

(2010) 09 MAD CK 0116
In the Madras High Court
Case No : C.M.A. No. 363 of 2007

P. Selvam

APPELLANT

Vs

Metropolitan Transport Corporation Limited

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142

Citation : (2010) 09 MAD CK 0116

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : M. Swamikkannu, for the Appellant; A. Babu, for the Respondent

Judgement

C.S. Karnan, J.—The above appeal has been filed by the appellant/claimant against the award and decree passed by the learned Motor

Accident Claims Tribunal/Fast Track Court -I, in MCOP No. 5122 of 2000, dated 29.04.2006, awarding a compensation of Rs. 65,000/- with

interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of making of payment of compensation. Having not been

satisfied with the award and decree passed by the Motor Accident Claims Tribunal, the claimant has filed the above appeal for additional

compensation of Rs. 6,00,000/- with interest.

2. The brief facts of the case are as follows:

On 08.10.2000, at about 09.30 hrs., the injured/claimant was riding cycle from East to West direction in Mugapier Water Tank Road on the

Southern Side of the Road. While he was proceeding opposite to Old Taluk Officer, the respondent Corporation bus bearing registration No. TN

01 N 1854 came from behind at a very high speed, in a rash and negligent

manner, swerved to the Extreme Southern side of the road and hit and knocked down the injured claimant. In the result he sustained multiple fractures and injuries. The accident had occurred only due to the rash and negligent driving of the driver of the respondent Corporation bus. As such, he claimed a compensation of Rs. 11,11,000/- with interest before the Tribunal.

3. The respondent State Transport Corporation resisted the claim petition by filing the counter statement on the following grounds.

4. The Respondent states that on 8.10.2000 their bus Route No. 7F bearing Regn. No. TN 01 N 1854 was on its trip from Parrys to Ambattur.

At about 10 metres while the bus was proceeding to Mugapair Water Tank Road the Petitioner herein riding a cycle on the left side of the

Metropolitan Transport Corporation Bus on the same direction. In the process the petitioner lost his grip and rode in a zig zag manner and grazed

on the front left side of the bus and sustained injuries. Thus the petitioner solely contributed to the accident. Hence the Respondent denies the

averment that the Metropolitan Transport Corporation Bus came in a rash and negligent manner and hit the back side of the petitioner and thus

sustained injuries. Further the Respondent states that the petitioner alone is liable for the said accident and this respondent is not liable to pay any

compensation.

5. The Respondent states that Metropolitan Transport Corporation (Chennai) Limited, driver was not responsible for the accident and

consequently this Respondent is not liable to pay any compensation much less the compensation claimed in the O.P.

6. The Respondent states that Metropolitan Transport Corporation Bus driver was cautious in driving the bus with lawful speed and with due

observance of traffic rules at the time of accident.

7. Without prejudice to above, the Respondent submits that in any event the above accident occurred due to contributory negligence of the

Petitioner.

8. The Respondent does not admit the averments made in paras 3, 4, 5, 6, 8, 9, 10, 11, 11.a, 12, 13, 19 and 20 of the O.P., and puts the

Petitioner to strict proof thereof.

9. The Respondent states that the petitioner cannot claim any amount u/s 140 of Motor Vehicles Act unless it is proved that this accident happened

only due to the negligence of the driver of this Respondent and the injuries alleged to have sustained by the Petitioner comes within the purview of

Section 142 of Motor Vehicles Act, 1988.

10. Without prejudice to the contention raised supra the quantum of compensation claimed in the O.P. are highly excessive, arbitrary and exorbitant.

It is therefore prayed that this Hon'ble Court may be pleased to dismiss the O.P. with cost and thus render justice.

4. The learned Motor Accident Claims Tribunal after considering the plea of the claimant and the counter statement of the respondent had framed

two issues for consideration, namely,

(i) Whether the accident had occurred only due to the rash and negligent driving of the driver of the respondent Corporation bus?

(ii) Whether the claimant is entitled to get compensation? If so, what is the quantum of compensation?

5. On the side of the claimant four witnesses were examined, namely, P.W.1-claimant, P.W.2-Ramu, P.W.3-Dr. Thyagarajan and P.W.4-

Sumathy and seven documents were marked as Exhibits P1 to P7, namely, Ex.P.1-First Information Report, Ex.P.2-Copy of the Accident

Register, Ex.P.3-Case Sheet, Ex.P.4-Disability Certificate, Ex.P.5-X-Ray Ex.P.6-Rough Sketch and Ex.P.7-Charge Sheet. On the side of the

respondent the driver of the bus Sundaramurthy was examined as R.W.1 and no document was marked.

