(2017) 02 MAD CK 0170

In the Madras High Court

Case No : C.M.A. No. 2231 of 2012

Managing Director — APPELLANT

Vs

K.M. Karthikeyan — RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Citation : (2017) 2 MLJ 513

Hon'ble Judges : Mr. M. Sathyanarayanan and Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. S.V. Vasanthakumar, Advocate, for the Appellant; Not ready in notice, for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—The respondent/Transport Corporation Limited, Chennai -2 in M.C.O.P. No. 901 of 2009 on the file of Motor Accidents Claims Tribunal (Fast Track Court No.II), Poonamallee, is the appellant herein and challenging the quantum of compensation awarded by the Tribunal has come forward with this Civil Miscellaneous Appeal.

2. The facts leading to the filing of this appeal, briefly narrated, are as follows:

(a) The claimant/respondent herein, at about 4.30p.m., on 15.12.2008, was proceeding from North to South from Bashyam Road to G.N. Chetty Road Junction and at that time, a bus belonging to the appellant Transport Corporation bearing Registration No. TN 01 9410, driven in a rash and negligent manner, came behind and dashed against the claimant, as a consequence of which, the claimant fell down and the front wheel of the bus ran over the right leg of the claimant and he sustained grievous injuries. Immediately, the respondent/ claimant was taken in an autorickshaw and was admitted in Apollo Hospitals, Chennai wherein, he underwent a surgery. Initially, he was operated upon for removal of the foot and since the injury got infected, his leg below knee was amputated.

(b) In respect of the accident, R-4, Soundara Pandianar Angadi Police Station, T. Nagar, Chennai, had also registered a case in Crime No. 604/TN3/08 U for the commission of offences under Sections 337 I.P.C. and 184 of Motor Vehicles Act, 1988 and pleaded guilty to the charge. The claimant claimed a sum of Rs.25 lakhs as compensation under the following heads:

Loss of earning from 15.12.2008 to 17.04.2008

Rs.5,00,000/-

Transport to Hospital

Rs. 25,000/-

Extra Nourishment

Rs. 50,000/-

Damage to Clothing and articles

Rs. 10,000/-

Medical Expenses

Rs.3,00,000/-

Nursing & Personal Attendance

Rs. 50,000/-

Compensation for pain and suffering

Rs.3,00,000/-

Compensation for continuing of permanent disability, if any;

Rs.7,00,000/-

Compensation for loss of earning power

Rs.5,45,000/-

Total

Rs.25,00,000/-

(c) The appellant was arrayed as respondent in the said claim petition and filed a counter statement denying the averments and took a stand that the driver of the bus had driven the vehicle in adherence to the traffic regulations and it was the claimant, who, without noticing the traffic, was conversing over cell-phone and on account of his negligence, he alone had contributed to the accident. Insofar as quantum of compensation is concerned, the appellant has denied the same and took a stand that, in any event, the compensation claimed by the claimant is highly excessive.

(d) During the course of trial/enquiry, the respondent/claimant examined himself as P.W.1 and the Doctor, who issued Disability Certificate, Ex-P7, was examined as P.W.2 and Exs-P1 to P8 were marked. The Driver of the offending vehicle was examined as R.W.1 and no documents were marked on their side.

(e) The Tribunal, on consideration of oral and documentary evidence, found that the Driver of the offending vehicle alone had contributed to the accident and as such, the appellant/Transport Corporation is liable to pay compensation to the respondent/claimant. Insofar as the quantum of compensation is concerned, the Tribunal found that the respondent/claimant was admitted as an in-patient in Apollo Hospitals from 15.12.2008 to 24.12.2008 and underwent a surgery and his leg below knee was amputated and skin grafting was also done. The Tribunal has also taken into consideration, the fact that the respondent/claimant, at the time of accident, was a Lead Consultant in SIFY TECHNOLOGIES and was earning salary to the tune of Rs. 95,659.93 and in connection with the job, he used to visit foreign countries and further, taking into consideration, the income tax returns marked as Ex-P6 series, thought it fit to award a sum of Rs. 28,86,200/- and taking note of the fact that the claimant himself has claimed compensation of Rs.25 lakhs, restricted it to Rs.25 lakhs with interest @ 7.5% per annum payable from the date of claim petition till the date of full and final settlement.

