

(2007) 10 MAD CK 0108

In the Madras High Court

Case No : C.M.A. No's. 1110 and 1111 of 2000

P. Rajalakshmi and Padmanabhan

APPELLANT

Vs

The Managing Director, Puratchi Thalaivar M.G.R. Transport Corporation

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Citation : (2007) 10 MAD CK 0108

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

Bench : Single Bench

Advocate : P. Subha Reddy, for the Appellant; A. Arumugham, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—These Civil Miscellaneous Appeals are filed by the claimants against the Judgment and Decree made in MCOP

Nos. 1827 and 1830 of 1996 dated 28.07.1999 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2. Background facts in a nutshell are as follows:

The appellants were injured in a motor traffic accident on 16.10.1995. On 16.10.1995 at about 13.45 hours the appellants were travelling in an

Ambassador Car bearing Registration No. TN-07-A-3100 from north to south direction in the Old Mamallapuram Road in between Pyanoor

Village and Pandithamedu Village, i.e., approximately 1.5 Kms from Pyanoor Village. At that time, a bus bearing Registration No. TN-31-N-

0265, belonging to the respondent / Transport Corporation, came from the opposite direction in a rash and negligent manner and dashed against

the car in which the injured were travelling and caused the accident. Due to the accident, the appellants / claimants sustained severe fractures and

the driver of the car as well as the other occupant, Rukmani Thayar were died on the spot. The appellants / claimants in CMA Nos. 1110 of 2000

and 1111 of 2000 claimed a compensation of Rs.4,10,000/- and Rs.5,10,000/- respectively, before the Tribunal. The respondent / Transport

Corporation resisted the claim. On pleading the Tribunal framed the following issues:

a) Whether the accident was due to the rashness or negligence on the part of the driver of the bus?

b) Whether the claimants are entitled to get the compensation?

If so, what is the amount? After considering the oral and documentary evidence, in respect of CMA No. 1110 of 2000, the Tribunal determined a

compensation of Rs.70,000/- and awarded only Rs.35,000/- which is 50% of Rs.70,000/- with interest at 12% p.a. from the date of petition, and

in respect of CMA No. 1111 of 2000, the Tribunal determined a compensation of Rs.1,00,000/- and awarded only Rs.50,000/- which is 50% of

Rs.1,00,000/- with interest at 12% p.a. from the date of petition, on the ground that there was a contributory negligence of 50%. Aggrieved by the

same, the present appeals are filed by the claimants.

3. Learned Counsel appearing for the claimants submitted that the Tribunal is wrong in holding that there was 50% contributory negligence on the

part of the Ambassador Car in which the claimants were travelling. It is also further submitted that the Tribunal has awarded only a meagre amount

of compensation. Therefore, the order passed by the Tribunal is not in accordance with law and these are fit cases for enhancement.

4. Learned Counsel appearing for the respondent / Transport Corporation has submitted that the Tribunal had considered all the relevant materials

and evidence available on record and came to the correct conclusion and awarded the compensation amounts, which are just, fair and reasonable.

It is therefore submitted that the compensation amounts awarded by the Tribunal are in accordance with law.

5. Heard the counsel. On the side of the claimants, witnesses P.W.1 to P.W.5 were examined and documents Ex.P1 to Ex.P18 were marked. On

the side of the Transport Corporation, only one witness R.W.1 was examined and no documents were marked. P.W.1 and P.W.2 are the

claimants. P.W.3 and P.W.4 are Doctors. P.W.5 is one Thangavelu. Ex.P1 and

Ex.P11 are the salary certificates. Ex.P2 is the photo. Ex.P3 is the photo bills. Ex.P4 is the Discharge Summary. Ex.P5 is the certificate given by the bank. Ex.P6 and Ex.P7 are the series of bills. Ex.P8 is the copy of the requisition letter given to the bank. Ex.P9 is the certificate given by the bank. Ex.P12 is the copies of Income Tax Assessment Orders.

Ex.P13, Ex.P15 and Ex.P16 are the disability certificates. Ex.P14 is the X-ray. Ex.P17 is the First Information Report. Ex.P18 is the sketch.

R.W.1 is one Munuswamy. After considering the oral and documentary evidence, in respect of CMA No. 1110 of 2000, the Tribunal determined

a compensation of Rs.70,000/- and awarded only Rs.35,000/- which is 50% of Rs.70,000/- with interest at 12% p.a. from the date of petition,

and in respect of CMA No. 1111 of 2000, the Tribunal determined a compensation of Rs.1,00,000/- and awarded only Rs.50,000/- which is

50% of Rs.1,00,000/- with interest at 12% p.a. from the date of petition, on the ground of contributory negligence of 50%. The details of the

compensation awarded by the Tribunal are as under:

CMA No. 1110 of 2000 (MCOP No. 1827 of 1996):

Rupees

Travelling and nutrition

expenses 2,000/-

Pain and suffering 8,000/-

Permanent disability 50,000/-

Loss of earning 10,000/-

Total... 70,000/-

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50% of Rs.70,000/- = Rs.35,000/-