6. P.W.1, the claimant had adduced evidence stating that on 08.10.2000, at about 9.30 hrs. he was riding his bicycle from East to West in the

direction of Mugappair Water Tank Road on the Southern side of the road. While he was proceeding opposite to Old Taluk Office, the

respondent Corporation bus bearing registration No. TN 01 N 1854 was coming from behind at high speed in a rash and negligent manner and

dashed against the cyclist. In the result he sustained grievous injuries. Immediately, he was taken to the KMC Hospital. He underwent treatment

from 08.10.2002 to 12.10.2002 as in-patient. Supporting the said accident, he has marked Ex.P1, Ex.P2 and Ex.P7. Further he had adduced

evidence stating that he was admitted at KMC hospital for three days as in-patient. Thereafter, he was taken to Puthur for further treatment.

P.W.1 further adduced evidence that he was a painter at the time of the accident and he was earning a sum of Rs. 200/- per day. After the

accident, he was unable to carry out his normal work as painter. Hence, he was constrained to join as Watchman in a private concern. After the

accident, he is unable to sit, walk, stand and squat.

7. Doctor, Thiagarajan P.W.3 had adduced evidence stating that the claimants tibia bone was fractured. As such his leg movement reduced by

80 degrees. He examined the claimant and verified the medical records and assessed the disability as 40% sustained by the claimant.

8. After considering the evidence of P.W.1, P.W.2 and P.W.3, and the documents marked as exhibits, the Tribunal had come to the conclusion

that the accident had occurred only due to the rash and negligent driving by the driver of the Corporation bus. As such the respondent Corporation

is liable to pay compensation and awarded the compensation as follows:

Rs. 40,000/- under the head loss of income for 40% disability,

Rs. 15,000/- under the head pain and sufferings,

Rs. 5,000/- under the head nutrition,

Rs. 5,000/- under the head transport charges,

totally Rs. 65,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

9. Having not been satisfied with the award and decree passed by the Motor Accident Claims Tribunal in MCOP No. 5122 of 2000, dated

29.04.2006, the claimant/appellant has filed the appeal for an additional amount of Rs. 6,00,000/- with interest.

10. The learned Counsel for the appellant vehemently argued that the injured/claimant was further taken to Puthur on three occasions for which

transport charges were not paid to the claimant. Further after the accident, the claimant was unable to carryout his normal work as such his income

was reduced. The Tribunal awarded a sum of Rs. 40,000/- under the head of loss of income for 40% disability, which is on lower side. Further,

the learned Motor Accident Claims Tribunal have not considered the medical expenses. As such he prays for additional compensation.

11. The learned Counsel for the respondent argued that the award passed by the Tribunal is a well settled one. After considering P.W.1, P.W.2

and P.W.3, the said award amount was granted on various heads. The rate of interest is also rightly fixed by the Motor Accident Claims Tribunal.

As such there are no discrepancies in the said award. Therefore he prays to dismiss the appeal.

12. Considering the facts and circumstances of the case and the arguments advanced on either side learned Counsel and award and decree passed

by the Motor Accident Claims Tribunal in MCOP No. 5122 of 2000 dated 29.04.2006, this Court is of the view that the award is on lower side.

Hence, this Court decided to restructure the compensation as follows:

(i) Rs.80,000/-under the head loss of income for 40% disability. (ii) Tribunal awarded a sum of Rs. 15,000/- under the head pain and sufferings

and this Court confirms the same. (iii)This Court awards another sum of Rs. 2,100/- in addition to the sum of Rs. 5,000/- under the head transport

charges since the claimant went to Puthur on three occasions. (iv)Tribunal awarded Rs. 15,000/- under the head pain and sufferings, this Court

confirms the same. (v)This Court further grants a sum of Rs. 12,000/- under the head loss of income for one year. In total this Court awards a sum

of Rs. 1,29,100/-. After deducting the original compensation amount of Rs. 65,000/-, an additional compensation amount of Rs. 64,100/- is

awarded by this Court with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation

which is equitable and fair.

13. Therefore, this Court directs the respondent State Transport Corporation to deposit the entire compensation amount with accrued interest

from the date of filing the claim petition till the payment of compensation, within a period of six weeks from the date of receipt of a copy of this

order into the credit of the MCOP No. 5122 of 2000, dated 29.04.2006, on the file of learned Motor Accident Claims Tribunal/Fast Track Court

-I. After such deposit is made, it is open to the claimant to withdraw the entire compensation with accrued interest, lying in the credit of the MCOP

No. 5122 of 2000, dated 29.04.2006 on the file of learned Motor Accident Claims Tribunal/Fast Track Court -I after filing necessary payment

out application, subject to deduction of withdrawals if any, in accordance with law.

14. In the result, the above Civil Miscellaneous Appeal is partly allowed and the award and decree passed by the Motor Accident Claims

Tribunal/Fast Track Court -I, Chennai in MCOP No. 5122 of 2000, dated 29.04.2006 is modified. There is no orders as to costs.