rs. 60,000/- towards loss of earning capacity. This Court already awarded a sum of Rs. 1,30,000/- towards permanent disability. A Full Bench of this Court in the case of Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , held that whenever compensation towards permanent disability is awarded, further amount towards loss of earning power should not be awarded. Applying the principle enunciated in the above Full Bench decision of this Court, the award of the Tribunal in respect of loss of earning capacity at Rs. 60,000/- is not in accordance with law and is therefore set aside. Considering the nature of injury, period of treatment and disability, the Tribunal has awarded a

sum of Rs. 10,000/- towards loss of amenities. I feel that the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has fixed the rate of interest at 12% p.a. from the date of petition. The date of accident is 29.1.1994. Taking into consideration the date of accident and the prevailing rate of interest during that period, the interest awarded by the Tribunal is confirmed. The details of the modified compensation as per the above discussion are as under:

Rs.

Loss of earning during treatment = 1,000.00 Transport to hospitals = 5,846.80
Extra nourishment = 5,000.00 Damage to clothing and articles = 500.00 Medical
expenses = 2,39,638.74 Loss of earning for three months = 7,500.00 Pain and
suffering = 12,500.00 Disability 65% = 1,30,000.00 Loss of amenities =
10,000.00 ----- Total 4,11,985.54

Rounded to 4,12,000.00 Less the amount already awarded 3,76,985.00
----- Balance amount = 35,015.00 -----

Therefore, the claimant is entitled to the enhanced compensation of Rs. 35,015/- with interest at 7.5% p.a from the date of petition. The Transport Corporation is directed to deposit the enhanced compensation award of Rs. 35,015/- with interest at 7.5% p.a within six weeks from the date of receipt of a copy of this order.

9. The learned Counsel appearing for the Transport Corporation has submitted that already half of the award amount has been deposited as per order of this Court dated 24.4.2002. On such deposit, the claimant is permitted to withdraw the same on making proper application. The Insurance Company is directed to deposit the balance award amount with proportionate interest and cost within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same on making proper application.

10. With the above modification, these Civil Miscellaneous Appeals are disposed of. No costs.