
(1999) 06 MAD CK 0073
In the Madras High Court

Nesamony Transport Corporation Limited	APPELLANT
Vs	
Chenthilathiapan and Another	RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Citation : (2000) 1 ACC 332

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—Nesamony Transport Corporation Limited, Nagercoil has filed this appeal challenging the award dated 30.4.1993 passed in M.C.O.P. No. 61 of 1988 on the file of Motor Accident Claims Tribunal (Subordinate Judge Court), Nagercoil, on the ground of negligence and of the quantum.

2. The respondent Chenthilathiapan is the claimant. On 10.1.1988, the respondent was going on a cycle with his friend Ashokan, P.W. 2 through the branch road called Rajapathai, from North to South. When they came near the main road where the branch road joins, the bus bearing Registration No. T.M.N. 9167 belonging to the appellant Corporation came in a rash and negligent manner on the right side of the main road and dashed against the culvert on the Rajapathai and thereafter, hit against the claimant and his friend. Due to this accident, the claimant sustained fractures and multiple bleeding injuries. He was taken to hospital, where operation was conducted upon him. After discharge from the hospital, the claimant has filed petition in M.C.O.P. No. 61 of 1988 on the file of the Motor Accident Claims Tribunal (Subordinate Judge Court), Nagercoil praying compensation of Rs. 1,00,000/- for the injuries sustained by him due to the negligent driving of the bus belonging to the appellant Corporation.

3. To prove the accident, the claimant examined himself as P.W. and his friend Ashokan was examined as P.W. 2. With reference to the medical treatment that he undertook and the expenses incurred by him, P.Ws. 3 and 4 were examined. Through these witnesses Exs. A1 to A27 were marked. Exs. A7 to A27 are the

documents relating to the medical treatment and other certificates concerned. On behalf of the appellant Corporation, the driver of the bus was examined as R.W. 1. According to R. W. 1, he was not negligent and the claimant alone was negligent and responsible for the accident.

4. The Tribunal accepted the case of the claimant and directed the appellant Corporation to pay the compensation of Rs. 40,300/- as against the total Compensation of Rs. 1,00,000/-. This judgment is put at issue before this Court in this appeal.

5. Mrs. Kala Ramesh, learned Advocate appearing for the appellant would contend that the evidence of P.Ws. 1 and 2 is quite contradictory to the contents of the F.I.R. which was given to the police and as such the evidence of P.Ws. 1 and 2 cannot be taken as trustworthy or acceptable. She would further state that with regard to the quantum, especially towards medical expenses, the Tribunal wrongly concluded that the claimant would be entitled to Rs. 25,000/-, despite the absence of the documentary proof.

6. On the other hand, Mr. P. Rathinadurai, learned Counsel appearing for the respondent, would contend, in support of the impugned order, that it has been clearly established that the driver of the bus was negligent and that the quantum fixed in respect of medical expenses also is proper. Further, he would bring to my notice that during the pendency of the appeal, he had filed a cross objection and since there was a delay, he has also filed an application to condone the said delay.

7. Taking into consideration the submissions made by the respective Counsel and on a perusal of the documents and the impugned judgment of the Tribunal, I am of the view that the reasonings given by the Tribunal for holding that the driver of the bus belonging to the appellant Corporation was negligent and that the claimant would be entitled to get compensation of Rs. 40,300/- is quite proper and sound.

8. The contradiction pointed out by the learned Counsel appearing for the appellant with reference to the evidence of P.Ws. 1 and 2, in the light of the contents of the F.I.R., in my view, may not be a major one, so as to affect the credibility of the evidence of P.Ws. 1 and 2.

9. But, it shall be noticed that the evidence of R.W. 1 who had stated that he was not negligent, is completely falsified through the sketch marked as Ex. A2. As a matter of fact, the case of the claimant, as projected in the evidence has been fully corroborated by Ex. A2, the sketch. From the sketch Ex. A2, it is seen that the bus proceeding in the east to west road turned to the right and hit against the culvert and after causing impact on the culvert went to the right side of the road and dashed against the cyclist, who was just about to enter into the main road through the north to south road. Therefore, there is no difficulty in accepting the finding of the Tribunal with reference to the negligence of the driver of the bus belonging to the appellant Corporation.

10. In the light of the above facts and circumstances, I am not inclined to accept the submission made by the Counsel for the appellant.

11. As regards the quantum, the learned Counsel for the appellant would strenuously contend that fixing at the rate Rs. 25,000/- towards medical expenses is on the higher side, especially when the documentary evidence is not available. According to her, Ex. A8 would show that towards medical facilities, only Rs. 2,450/- was paid.

12. This submission is resisted by the Counsel for the respondent by stating that the victim was taken to the Government hospital immediately after the accident and he was there for about five days and since he was in a serious condition, he was taken to a private hospital, where he was admitted and an operation was conducted.

13. According to the evidence of P.Ws. 3 and 4, he was hospitalised from 14.1.1988 to 1.2.1988. In the meantime, an operation was conducted. Though for the entire amount of Rs. 25,000/-, there are no medical bills, the non-production of medical bills cannot be taken as a ground to reject the evidence of P.W. 1, who has stated that he was incurring expenditure by paying the rent to the hospital room, etc. Admittedly, as stated by P.Ws. 3 and 4, operation was conducted upon the claimant and plate was inserted in his left leg.

14. In the light of the above facts and circumstances, I am unable to say that the amount of compensation of Rs. 25,000/- under the head medical expenses can be said to be excessive.

15. Therefore, I do not find any merit in the appeal. Consequently, this appeal is dismissed. No costs.

16. In view of the confirmation of the findings rendered by the Tribunal as regards the quantum and negligence, I am not inclined to entertain the cross objection alongwith a petition to condone the delay which is said to have been filed.