

(2010) 09 MAD CK 0210
In the Madras High Court
Case No : C.M.A. (MD) No. 1205 of 2004

P. Arumugam

APPELLANT

Vs

Tamil Nadu State Transport Corporation

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 09 MAD CK 0210

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : T.V. Sivakumar, for the Appellant; M.S. Rajeswar, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Appellant-claimant against the judgment and Decree dated 25.06.2003 made in M.C.O.P. No. 153 of 2003 on the file of the learned Motor Accidents Claim Tribunal, Chief Judicial Magistrate, Thanjavur at Kumbakonam.

2. Background facts in a nutshell are as follows:

The injured Arumugam met with motor traffic accident on 09.01.2002 at about 6.30p.m. The said injured was riding his bicycle from west to east direction on the left side of the Nageswarankoil North Street, Kumbakonam town. While he was crossing in front of Muniyandi Hotel, the bus belonging to the Respondent-Transport corporation bearing Registration No. TN-49-0896 came in a rash and negligent manner at high speed and hit the bicycle in which claimant was riding. Due to the same, the claimant was thrown out of his cycle and sustained grievous injuries. He claimed a compensation of Rs. 3,00,000/- before the Tribunal. The Respondent-Transport Corporation resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the Respondent-Transport Corporation?

2. Whether the accident was caused due to the rash and negligent act of the claimant?

3. Whether the claimant is entitled for compensation? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the Respondent-Transport Corporation and awarded a compensation of Rs. 35,000/-with interest at 9% per annum from the date of petition and the details of the same are as under:

For pain and suffering Rs. 10,000/- For injuries Rs. 25,000/- _____
Total Rs. 35,000/- _____ Aggrieved by that award, the Appellant-claimant has filed the present appeal for enhancement of the award amount awarded by the Tribunal.

3. Learned Counsel appearing for the Appellant-claimant submitted that the Tribunal has awarded a very low and meagre sum of compensation and the Tribunal ought to have awarded the claim amount as claimed by the claimant. The Tribunal has not considered all the relevant materials and it has not followed the principles of assessment before passing the award and it is a fit case for enhancement. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the Respondent-Transport Corporation submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel and perused the materials available on record. On the side of the Appellant-claimant, P.W.1 and P.W.2 were examined and documents Exs.P.1 to P.12 were marked. On the side of the Respondent Transport Corporation, R.W.1, Ganesan, driver of the bus was examined and no document was marked. P.W.1 is the claimant. P.W.2 is Dr. Srinivasan. Ex.P.1 is the certified copy of F.I.R. Ex.P.2 is the certified copy of Accident Register. Ex.P.3 is the certified copy of Motor Vehicle Inspector's report. Ex.P.4 is the certified copy of Charge Sheet. Ex.P.5 is the discharge card. Ex.P.6 are the medical bills of Rs. 12,356/-. Ex.P.7 are the medical bills for Rs. 4,841.43. Ex.P.8 is the receipt of Rs. 4,050/- + Rs. 1,200/-. Ex.P.9 is the bill for Rs. 660/-. Ex.P.10 is the disability certificate. Ex.P.11 are the X-rays. Ex.P.12 is the pay certificate. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the Respondent Transport Corporation. It is a question of fact and therefore the same is confirmed.

6. The injured claimant was 45 years old at the time of accident. In the evidence

of P.W.1, it is stated that the injured claimant is a head cook, working in Eversilver Factory and further it was claimed that he was earning a sum of Rs. 50/- per day as batta in a hotel and Rs. 100/- per day in Eversilver Factory. Further in his evidence, it is stated that it is only the driver of the bus belonging to the Respondent-Transport Corporation has caused the accident and he was charge sheeted by the Kumbakonam Traffic Investigation Police Station in Cr. No. 3 of 2002, u/s 279 and 337 of I.P.C. Due to the accident, he sustained the following injuries:

- (i) Healed abrasion in right elbow.
- (ii) Healed abrasion in back of forearm
- (iii) Back of right thigh healing abrasion.
- (iv) Pain tenderness over the ankle pedal oedema right leg pain, drowsiness over the left hip and pelvis region.
- (v) Dislocation symphysis pulis with multiple deep abrasion.

