
(2012) 04 MAD CK 0082
In the Madras High Court
Case No : C.M.A. No. 3417 of 2008

Mr. Ramakrishnan

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport
Corporation Ltd., Dharmapuri

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 04 MAD CK 0082

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Advocate : N. Subramani, for the Appellant; V. Ramesh, for the Respondent

Judgement

R. Karupiah

1. This civil miscellaneous appeal is preferred by appellant for enhancement of compensation against the judgment and decree, dated 12.07.2006, made in M.C.O.P. No. 725 of 2002, on the file of the Motor Vehicle Accident Claims Tribunal, Tiruvannamalai. The appellant/petitioner filed a Claim Petition, u/s 166 of the Motor Vehicles Act, seeking to pass an award of Rs. 1,00,000/- as compensation, for the injuries sustained by him, due to the motor vehicle accident.

2. The case of the appellant/petitioner is that, on 26.11.2001, at about 2.30 a.m., while the appellant/petitioner and one Ms. Gowri, viz., petitioner, in M.C.O.P. No. 157 of 2003, were travelling as passengers in the respondent's bus, bearing Regn. No. TN 29 N 1031, in Tiruvannamalai to Chengam Road, Periyakolapadi, nearby, Indira Nagar, the driver of the respondent bus, drove the bus in a rash and negligent manner and dashed against a stationary Tractor, bearing Regn. No. TN 29 A 8182, and Trailer, bearing Regn. No. TN 25 Z 5360 and in the said accident, the appellant/petitioner and the said Ms. Gowri, sustained grievous injuries and the accident had occurred, only due to the rash and negligent driving of the driver of the respondent/Corporation and at the time

of the accident, the appellant/petitioner was aged about 48 years old and was doing business and earning a sum of Rs. 3,000/- per month and due to injuries, he was unable to work and therefore, the Respondent is liable to pay compensation.

3. Inter alia, on the side of the respondent, has contended that the accident was not occurred as stated by the appellant/petitioner and on 26.11.2001, at about 2.00 a.m., when the driver of the respondent bus was driving the bus with due care and caution, following the traffic rules, another bus was coming on the opposite direction in a rash and negligent manner with bright lights without responding to the dip-dim signal made by the respondent bus driver and the driver of the respondent bus immediately applied brake and took diversion to the left to avoid collision with the said bus and hence the accident was not occurred as contended by appellant and further contended that the petitioner should claim compensation from the owner of the Tractor bearing Registration No. TN 29 A 8182 since the owner of the said Tractor is guilty of negligently parking the vehicle on the road without parking indicator and also contended that the petitioner should prove the age, occupation, injuries, medical expenses etc. and the amount of compensation claimed is excessive.

4. Before the Tribunal, joint trial was conducted along with M.C.O.P. No. 157 of 2003, filed by another injured person and on the side of the petitioners, this petitioner was examined as PW.1 and another injured petitioner as PW.2 and examined one Dr. Raveendran regarding disability sustained by the petitioner as PW.3 and marked Ex.P1, copy of FIR, Ex.P2-M.V.Report, Exs.P3 and P7-wound certificates of this petitioner, Ex.P4 and Ex.P8-wound certificate of another injured petitioner, Ex.P5-disability certificate of this petitioner, Ex.P6-X ray of this petitioner .On the side of the respondent-Corporation, the driver of the bus was examined as RW.1 and no document was marked.

5. The Tribunal has discussed in detail about the oral evidence of both sides and documentary evidence on the side of the petitioner and finally held that the accident was occurred only due to rash and negligent driving of the respondent bus driver and therefore the respondent is liable to pay compensation and further held that the appellant is entitled to compensation of Rs. 45,100/- on the following heads:-

Loss of earning capacity -

Rs. 35,100.00

Pain and suffering and mental agony -

Rs. 5,000.00

Loss of income during the period of treatment, medical expenses and expenses on attender -

Rs. 5,000.00

45,100.00

6. Challenging the abovesaid quantum of compensation, the petitioner in MCOP. No. 725/2002 alone has filed this appeal. The respondent-Corporation has not filed any appeal or cross-appeal against the abovesaid award.

7. On the side of the claimants, both injured petitioners in MCOP. No. 725/2002 and MCOP. No. 157/2003 had deposed as PW.1 and PW.2 and they deposed about the occurrence as stated in the claim petition i.e. the accident was occurred only due to rash and negligent driving of the respondent bus driver. Further, on the side of the petitioners, have marked Ex.P1-copy of FIR, Ex.P2-M.V.Report. On the side of the respondent, has not marked any document, but examined only the driver of the bus as RW.1.

