

(2010) 04 MAD CK 0115
In the Madras High Court
Case No : C.M.A. No. 974 of 2006

Metropolitan Transport Corporation Limited

APPELLANT

Vs

T. Vittalrao

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142

Citation : (2010) 04 MAD CK 0115

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

Bench : Single Bench

Advocate : A. Babu, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/respondent, The Managing Director, Metropolitan

Transport Corporation Limited Division - I, Chennai-600 002, against the Award and Decree, dated 27.01.2004, made in M.C.O.P. No. 5228

of 2001, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, awarding a compensation amount of Rs.

3,54,500/- with 9% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree passed by the Motor Accident Claims Tribunal, the appellant/respondent, The Managing Director,

Metropolitan Transport Corporation Limited Division - I, Chennai-600 002 has filed the above appeal praying to scale down the award passed by

the Tribunal.

3. The short facts of the case are as follows:

On 09.08.2001, at about 08.15 hours the petitioner was carefully travelling as a passenger in a M.T.C.Bus bearing registration No. TN01 N3264,

Route No. 59, while the petitioner was carefully trying to get down from the MTC bus through front entrance at Arumbakkam bus stop, before he

could get down the conductor suddenly blew whistle and the driver drove away the bus in a very rash and negligent manner at terrific speed

endangering the public safety and caused the grievous accident. Resultantly, the petitioner had lost his grip and fell down and the left rear wheel ran

over his left foot and caused the grievous injuries. Regarding the said accident a criminal case has been registered by the Traffic Investigation

Police, K4, Anna Nagar Police Station, in Crime No. 380/AS3/2001. Further, the petitioner submitted that the accident had happened only due to

the rash and negligent act of the driver of the M.T.C. Bus. Therefore, the respondent being the owner of the Corporation is vicariously liable to pay

compensation of Rs. 6,00,000/- to the petitioner with interest and costs.

4. The respondent filed a counter statement and denied all the averments made in the claim petition. Further, the respondent submitted that on

09.08.2001 their bus bearing registration No. TN01 N3264, Route No. 59 was on its trip from Vallalar Nagar to Thiruverkadu, very slowly and

cautiously and at about 08.15 (a.m.) hours, reached EVR Salai near Arumbakkam bus stop. At that time the petitioner suddenly got down from

the slow moving bus, lost his grip and fell down on the road, the petitioner sustained simple injuries. The accident was only due to the negligence

and carelessness of the petitioner. So, the claim petition against the respondent is liable to be dismissed. Without prejudice to the contention, the

respondent submitted that the petitioner is entitled to interest at the rate of 9% as per the decision of the Supreme Court in Civil Appeal No. 6 of

2001 arising out of SLP Civil No. 1431/2000 which was decided on 03.01.2001. Further, the respondent submitted that the driver of the bus was

not responsible for the accident and consequently this respondent is not liable to pay any compensation much less than the compensation claimed in

the petition. The driver of the bus was cautious in driving the bus with lawful speed and with due observance of traffic rules at the time of accident.

Without prejudice to the above, the respondent submitted that in any event the above accident occurred due to contributory negligence of the

petitioner. Further, the respondent submitted that the petitioner cannot claim any amount u/s 140 of the Motor Vehicles Act unless it is proved that

this accident happened only due to the negligence of the driver of this respondent and the injuries alleged to have sustained by the petitioner comes

within the purview of Section 142 of the Motor Vehicles Act, 1988, the death was caused due to the accident injuries that the claimants are legal

heirs/dependants of the deceased. Without prejudice to the contentions raised supra the quantum of compensation claimed in the petition is highly

excessive arbitrary and exorbitant. Hence, the respondent prayed to dismiss the petition with costs.

5. The Motor Accident Claims Tribunal had framed two issues for consideration namely;

(i) Who is responsible for the accident?

(ii) Whether the petitioner is entitled to get compensation? If so, what is the quantum of compensation?

6. On the side of the petitioner three witnesses were examined as PW1 to PW3 and six documents were marked as Ex.P1 to Ex.P6. On the side

of the respondent two witnesses were examined as RW1 and RW2 and one document was marked as Ex.R1.

7. The petitioner was examined as PW1. PW1 had adduced evidence stating that after the said accident he is unable to stand, walk and squat.

Further adduced evidence stating that on 09.08.2001 at about 08.15 hours, at Arumbakkam bus stop, the accident had happened. The claimant

further adduced evidence stating that while he was alighting from the respondent's Corporation bus, the conductor of the bus flew the whistle.

Immediately, the driver drove the bus fast. As such, the claimant lost his balance and fell on the floor. In the result, he sustained grievous injuries.

Immediately, he was taken to KMC Hospital and he was admitted as inpatient from 08.08.2001 to 31.10.2001. The petitioner further adduced

evidence stating that he had undergone two surgical operation on his left leg. Further, there was a shortening on his left leg from knee ankle, for

which he marked Ex.P1. PW1 further adduced evidence stating that he spend a sum of Rs. 50,000/- for medical expenses alone. At the time of

the said accident he was employed at a Star Hotel and was earning a sum of Rs. 4,000/- per month. After the said accident, he is unable to restore

to his normal life. The claimant further marked Ex.P3, the bus ticket; Ex.P4, photo and Ex.P5, FIR.

