
(2011) 04 MAD CK 0490

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 992 of 2011 and M.P. No. 1 of 2011

Metropolitan Transport Corporation Ltd.

APPELLANT

Vs

E. Annammal

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0490

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

Bench : Single Bench

Advocate : S.S. Swaminathan, for the Appellant; U.M. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / Transport Corporation against the award and decree dated 19.02.2010 passed in M.C.O.P. No. 1821 of 2006, on the file of Motor Accidents Claims Tribunal, I Ind Judge, Small Causes Court, Chennai.

2. The brief facts of the case are as follows:

On 10.02.2006, at around 7.55 hours, the Petitioner had attempted to board the bus bearing Registration No. TN01-N-1591 along with other passengers at the Kazipattur bus stop on the Old Mahapalipuram Road, when at that time, the driver started the vehicle all of a sudden without the signal from the conductor, as a result, the claimant had sustained grievous injuries. Hence, the claimant had filed a claim petition against the Respondent for compensation a sum of Rs. 10,00,000/-with interest.

3. The Respondent Transport Corporation had filed a counter statement and resisted the claim petition. The Respondent denied that the bus was driven by its driver in a rash and reckless manner, actually, the driver started the bus after getting a whistle from the conductor, at that moment, the claimant all of a sudden stepped down from the bus which was in motion and tripped over the

front steps and fell down on the road, as such the accident occurred. Immediately, he was taken to the Malar Hospital and admitted thereon. The age, income and occupation of the claimant are denied. In the said accident, contributory negligence is attributed.

4. On the pleas of both parties, the Tribunal had framed four issues for consideration, namely;

(i) Whether the accident had happened due to the rash and negligent driving of the driver of the M.T.C. Bus bearing Registration No. TN01-N-1591?

(ii) Whether the Respondent is liable to pay the compensation?

(iii) Whether the Petitioner is entitled for the compensation?

(iv) To what relief?

5. On the side of the claimant two witnesses had been examined and Exs.P1 to P16 were marked.

On the side of the Respondent no witness was examined and no document was marked.

6. PW1 had adduced evidence stating that on 10.02.2006 at about 7.55 hours, she had attempted to board the bus bearing Registration No. TN01-N1591 at the Kazhipattur Bus stop on the Old Mahapalipuram Road, at that time, the driver had started the bus without getting a whistle from the conductor, as such she lost her balance and fell down on the road. PW2-Investigating officer stated that a FIR and charge sheet were filed against the driver of the bus. PW1 further stated that both bones of her left leg had fractured besides she had sustained injuries on her right foot toes, the fourth and fifth, both hands and multiple injuries sustained all over the body. She had undergone treatment at Malar Hospital as inpatient for a period of about 25 days. During the medical treatment period, she had undergone surgical operation again under two occasions, she was admitted in the same hospital as an inpatient for a period of about 10 days. She had spent a sum of Rs. 2,06,116/-towards medical expenses. The doctor had assessed the disability as 65%. He also spoke on the same line about the nature of the claimant's injuries.

7. On considering the evidence of the witnesses, the Tribunal had granted a sum of Rs. 4,10,000/-with interest at the rate of 7.5% per annum.

8. Aggrieved by the said award, the Appellant has filed the above appeal to scale down the compensation.

9. Learned Counsel for the Appellant argued that the Tribunal had awarded Rs. 60,000/-, Rs. 20,000/-and Rs. 10,000/-granted towards loss of earning, transport and mental agony to the Petitioner and her family members, which are not pertinent in this case. Actually, the accident had been invited by the claimant in a negligent manner.

10. Learned Counsel for the claimant argued that the claimant had sustained bone fracture injuries and she had undergone medical treatment more than one month as inpatient. Thereafter, she underwent treatment as outpatient for a lengthy period. She had spent more than Rs. 2,00,000/-towards medical expenses. During the medical treatment, she had undergone a surgical operation on her left leg and a steel rod with screws were fixed in the operated area. As such, the claimant is entitled to receive compensation under the head of future medical expenses.

11. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the Tribunal had awarded Rs. 60,000/-and Rs. 10,000/-towards loss of earning and mental agony to the Petitioner and to her family members which are not pertinent, hence the heads are set-aside and modified the compensation as hereunder:

Rs.1,30,000/-towards permanent disability;

Rs.2,05,000/-for medical expenses;

Rs.15,000/-towards pain and suffering;

Rs.5,000/-for attender charges;

Rs.5,000/-for nutrition;

Rs.5,000/-for transport;

Rs.15,000/-under the head of loss of income during medical treatment period and for convalescent period;

In total, this Court awards a sum or Rs. 3,80,000/-, which is fair and justifiable in the instant case. Therefore, this Court scales down the compensation from Rs. 4,10,000/-to Rs. 3,80,000/-and this amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

12. Therefore, this Court directs the Appellant / Transport Corporation to deposit the modified compensation amount as observed above, with accrued interest and costs to the credit of M.C.O.P. No. 1821 of 2006, on the file of Motor Accidents Claims Tribunal, I Ind Judge, Small Causes Court, Chennai within a period of six weeks from the date of receipt of this order, subject to deductions, if any already deposited. After such deposit being made, it is open to the claimant to withdraw the modified compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 1821 of 2006, on the file of Motor Accidents Claims Tribunal, I Ind Judge, Small Causes Court, Chennai, after filing a Memo along with this order.

13. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree passed by the Motor Accidents Claims

Tribunal on the file of I Ind Judge, Small Causes Court, Chennai made in M.C.O.P. No. 1821 of 2006, dated 19.02.2010 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.