8. Admittedly, criminal case was registered by police as against RW.1 and pending and therefore to escape from the criminal proceedings, RW.1 has falsely deposed as if the accident was not occurred due to rash and negligent driving of RW.1 as contended by the learned counsel for the appellant. Further, the respondent has not filed any appeal or cross-appeal as against the finding of the Tribunal regarding negligence and liability. Therefore, the Tribunal has rightly held that the accident was occurred only due to rash and negligent driving of the respondent bus driver and hence the respondent is liable to pay compensation.

9. With regard to quantum of compensation, on the side of the appellant has contended that the Tribunal erred in concluding that the appellant has sustained only 15% disability and also wrongly fixed the annual income of the appellant as Rs. 18,000/- and also contended that Rs. 35,100/- for future loss of earning, Rs. 5,000/- towards pain and suffering, Rs. 5000/- for loss of income during the period of treatment, medical expenses on attender are all very low and therefore filed this appeal to enhance the compensation.

10. In contra, the learned counsel for the respondent has contended that the Tribunal, on the basis of nature of injuries and disability, correctly assessed the disability as 15% and awarded compensation on various heads and there is no need to enhance the claim as requested by the appellant.

11. Admittedly, this appellant/petitioner has sustained grievous injuries in the abovesaid accident and from the oral evidence of PW.1, who is injured petitioner and PW.3-doctor and documentary evidence (i.e) Ex.P3, Exs.P5 to P7-wound certificates reveals that the petitioner had sustained three injuries including grievous fracture injury on bone in the right leg and the doctor has assessed the disability as 40%. A perusal of the award passed by the Tribunal reveals that the Tribunal has fixed the disability only 15% instead of 40% assessed by the doctor. But the Tribunal has not given any sufficient reasons for rejecting the disability assessed by the doctor. Considering the nature of injuries and evidence of PW.1 injured petitioner and PW.3-doctor, I am of the view that the petitioner's disability is to be taken as 40% as rightly assessed by PW.3-doctor.

12. Admittedly, at the time of accident, the age of the petitioner was 48 years and he was doing business. But, on the side of the petitioner, has not proved with reliable oral and documentary evidence that after the accident he was not doing any business as before and since the petitioner is doing business even after the accident, the multiplier system need not be applied for fixing the compensation as rightly contended by the learned counsel for the respondent.

13. Considering the nature of injuries, disability, age, avocation, period of accident and other factors, I am of the view that the compensation awarded by the Tribunal is very low and therefore it is to be enhanced.

14. As already discussed, the Tribunal has fixed the disability as 15% instead of 40% assessed by PW.3-doctor and awarded Rs. 35,100/-. As discussed earlier, the multiplier system cannot be taken for assessment since the petitioner has not proved that after the accident he was not doing any business. Therefore, for permanent disability, Rs. 40,000/- is to be awarded instead of Rs. 35,100/- for loss of earning capacity. Further, the Tribunal has awarded Rs. 5000/- for pain and suffering and mental agony and it has to be enhanced as Rs. 10,000/- considering the nature of injuries, period of treatment and disability. The Tribunal has awarded Rs. 5000/- for loss of income during the treatment period, medical expenses and expenses on attender. The petitioner has not produced any documentary evidence to prove the loss and expenses and hence no need to interfere with the abovesaid award amount fixed by Tribunal for the abovesaid three heads.

15. Therefore, from the abovesaid discussion, the award amount passed by the Tribunal is to be modified and enhanced as follows:-

Permanent disability -

Rs. 40,000.00

Pain and suffering -

Rs. 10,000.00

Loss of income during the treatment period, medical expenses and attender charges -

Rs. 5,000.00

Rs. 55,000.00

16. In the result, this Civil Miscellaneous Petition is partly allowed and the compensation amount is enhanced from Rs. 45,100/- to Rs. 55,000 with interest at 7.5% per annum.

17. Both sides admitted that the entire award passed by the Tribunal with interest has been already deposited and the appellant/petitioner has also withdrawn the same. Therefore, the balance amount of Rs. 9,900/- with interest at 7.5% per annum from the date of claim petition till the date of payment is to

be deposited by the respondent-Corporation within a period of four weeks from the date of receipt of copy of this Judgment. On such deposit, the appellant/petitioner is permitted to withdraw the abovesaid amount. No costs.