8. The driver of the bus was examined as RW1. RW1 in his evidence stating that he is working as a driver in the respondent's Corporation. On

09.08.2001, he took the bus from the depot at 07.40 a.m. and while proceeding to Thiruverkadu, he stopped the bus at Arumbakkam bus stop

for alighting the passengers. After the conductor whistled, he had moved the bus. At that time, he heard a noise from the rear side of the bus.

Immediately, he stopped the bus and noticed that the claimant sustained injuries. Further, the driver on his evidence stated that the accident had not

happened due to his negligence. Further, the accident was registered by the K4 Anna Nagar Traffic Investigation Wing, in Crime No.

380/AS3/2001 against the driver of the bus. The said case is pending before the Criminal Court. After considering the evidence of the PW1 and

RW1, the Tribunal had come to the conclusion that the accident had happened due to the negligence of the driver.

9. PW1 in his evidence stating that he was earning a sum of Rs. 150/- per day. As such, he was earning a sum of Rs. 4,500/-. After removing his

left leg from knee joint, he is unable to restore to his normal work. Further he adduced evidence that for more than two months he was in hospital

as inpatient.

10. After considering the witnesses of both sides and documentary evidences, the Tribunal awarded a compensation as follows:

1. Rs. 40,000/- under the head of loss of income during the treatment period,
2. Rs. 3,000/- under the head of transport expenses,
3. Rs. 3,000/- under the head of nutrition,
4. Rs. 500/- under the head of damages to cloths,
5. Rs. 8,000/- under the head of medical expenses,
6. Rs. 20,000/- under the head of attendant charges,
7. Rs. 20,000/- under the head of mental shock,
8. Rs. 70,000/- under the head of future loss of income,
9. Rs. 30,000/- under the head of pain and suffering,
10. Rs. 1,00,000/- under the head of permanent disability,

11. Rs. 60,000/- under the head of loss of earning power.

In total, the Tribunal awarded a sum of Rs. 3,54,500/- as compensation together with interest at the rate of 9% per annum from the date of filing

the claim petition till the date of payment of compensation. Further, the Tribunal directed the respondent to deposit the entire compensation with

accrued interest and cost within a period of two months from the date of its Order. In turn, the amount to be deposited in State Bank of India,

Avadi Branch, for a period of three years in a fixed deposit scheme. The Advocate fees was fixed at Rs. 10,090/-.

11. Aggrieved by the said Award and Decree passed by the Motor Accident Claims Tribunal, the appellant/respondent, The Managing Director,

Metropolitan Transport Corporation Limited Division - I, Chennai-600 002 has filed the above appeal praying to scale down the award passed by

the Tribunal.

12. Learned Counsel appearing for the appellant argued that the Tribunal awarded a sum of Rs. 1,00,000/- under the head of disability without

any documentary evidence. Further, the Tribunal awarded a sum of Rs. 20,000/- under the head of attender charges, which is not pertinent in this

case. Rs. 8,000/- awarded under the head of medical expenses without any documentary evidence. Further, the learned Counsel argued that a

sum of Rs. 20,000/- under the head of mental agony is not pertinent in this case. Rs. 30,000/- under the head of pain and suffering is on higher side

.The Tribunal awarded a sum of Rs. 40,000/- under the head of loss of income, Rs. 70,000/- under the head of loss of future earning and Rs.

60,000/- under the head of loss of earning power are controversial to each other. Further, the Disability Certificate issued by the PW2 is an

erroneous one, since, the disability mentioned as 85% disability. The Doctor has not properly assessed the disability. Further, the learned Counsel

argued that the quantum of compensation awarded by the Tribunal is on the higher side, since the claimant was aged about 55 years at the time of

accident. Hence, the learned Counsel has prayed before this Court to scale down the compensation amount granted by the Tribunal.

13. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal and the arguments advanced by the learned

Counsel appearing for the appellant, this Court is of the view that the claimant's

leg was shortened upto the knee. Further, on view that after the said accident he is unable to restore his normal life as a master in a Star Hotel. Considering the nature of injuries and also surgical operation conducted on the left leg, the award of Rs. 3,54,500/- together with interest at the rate of 9% per annum, from the date of filing the claim petition till the date of payment of compensation, granted by the Tribunal, is fair and equitable. This Court does not find any error in the award and decree passed by the Tribunal, which is found to be fair and equitable.

14. On 20.09.2006, this Court directed the appellant to deposit the entire compensation amount with accrued interest, into the credit of the M.C.O.P. No. 5228 of 2001, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, within a period of eight weeks from the date of its Order. Further, on 07.09.2006 this Court permitted the claimant to withdraw 50% of the compensation amount with accrued interest and costs, lying in the credit of the M.C.O.P. No. 5228 of 2001, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai.

15. As the accident had happened in the year 2001, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon, lying in the credit of the M.C.O.P. No. 5228 of 2001, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, by making proper payment out application in accordance with law, subject to the deduction of earlier withdrawal if any made.

16. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 27.01.2004, made in M.C.O.P. No. 5228 of 2001, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. II, Chennai, is confirmed. There shall be no order as to the costs.