

(2013) 09 MAD CK 0063
In the Madras High Court
Case No : C.M.A. No. 2903 of 2008

P. Vinoth

APPELLANT

Vs

The Managing Director Karnataka State Road Transport
Corporation Ltd.

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0063

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

Bench : Single Bench

Advocate : A. Shanmugaraj, for the Appellant; V. Ramesh, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 12.11.2007, made in

M.C.O.P. No. 2663 of 2001, on the file of the Small Causes Court-V, Motor Accident Claims Tribunal, Chennai. The short facts of the case are

as follows:--

The minor petitioner, represented by his father, had filed a claim petition in M.C.O.P. No. 2663 of 2001, on the file of the Small Causes Court-V,

Motor Accident Claims Tribunal, Chennai, claiming a compensation of a sum of Rs. 4,00,000/- from the respondent for the injuries sustained by

him in a motor vehicle accident.

2. It was submitted that on 21.02.2001, at about 04.20 p.m., when the petitioner was crossing Poonamallee High Road, at Koyambedu, opposite

to Daniel Thomas School, the respondent's Corporation bus bearing registration No. KA07 F392, driven by it's driver in a rash and negligent

manner, had dashed against the petitioner. As a result, the petitioner had sustained grievous injuries namely fracture in skull and also sustained

multiplier injuries all over his body. He was admitted at Sundaram Hospital on 21.02.2001 and received treatment as an inpatient. Due to disability

sustained by him in the accident, he is not able to do his work as before. Hence, he filed the claim petition against the respondent Corporation.

3. The respondent Corporation, in their counter statement, had stated that on the date of accident, when the respondent's corporation bus was

proceeding near Poonamallee, the petitioner had suddenly crossed the road. On seeing this, the bus driver had slowed down the bus and turned

the bus to the extreme left side of the road. But, the petitioner had himself fallen down and sustained injuries. Further, they had stated that the claim

was excessive.

4. On considering the averments of both sides, the Tribunal had framed four issues namely:

i. Whether the accident had happened due to the rash and negligent driving by the driver of the bus bearing registration No. KA07 F392?

ii. Whether the respondent is liable to pay compensation?

iii. Whether the petitioner is entitled for the compensation? and

iv. To what relief?

5. On the petitioner's side four witnesses were examined as P.Ws.1 to 4 and 14 documents were marked as Exs.P1 to P14 namely FIR, rough

sketch, discharge summaries, medical bills, disability certificate, X-ray, letters from the school, certificate for removing the name of the petitioner

from the school roll and authorisation letter. On the respondent's side one witness was examined as R.W.1 and one document was marked as

Ex.R1 namely copy of criminal court Judgment.

6. P.W.1 father of the petitioner had adduced evidence that his son was studying in sixth standard at Daniel Thomas School, Koyambedu and that

on 21.02.2001, at about 04.20 p.m., when his son was crossing Poonamallee High Road, from north to south, at the pedestrian crossing in front of

his school, along with other pedestrians, the driver of the respondent's Corporation bus drove the bus bearing registration No. KA07 F392, rashly

and negligently and dashed it against his son and in support of his evidence, he had marked Exs.P1 to P14.

7. P.W.3 Dilli Babu, Watchman of the Daniel Thomas School and eye-witness of the accident, had adduced evidence on similar lines to the

evidence of P.W.1 regarding the nature of accident.

8. P.W.4 V.P. Sivamaran, Head Constable of Police, had adduced evidence that charge sheet was filed against the driver of the bus before the

Egmore Magistrate's Court and that in the criminal case the driver of the bus was acquitted.

9. R.W.1 driver of the bus had adduced evidence that at the time of accident, when the bus was proceeding near Poonamallee, he had observed a

boy crossing the road and that on seeing this, he had slowed down the bus and turned the bus to the extreme left side of the road and that the boy

himself had fallen down and sustained injuries. He deposed further that he was not responsible for the accident and in support of his evidence he

had marked Ex.R1.

10. The Tribunal on holding that the findings of the criminal Court is not binding on the Motor Accident Claims Tribunal and on opining that the

accident could have been averted if the driver of the bus had driven it in a slow and cautious manner and on scrutiny of evidence of P.W.1, P.W.2

and R.W.1 had held that the accident had been caused by the rash and negligent driving of the driver of the bus bearing registration No. KA07

F392 and hence the respondent is liable to pay compensation to the petitioner.

