
(2012) 03 MAD CK 0029

In the Madras High Court

Case No : C.M.A. No. 157 of 2006 and C.M.P. No. 495 of 2006

Metropolitan Transport Corporation Ltd.

APPELLANT

Vs

N. Thirumal

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Citation : (2012) 4 MLJ 365

Hon'ble Judges : S. Vimala, J;R. Banumathi, J

Bench : Division Bench

Advocate : M. Krishnamoorthy, for the Appellant; A.N. Viswanatha Rao, for the Respondent

Final Decision : Dismissed

Judgement

Ms. S. Vimala, J.—The injured/petitioner-Thirumal, aged 19 years, +2 student met with an accident on 17.6.1998. He filed the petition for

compensation claiming a sum of Rs. . 12,00,000/-. The Tribunal awarded only a sum of Rs. . 10,16,000/- as against the claim of Rs. . 12,00,000/-

. The Transport Corporation has filed this appeal challenging the quantum of compensation as well as the finding on negligence. The brief facts:

On 17.6.1998, the petitioner/claimant was travelling as a passenger in the bus bearing Regn. No. TN-01-N-2294. The driver drove the bus in a

rash and negligent manner that the claimant, who was inside the bus at the entrance was thrown outside and the left wheel of the bus run over the

petitioner/claimant. The way in which the accident had taken place will speak about the negligence on the part of the bus driver.

2. The Transport Corporation disputed the negligence on the part of the driver of the Corporation. The case of the Transport Corporation is that

the accident arose only on account of negligence of the injured, who did not pay heed to the advice of the crew of the bus and thus invited the

accident. The age, income, nature of injury, period of treatment, alleged disability and the claim made were disputed.

3. Before the Tribunal, claimant-Tribunal has been examined as P.W.1 and the Doctor who issued disability certificate has been examined as

P.W.2 and Exhibits P-1 to P-8 have been marked. On the side of the respondent R. W. 1 -Kesavan, the Manager of the Corporation has been

examined. Detailed accident report has been filed as Exhibit R1 and First Information Report has been filed as Exhibit R-2.

4. On perusal of oral and documentary evidence, the Tribunal has given a finding that the accident took place solely on account of rash and

negligent driving of the driver of the bus (Regn. No. :TN-01-N-2294). The Tribunal has awarded compensation as per the following break-up

details:

Sl. No.	Heads	Claim made by the Claimant Rs. .	Amount awarded by the Tribunal Rs. .
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1	Transport expenses	25,000	20,000
2	Extra nourishment	25,000	20,000
3	Medical expenses	20,000	81,000
4	Attendant charges	50,000	40,000
5	Mental Agony	1,00,000	75,000
6	Mental agony to Parents	50,000	30,000
7	Pain and suffering	1,00,000	75,000
8	Permanent disability	2,00,000	1,75,000
9	Loss of earning power	6,30,000	5,00,000
	Total	12,00,000	10,16,000

5. The contention of the learned counsel for the appellant is that the claimant himself was negligent and therefore, the Transport Corporation is not

liable to pay any compensation. The specific case of the Corporation is that the injured was travelling in the foot-board and thus invited the

accident. It is pointed out by the learned counsel for the claimant that neither the driver nor the conductor has been examined before the Tribunal to

speaking about the alleged negligence on part of the claimant. The best person to speak about the manner of accident is the driver or the conductor of the bus. But, none of them has been examined, instead the Corporation has chosen to examine the Manager as the witness. The Tribunal has chosen to accept the evidence of the claimant himself and has given a finding that the accident took place due to the rash and negligent driving of the appellant's driver. When the best evidence is not made available to the Tribunal, the inference is that the evidence if adduced would be against the interests of the Corporation. Therefore, there is no reason to interfere with the finding of the Tribunal that the accident took place due to the rash and negligent driving of the appellant's driver.

6. The next question to be considered is with regard to quantum of compensation. The contention of the appellant-Corporation is that the quantum of compensation awarded by the Tribunal is excessive. In order to appreciate this contention, this Court has looked into the nature of disability and the consequences of disability. According to the claimant, he sustained left temporal parietal compound depressed fracture and that he was surgically treated at the Hospital whereby the bone fragments were removed and cranioplasty was done. This according to the claimant has resulted in his right side hemi paraplegia whereby his right side limbs are completely affected.

7. The learned counsel for the appellant submitted that according to the Doctor the disability is 75% and as the claimant is suffering from neuralgic ailments for the past 5 years, the claimant's study has been totally affected. The claimant is said to be under constant physiotherapy treatment and future medical expenses ought to be awarded to the claimant. Lack of sleep, sleep disorder, dependent on attendant, loss of marriage prospects, memory loss, blurred speech, lack of concentration, continued treatment, loss of expectation of life and loss of enjoyment of amenities are alleged to be the consequences of the head injury suffered by the claimant. The evidence of the claimant regarding the surgery and paralysis on right side has been corroborated by the evidence of the doctor. The Tribunal has considered the disability certificate-Exhibit P6, scan-Exhibit P7 and scan report-Exhibit P8. Now, the issue to be considered is whether the quantum of compensation allowed by the Tribunal is proper and fair.

