
(2013) 06 MAD CK 0223
In the Madras High Court
Case No : C.M.A. No. 972 of 2007

Manthiral

APPELLANT

Vs

S. Marimuthu and The Tamil Nadu State Transport
Corporation (Coimbatore Division-I) Ltd.

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 8 MLJ 264

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

Bench : Single Bench

Advocate : P. Srinivas, for the Appellant; A. Balu for R2, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellant/complainant had filed M.C.O.P. No. 60 of 1999, on the file of Motor Accident Claims Tribunal, Subordinate Court, Udumalpet, against the respondent herein namely, Tamil Nadu State Transport Corporation and claimed compensation of a sum of Rs. 3,00,000/- with interest. It was submitted that on 08.07.1997, when the claimant was boarding the bus bearing Registration No. TN-37-N-0222 and while she was about to sit in the bus, the driver of the bus had suddenly started the bus in a rash and negligent manner. As a result, the claimant was thrown out from the bus and the rear wheel of the bus ran over her left leg. She sustained grievous injuries and took treatment in hospital. Hence, the claimant has filed the claim against the Transport Corporation. The Transport Corporation had filed counter statement and resisted the claim petition. The respondent stated that the claimant on seeing that her husband had not boarded the bus along with her, jumped out from the bus and as such she invited the accident. Further, the respondent denied the averments in the claim regarding age, income and occupation of the claimant.

2. On considering the averments of both parties, the Tribunal had framed two issues for consideration in the case namely:

(1) Whether the driver of the bus had committed the accident due to his rash and negligent driving? and

(2) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

3. On the side of the claimant, four documents were marked namely: Ex. P1-F.I.R.; Ex. P2-Motor Vehicle Inspector's Report; Ex. P3-Charge sheet and Ex. P4-Wound certificate. On the side of the respondent, one witness was examined as RW1 and no document was marked.

4. PW1, had adduced evidence that on 08.07.1997, at about 05.00 p.m., she boarded the bus bearing Registration No. TN-37-N-0222 and she was about to take her seat, the driver of the bus had suddenly started the bus in a rash and negligent manner, as a result of which, she was thrown out from the bus and the back wheel of the bus ran over her left leg. Immediately, she was taken to the Government Hospital, Udumalpet, wherein preliminary treatment had been given and thereafter she had been referred to Government Medical College Hospital, wherein she had undergone treatment, as an inpatient, for a long period. She further stated that her left leg had been amputated and that she was doing milk business at the time of accident and earning Rs. 2,000/- per month.

5. RW1, had adduced evidence that the claimant had attempted to alight from the bus while the bus was moving and as such she invited the said accident. After considering the evidence of both the parties, the Tribunal had come to a conclusion that the driver of the bus had committed the said accident. Hence, the Tribunal had awarded a sum of Rs. 20,000/- as compensation. Further, the Tribunal had observed that the Doctor had not examined the order to prove that the claimant's left leg had been amputated.

6. Not being satisfied with the said compensation amount, the claimant has filed the above appeal. The highly competent counsel, contended that the claimant's left leg had been amputated upto thigh level while she was undergoing treatment at Government Hospital, Coimbatore from 08.07.1997. On 21.07.1997, a cameraman came to the hospital and took photographs of the claimant, while she was in a reclining position. Further, her husband got permission from the hospital authorities to take photographs of his wife by a cameraman inside the hospital. The Doctor had also permitted the cameraman to take photos. In the said representation, the claimant's patient serial number has been mentioned as I.P. No. 26639. The learned counsel produced the photo with that application before this Court. The highly competent counsel further contended that the claimant had become disabled and was unable to arrange Doctor to give evidence to establish her case amputation of her left leg. The learned counsel also produced colour photographs of the claimant before this Court and also produced the claimant to prove her disability due to amputation of her left leg. The learned counsel further contended that at the time of accident, she was aged about 50 years and doing milk business. After the accident she has been

incapacitated from doing her avocation. The very competent counsel further contended that the Tribunal had not granted compensation under the relevant heads namely, transport, attender charges, nutrition and loss of earning, medical expenses and loss of comfort. The very competent counsel submitted that the claimant has become a physically disabled person and can walk only with the aid of a crutch. She is aged about 64 years and unable to move from one place to another place even with the aid of the crutch.