11. On scrutiny of Exs.P3, P4 and P13, it is seen that the petitioner had sustained fracture of occipital bone and cerebellar hematoma due to the

accident.

12. P.W.2 Dr. Thiagarajan had also adduced evidence that due to the accident, the petitioner had sustained fracture of occipital bone and

cerebellar hematoma. He had certified that the petitioner had sustained 75% of disability due to the accident and in support of his evidence, he had

marked Exs.P9 and P10.

13. The Tribunal on scrutiny of oral and documentary evidence awarded a sum of Rs. 1,70,000/- for medical expenses as per medical bills

marked as Exs.P5 to P8, Rs. 2,000/- was awarded for transport expenses, Rs. 2,000/- was awarded for nutrition, Rs. 5,000/- was awarded for

pain and suffering and Rs. 75,000/- was awarded for disability. In total, the Tribunal had awarded a sum of Rs. 2,54,000/- as compensation to the

petitioner and directed the respondent to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the petition till

the date of payment of compensation (excluding the period from 27.04.2005 to 22.11.2005) with costs, within one month from the date of it's

Order.

14. Not being satisfied by the Award passed by the Tribunal, the petitioner has preferred the present civil miscellaneous appeal.

15. The learned counsel appearing for the appellant has contended in his appeal that the Tribunal had failed to consider that the appellant had

sustained fracture of occipital bone and cerebellar hematoma and consequently he was forced to discontinue since his speech, using of right hand

(especially for writing) and memory has also been affected.

16. Further, it is contended that the Tribunal had failed to look into the details of disability stated by P.W.2 and erred in awarding only a sum of

Rs. 75,000/- for disability as the minor petitioner's speech, use of right hand for writing and memory has been affected to the tune of 75% and he

was forced to discontinue his studies from sixth standard and his marital prospects has also been affected. Therefore, he prayed for grant of

additional compensation of Rs. 1,46,000/-.

17. The very competent counsel for the respondent has argued that the appellant had suddenly crossed the road and invited the said accident. The

Doctor had assessed the disability at 75% which is excessive. Further, the Tribunal had granted compensation under the relevant heads.

18. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the

impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability as both

had been decided in an appropriate manner, after considering oral and documentary evidence. However, the quantum of compensation is on the

lower side and therefore this Court is inclined to grant additional compensation as the claimant had sustained skull injuries and the claimant is aged

12 years and the Doctor had assessed disability at 75%. As such, this Court reassesses the compensation as follows:

i. Rs. 1,70,000/- is awarded towards medical expenses,

ii. Rs. 1,12,000/- is awarded towards disability,

- iii. Rs. 20,000/- is awarded towards pain and suffering,
- iv. Rs. 10,000/- is awarded towards transport,
- v. Rs. 20,000/- is awarded towards loss of amenities and loss of comfort, and
- vi. Rs. 10,000/- is awarded towards attender charges,

In total, this Court awards a sum of Rs. 3,42,000/- as compensation, as it is found to be appropriate to the instant case. After deducting the

compensation amount of Rs. 2,54,000/- fixed by the Tribunal, this Court grants a sum of Rs. 88,000/- as additional compensation and this amount

will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

19. This Court directs the respondent Corporation to comply with this Court's Order, within a period of four weeks from the date of receipt of a

copy of this order, by way of depositing the compensation amount, to the credit of M.C.O.P. No. 2663 of 2001, on the file of the Small Causes

Court-V, Motor Accident Claims Tribunal, Chennai.

20. After such a deposit having been made, learned Judge is directed to deposit the entire compensation amount with accrued interest thereon, in a

nationalized bank under the accumulating deposit scheme, till he attains major and hand over the fixed deposit certificates to the father of the minor

claimant. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 12.11.2007, made in M.C.O.P. No.

2663 of 2001, on the file of the Small Causes Court-V, Motor Accident Claims Tribunal, Chennai, is modified. Consequently, connected

miscellaneous petition is closed. There is no order as to costs.