He was initially admitted in the Ratna Hospital, Thanjavur and he was inpatient from 09.01.2002 to 17.01.2002 and later he was admitted in Vinodhagan Memorial hospital, Thanjavur and he was inpatient from 17.01.2002 to 07.02.2002 and further he was referred to Ratna Hospital, Thanjavur and he took treatment from 07.02.2002 to 11.02.2002. P.W.2 is the doctor, who examined the injured claimant and determined the disability at 30%. Ex.P.10 is the disability certificate and Ex.P.11 is the x-ray. In the evidence of P.W.2, it is stated that due to the accident, the injured claimant sustained the following injuries:

1. He had abrasion measuring 10x15cm over his right buttex.
2. He had abrasion measuring 10x10cm over his right thigh.
3. He had abrasion measuring 15x15cm over his right leg.
4. He had abrasion 10x8cm over right back of ankle.
5. he had abrasion measuring 5x5cm over his right fore-arm.
6. He had lacerated injury measuring 2x2x9cm over his back of right knee.
7. He had lacerated injury over his right fore-arm.

Due to the same, the injured claimant is unable to stand, sit, climb and walk substantially. After considering the above oral and documentary evidence, the Tribunal has awarded a sum of Rs. 25,000/- towards injuries. There is no dispute that the injured claimant sustained injuries and also there is a shortening of lower limb of 2cm. Normally the Courts award a sum of Rs. 1,000/- to Rs. 2,000/- per percentage of disability. Hence, a sum of Rs. 50,000/- has been awarded due to the loss of 30% disability as against a sum of Rs. 25,000/-

awarded by the Tribunal under the head "Injuries". The Tribunal has also awarded a sum of Rs. 10,000/- towards pain and suffering. After taking into consideration that the injured claimant was treated in various hospitals and he was in hospital for more than 32 days, the award amount of Rs. 10,000/- granted by the Tribunal under the head of pain and suffering is very reasonable and hence the same is confirmed. The Tribunal has not awarded any sum towards extra nourishment and transport charges. After taking into consideration the nature of injuries and the treatment taken in various hospitals, the injured claimant is entitled for a sum of Rs. 5,000/- towards extra nourishment and a sum of Rs. 5,000/- for transport charges. Further, the Tribunal has not awarded any amount towards loss of amenities and hence, the injured claimant is entitled for a sum of Rs. 5,000/- towards loss of amenities. The injured claimant has also claimed a sum of Rs. 12,365/- towards medical expenses. Ex.P.6, P.7 P.8 and P.9 are the series of medical bills. Without properly considering the same, the Tribunal has rejected the entire claim towards medical expenses. After taking into consideration all the Exhibits, it is reasonable to award a sum of Rs. 10,000/- towards medical expenses.

7. The details of the modified compensation as per the above discussion are as under:

For pain and suffering Rs. 10,000/- For for loss of income due to 30% disability Rs. 50,000/- For extra nourishment Rs. 5,000/- For transport charges Rs. 5,000/- For loss of amenities Rs. 5,000/- For medical expenses Rs. 10,000/-
----- Total Rs. 85,000/- Less the amount awarded by the Tribunal Rs. 35,000/- ----- Enhanced amount Rs. 50,000/- -----

Therefore, the claimants are entitled to the enhanced compensation of Rs. 50,000/- with interest at 7.5% from the date of claim petition.

8. The Respondent/Transport Corporation is directed to deposit the enhanced compensation of Rs. 50,000/- with interest at 7.5% p.a. from the date of petition, within a period six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same on making proper application.

9. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.