

(2001) 11 MAD CK 0008
In the Madras High Court

Metropolitan Transport Corporation (Chennai Div.-I) Ltd.

APPELLANT

Vs

K. Shankar

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Citation : (2002) 1 ACC 488

Hon'ble Judges : K. Narayana Kurup, J;A. Kulasekaran, J

Bench : Division Bench

Judgement

K. Narayana Kurup, J.—In a road traffic accident which took place on 14.2.1989, 18 years old youth who was working as helper in a

Lathe suffered serious injuries resulting in amputation of right leg above knee causing 80% permanent disability as certified by P.W. 4 doctor,

giving rise to claim petition in M.A.C.O.P. No. 624/1989 before the Motor Accident Claims Tribunal (Chief Judge), Court of Small Causes at

Chennai. The Tribunal on appreciation of evidence passed an award only for a sum of Rs. 25,000/- under "No-Fault Liability", on the ground that

the accident took place solely on account of negligence on the part of the injured. However, on appeal by the claimant, this Court passed an award

for a sum of Rs. 4,50,000/- with interest thereon at 12% p.a. from the date of petition till realisation. Hence this appeal by the owner of the bus.

2. Having heard learned Counsel appearing on both sides, we are not persuaded to interfere with the order of the learned Single Judge in this

appeal. It has come out in evidence that the injured was working as a helper in a Lathe earning Rs. 500/- per month as on the date of accident.

Considering his age, the multiplier of "18" can be adopted. Thus on the above figures, the compensation for permanent disability can be worked

out as under: Rs. 500 x 12 x 18 x 80/100 : Rs. 86,400/-. In the absence of appeal by the injured, we limit the compensation under the above head

to a sum of Rs. 80,000/-. Further, it has come out in evidence that the claimant underwent hospitalization for a period of two months. Considering

the crush injury suffered by him, he might have certainly suffered severe pain during the hospitalisation and accordingly we confirm the amount of

Rs. 50,000/- towards compensation for pain and suffered. For loss of future amenities, we award a sum of Rs. 1,00,000/- and towards loss of

earning during the period of hospitalisation for two months we award a sum of Rs. 1,000/- in lieu of Rs. 2,000/- awarded by this Court. For loss

of marriage prospects, the sum of Rs. 50,000/- awarded by the learned Single Judge is confirmed. Since the claimant has suffered amputation of

right leg, he will certainly require the assistance of some other person for which adequate provision has to be made and accordingly we award a

sum of Rs. 1,00,000/- under that head. However, we delete a sum of Rs. 1,00,000/- being the compensation awarded under the head of mental

agony. For medical expenses, a sum of Rs. 7,000/- is awarded by the learned Single Judge and we confirm the same; the sum of Rs. 50,000/-

awarded by the learned Single Judge for mental anguish suffered by parents is not liable to be granted and the same is rejected. For transportation

and extra nourishment, a sum of Rs. 11,000/- awarded by the learned Single Judge is confirmed. In addition to the above said amounts, a sum of

Rs. 50,000/- is awarded towards expenses for artificial limb. Thus, in total the injured will be entitled to a total sum of Rs. 4,49,000/- which will

carry interest thereon at 12% p.a. from the date of petition till realisation.

3. However, learned Counsel for the appellant has a case that since the accident took place as a result of negligence on the part of the claimant, he

is not entitled to get any amount of compensation except the compensation under no-fault liability. Having bestowed our anxious consideration to

the aforesaid contention we find no merit in the same. Going by the evidence of P.W. 1 claimant and P.W. 3 another independent witness, we are

of the opinion that the accident took place solely on account of negligence on the part of the driver of the offending bus\ P.W. 1 would

categorically state that he was walking on the western side of the road which is in the north south direction and the offending bus was proceeding

from south to north. If that is so, learned Single Judge correctly attributed negligence on the part of the driver of the bus since the accident took place on the western extremity of the road. The evidence of P.W. 1 is corroborated by independent eyewitness evidence of P.W. 3. Having perused the evidence of P.W. 1 and P.W. 3 we are inclined to place reliance on the same as they inspire confidence in us. Of course, R.W. 1 driver of the bus would state that the accident in question took place when the injured attempted to board the bus which was in motion. This version of R.W. 1 is supported by R.W. 3 who is an eye-witness to the accident. Oral testimony of R.W. 1 and R.W. 3 is corroborated by F.I.R. lodged by the driver of the bus. In this connection we may observe that even assuming that the accident took place in the manner suggested by the driver of the bus, that will not have the effect of exonerating the driver and owner from the liability to pay compensation since it is well settled that a person attempting to alight from a moving bus as also a person trying to board a moving bus will nevertheless be a passenger for the purpose of awarding compensation in a road traffic accident. Adverting to this aspect learned Single Judge of this Court has observed relying on a Division Bench decision of this Court reported in Jaganathan M. v. Pallavan Transport Corporation Ltd. 1997 (1) LW 226, that it is the fundamental duty of both the driver as well as the conductor to verify specifically whether any passenger is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped, irrespective of the fact whether the place of stopping is a bus stop or not. It is further observed that the driver of the bus which carries passengers owes a duty for the safety of passengers and that while driving he must avoid acts of commissions which can reasonably be foreseen to injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. The aforesaid decision of this Court in appeal has been confirmed by the Supreme Court in 2001 (1) CTC 49 wherein the Apex Court rejected the contention of the owner of the bus, finding negligence on the part of the driver. Therefore, in the light of the aforesaid decision we repel the contention raised by the learned Counsel for the appellant.

4. In the result, we pass an award for a sum of Rs. 4,49,000/- with interest thereon at 12% p.a. from the date of petition till realisation. L.P.A. is

ordered accordingly. No costs.