CMA No. 1111 of 2000 (MCOP No. 1830 of 1996):

Rupees

Travelling and nutrition

expenses 3,000/-

Pain and suffering 12,000/-

Permanent disability 70,000/-

Loss of earning 15,000/-

Total... 1,00,000/-

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50% of Rs.1,00,000/- = Rs.50,000/-

As stated earlier, the other occupant Rukmani Thayar died in the said accident in which the Tribunal awarded a sum of Rs.5,90,000/- to the said

Rukmani Thayar. Aggrieved, the Transport Corporation filed C.M.A. No. 648 of 2000 against the order passed in MCOP No. 638/1996 on the

file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court at Chennai. The said matter came up before this Court on

22.10.2007 and this Court held that there was no contributory negligence on the part of the Ambassador Car. It is also to be noted that the

Tribunal, in that case, had given a finding that there was no contributory negligence of 50% and the accident had occurred only due to the rash and

negligent driving of the bus belonging to the Transport Corporation. The said order of the Tribunal is dated 25.02.1999, which has not been

brought to the notice of the Tribunal in the present cases (MCOP Nos. 1827 and 1830 of 1996), due to some reason. The present Tribunal

Orders are dated 28.07.1999. The counsel appearing before the Tribunal ought to have taken up and argued all these matters together, but the

cases were taken up separately and hence the Tribunal passed the orders separately. In CMA No. 648 of 2000 dated 22.10.2007, this Court

considered the negligence part and held as follows:

The claimant is the only son of the deceased. The deceased was 57 years old at the time of accident. The deceased was a house wife, managing

the business and the entire properties belonging to her and out of which, she was earning a sum of Rs.10,000/- per month. P.W.2 is the eye

witness has spoken to the fact that while he was proceeding in the Ambassador Car bearing Registration No. TN-07-A-3100 between

Pondithamedu Village and Pyanoor Village in Old Mahabalipuram Road, the bus bearing Registration TN-31-N-0265 was driven by its driver in a

rash and negligent manner and dashed against the car and as a result of the

accident, the car rolled down and the driver was thrown away from the car and other occupants, namely his mother-in-law, his wife and two children including himself have sustained grievous injuries. P.W.2 had made it clear in the cross examination that the accident was only due to the rashness and negligence on the part of the driver of the bus. P.W.3 is the wife of P.W.2. P.W.3, being one among the occupants of the said Ambassador Car deposed that the driver of the bus has violated the traffic rules and came rashly and hit the car and as a result, the car driver died on the spot. The driver and conductor of the bus were also examined and they are R.W.2 and R.W.1. Both of them have given oral evidence that the accident had occurred only due to the negligence on the part of the driver of the Ambassador Car. R.W.2, in the cross examination, had stated that he was keeping left side of the road at the time of accident. But Ex.P7-Copy of rough sketch, clearly shows that the driver of the bus, R.W.2, was responsible for the accident. R.W.1 has conceded the fact that since he happened to be on the back side in the bus and was issuing tickets to the passengers, he has not actually seen the accident. Ex.P6 is the copy of F.I.R. which was lodged by the driver of the bus, R.W.2 and R.W.2 was charge sheeted before the learned Judicial Magistrate, Thirukazhikundram. After taking into consideration all these oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the appellant / Transport Corporation. In view of the above, it is evident that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the Transport Corporation and hence, the finding given by the Tribunal in the present cases that there is a contributory negligence on the part of the Ambassador Car is set aside. The Tribunal had considered all the relevant materials and evidence and determined the quantum of compensation which the claimants are entitled, at Rs.70,000/- in respect of CMA No. 1110 of 2000, and Rs.1,00,000/- in respect of CMA No. 1111 of 2000, respectively, with interest at 12% p.a. from the date of petition. Learned Counsel appearing for the Transport Corporation is also unable to produce any materials or evidence or any compelling reason to take a different view.

6. Therefore, the claimants in CMA Nos. 1110 and 1111 of 2000 are entitled to the modified compensation of Rs.70,000/- and Rs.1,00,000/-,

instead of the compensation of Rs.35,000/- and Rs.50,000/- awarded by the Tribunal, respectively. Accordingly, the claimants in CMA Nos.

1110 and 1111 of 2000 are entitled to the enhanced compensation of Rs.35,000/- and Rs.50,000/- respectively. In the present cases, the correct

rate of interest is 9% and therefore, the interest rate is modified to 9% as against 12% fixed by the Tribunal, only for the enhanced amount.

7. The Transport Corporation is directed to deposit the enhanced compensation amounts of Rs.35,000/- and Rs.50,000/- to the credit of

respective claim petitions with interest at 9% p.a. from the date of petition, within a period of six weeks from the date of receipt of a copy of this

order. On making such deposits, the claimants are permitted to withdraw their respective amounts from the deposits.

8. The Civil Miscellaneous Appeals are disposed of with the above modifications. No costs.