8. The learned counsel for the respondent has relied upon the following decisions, in support of his contention that the award of compensation cannot be said to be excessive.

- 1) R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,
- 2) Nagappa Vs. Gurudayal Singh and Others,
- 3) Ram Kiran Goyal v. Sub-Divisional Engineer and Others (2012) 1 TAC 744 (SC)
- 4) Laxman v. Oriental Insurance Co. Ltd., (2011) 10 SCC 756
- 5) Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 : LNI 2011 SC 983
- 6) The New India Assurance Co. Ltd. Vs. K. Kartheeswaran and Another,

The dictum laid down in those cases wherever applicable has been taken into account while deciding the quantum of compensation.

9. The learned counsel for the appellant submitted that when the Tribunal has awarded compensation of Rs. . 75,000/- towards pain and suffering,

the Tribunal is not justified in awarding Rs. . 75,000/- towards mental agony and Rs. . 30,000/- towards mental agony to the parents. This

contention is perfectly justified, as when the claimant has been awarded a sum of Rs. . 75,000/- towards pain and suffering, towards mental agony

either to the claimant or the parents is unsustainable. Therefore, the award of Rs. . 75,000/- towards mental agony and Rs. . 30,000/- towards

mental agony to parents are set aside. The award of Rs. . 75,000/- towards pain and suffering to the claimant is maintained.

10. During hearing of the appeal, the learned counsel for the respondent submitted that the future of the claimant is lost and he has become a

liability to the parents in a dual way i.e., in one way the parents had to extend moral and physical support to him and in the other way the parents

had to extend financial support for the continued treatment to the claimant. This submission prompted us to require the claimant to be present

personally, in order to appreciate the present status of the claimant. The claimant appeared before us and it was evident that he is suffering from

paraplegia. Therefore, we deem it appropriate to maintain the award of damages under the head of transport expenses, extra nourishment, medical

expenses and attendant charges and to award further medical expenses (as claimed). Even though the injured has taken treatment in the

Government Hospital initially, later on physiotherapy treatment has been taken from the Private Hospital.

11. It is evident from Exhibit P-3-Mark sheet of the claimant that he was a student of +2 and his date of birth is 10.5.1981. The date of accident is

17.6.1998. At the time of accident, the age of the claimant was 17. Perusal Exhibit P-4-Transfer Certificate issued by the School Authorities

reveal that the claimant has discontinued his studies from 17.6.1999 i.e., one year after the accident. It is his evidence that he could not continue his

studies and therefore, he has suffered total prospective loss of earning. Considering the unusual deprivation, the claimant has suffered and the effect

on his future life, the award of the Tribunal at Rs. . 5,00,000/- for loss of earning capacity cannot be said to be excessive.

12. Tribunal awarded Rs. . 5,00,000/- for ""loss of earning power"" and Rs. . 1,75,000/- for ""permanent disability"". Learned counsel for Appellant

contended that when the Tribunal has awarded compensation for ""loss of earning power"", the Tribunal ought not to have ordered compensation of

Rs. . 1,75,000/- under the caption for ""permanent disability"". The injured claimant was also present in the Court on 30.3.2012. We have noticed

that the injured claimant was limping and had difficulty in walking. We have also noticed that the claimant was not in a position to move his right

hand. Because of the injuries and the resultant disability, the claimant is not in a position to carry on his normal avocation and therefore, suitable

compensation is to be awarded for ""loss of enjoyment of amenities.

13. Having regard to the nature of ailment i.e., lack of sleep, sleep disorder, dependent on attendant, memory loss, blurred speech, lack of

concentration, continued treatment, which appears to be perennial in nature a sum of Rs. . 1,75,000/- is awarded towards loss of enjoyment of

amenities. The award of Rs. . 1,75,000/-towards permanent disablement is transformed to the head of loss of enjoyment of amenities.

14. The learned counsel for the respondent produced medical bills to the extent of Rs. . 30,000/- and submitted that towards future medical

expenses, this claim should be sanctioned. The amount of Rs. . 30,000/- awarded under the head of mental agony to parents is transformed to the

head of subsequent medical expenses to the claimant.

15. Thus the quantum of compensation payable to the claimant is Rs. .

9,41,000/-.

16. In the result, the appeal is partly allowed. The amount of compensation is reduced from Rs. . 10,16,000/- to Rs. . 9,41,000/-. In C.M.P. No.

495 of 2006 the appellant has been directed to deposit a lump sum amount of Rs. . 10,00,000/- out of which, the claimant has been permitted to

withdraw a sum of Rs. . 5,00,000/-. The appellant shall pay the amount of compensation determined by this Court i.e., Rs. . 9,41,000/- with

proportionate interest at 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited at the time of filing of

the appeal as well as the amount deposited by virtue of the interim order passed in C.M.P. No. 495 of 2006, within a period eight weeks from the

date of receipt of copy of this Judgment. On such deposit being made, the claimant is entitled to withdraw the same, less the amount already

withdrawn. In these circumstances, there shall be no order as to costs. Consequently, connected Miscellaneous Petition stand closed.