3. The Transport Corporation, aggrieved over the quantum of compensation, has filed this appeal.

4. Learned counsel for the appellant has drawn the attention of this Court to the impugned judgment as well as the original records and would submit that the claimant was aged about 57 years and the prospects of earning more income and travelling abroad are very remote and in any event, the percentage of disability assessed by P.W.2 is very much on the higher side and the Tribunal has failed to take into consideration, the relevant aspects and awarded compensation, as claimed by the claimant and therefore, prays for reduction in compensation.

5. The appeal was admitted on 31.07.2012 and despite the lapse of nearly 4 years, service is yet to be completed.

6. This Court has carefully considered the submissions made by the learned counsel or the appellant and also perused the impugned judgment as well as the original records.

7. The question that arises for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is on the higher side and whether it warrants reduction?

8. A perusal of Ex-P4, appointment order, would disclose, among other things, that the petitioner was offered appointment as Lead Consultant, Information Assurance in Level 3A and he was to be paid a sum of Rs.6,76,000/- per annum. Ex-P4 would also disclose that he was deputed to USA as Information System Auditor in Level 3A with salary of US$52,600/- per annum payable on bi-monthly

basis. It is also the specific case of the claimant that in connection with his job, he used to travel abroad very many times and on account of disability suffered by him, in the form of amputation of leg below knee, he is unable to travel abroad and he is not in a position to carry on his normal day-to day affairs also. The claimant, in support of his income, has already marked Ex-P5 series, income tax returns, for the financial years between 2005 and 2008, declaring a total income of Rs. 21,66,159/- and the Tribunal, on taking into consideration, the said total income, has found that the claimant would have earned a sum of Rs.7,22,053/- and on perusal of the evidence of P.W.2 coupled with Discharge Summary, marked as Exs-P2 and P3 has recorded a finding that the claimant has suffered disability at 50% and the photograph of the claimant is also available under Ex-P8, which would disclose that his left leg below knee has been amputated and he is using a crutch for the purpose of walking and it is to be seen, at this juncture, that the claimant, at the time of accident was aged about 57 years and he has to lead rest of his life with that disability and on account of amputation of his left leg below knee, his future prospects and his travel abroad to earn more income has also got diminished. The tribunal , having arrived at annual loss of income of Rs.7,22,053/- and taking the percentage of disability at 50%, applied multiplier of 8 and arrived at Rs.28,88,212/- as compensation. Insofar as medical expenses are concerned, it is the evidence of P.W.1 that the entire medical expenses was borne out by the Employer and therefore, no amount was awarded by the Tribunal towards the same. The Tribunal did not award any amount towards "Pain and suffering" underwent by the petitioner during the period of his hospitalization. Thus, the Tribunal found that claimant was entitled to Rs. 28,88,212/- and having found that he has claimed a compensation of Rs.25 lakhs, awarded the same.

9. In the considered opinion of this Court, the Tribunal has appreciated the oral and documentary evidence in proper perspective and rightly reached the conclusion that the respondent/claimant is entitled to compensation of Rs.25 lakhs with interest @ 7.5 per annum from the date of claim petition till the date of realization and this Court, on an independent application of mind, finds that there is no error apparent or infirmity in the reasons assgined by the Tribunal for awarding the aforesaid compensation and therefore, we find no merit in this appeal.

10. This Court, while entertaining the appeal, has granted an interim order on 31.07.2012 directing the appellant Transport Corporation to deposit the entire compensation amount along with accrued interest and the learned counsel for the appellant, on instructions, would submit, that the conditional order passed by this Court has been complied with. The respondent/claimant is entitled to withdraw the entire compensation along with accrued interest by filing appropriate application before the Tribunal.

11. In the result, the Civil Miscellaneous Appeal is dismissed confirming the award dated 27.07.2011 made in M.C.O.P. No.901 of 2009. There will be no

order as to costs.