7. The highly competent counsel for the Transport Corporation argued that the claimant had not produced adequate documents namely, disability certificate, X-ray, Wound Certificate, Medical discharge summary. Further, the claimant had failed to establish her case through Doctors' evidence. Therefore, the case has not been proved beyond reasonable doubt. Hence, the Tribunal had granted a lumpsum compensation of a sum of Rs. 20,000/- which is an adequate one in the instant case. The very competent counsel further contended that the claimant herself jumped from the bus after boarding it since she noticed that her husband had not boarded the bus along with her. Therefore, the entire negligence lies only on the side of the claimant. The learned counsel further submitted that in order to prove the amputation and disability, the concerned Doctor has to give evidence regarding the operation which had been alleged to have been conducted on the petitioner's left leg. Further, the claimant had not produced the rough sketch, in order to determine the place of accident and tyre mark of the bus.

8. Per contra, the highly competent counsel for the claimant contended that it is the duty of the driver and conductor to start the bus only after ensuring that all the passengers are seated in the bus. In the instant case, the bus had been started by the driver even while the petitioner was boarding the bus and therefore the entire negligence is on the side of the driver of the bus. The F.I.R. also had been registered against the driver and a prima facie case on the side of the claimant, who is not only a milk vendor but was also employed as a coolie in agricultural operations. In this case, the claimant had sustained 100% disability since her left leg had been amputated upto thigh level. Therefore, multiplier method should have been adopted for awarding compensation. Now, the claimant has to always depend upon others to move her from one place to another place. Further, the learned counsel contended that the claimant is entitled to get compensation under the head of loss of amenities, loss of comfort due to disfigurement which are permanent in nature.

9. The learned counsel further contended that the claimant's left leg had been completely crushed in the said accident and immediately the driver of the bus had taken the claimant to the Udumalpet Government Hospital. Therefore, there is a prima facie case on the side of the claimant. However, the quantum of compensation granted by the Tribunal is meagre.

10. This Court, after noticing the physical condition of the claimant and verifying the colour photos, application for getting permission from the Hospital authorities

to take photographs of the claimant inside the hospital, wherein she had undergone treatment as an inpatient is of the view that the claimant's left leg had been amputated upto thigh level due to the injuries sustained by her in the said accident. This Court had also enquired the claimant regarding accident and mode of treatment, period of treatment, nature of injuries and her reply to these queries were highly satisfactory and genuine.

11. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal and on scrutiny of photographs of the claimant and also on observation of the response of the claimant to the queries raised by this Court, holds that the claimant is entitled to get adequate compensation. The claimant has also sought additional compensation of a sum of Rs. 2,80,000/- and the same is granted by this Court since the claimant's left leg had been amputated resulting in the total disability. The breakup of the additional compensation granted by this Court is listed below:- Rs. 1,00,000/- under the head of disability; Rs. 25,000/- under the head of pain and suffering; Rs. 10,000/- towards transport; Rs. 10,000/- towards attender charges; Rs. 10,000/- towards nutrition; Rs. 25,000/- towards loss of earning during medical treatment period and Rs. 1,00,000/- under the head of loss of amenities, loss of comfort due to disfigurement, which is permanent in nature. Accordingly, the compensation has been assessed at Rs. 2,80,000/-. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation. This Court directs the respondent/Transport Corporation to deposit the said compensation amount within a period of eight weeks from the date of receipt of this order. This Court also directs the Transport Corporation to send communication to the claimant after depositing the said compensation amount before the Trial Court to enable her to approach her counsel for receiving the compensation amount from the Court.

12. After such a deposit has been made, it is open to the claimant to withdraw the entire additional compensation amount, with accrued interest thereon lying into the credit of M.C.O.P. No. 60 of 1999, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Udumalpet, after filing a memo, along with a copy of this order. In the result, the above appeal is allowed. Consequently, the award and decree passed in M.C.O.P. No. 60 of 1999, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Udumalpet, dated 03.03.2004, is modified. As it has been proved that the claimant had sustained disability due to amputation of her left leg till thigh and also observing that the accident took place in the year 1997, no further appeal should be entertained in the instant case.