

(2012) 01 MAD CK 0094

In the Madras High Court

Case No : C.M.A. No's. 720 and 3366 of 2011

S. Sundaramurthy

APPELLANT

Vs

Metropolitan Transport Corporation (Chennai) Limited

RESPONDENT

Metropolitan Transport Corporation (Chennai) Limited

Vs S. Sundaramurthy

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 3 TAC 472

Hon'ble Judges : S. Vimala, J;R. Banumathi, J

Bench : Division Bench

Advocate : A. Babu in C.M.A. No. 3366/2011 and in C.M.A. No. 720/2011, for the Appellant; P.T. Salim Fathima in C.M.A. No. 3366/2011 and C.M.A. No. 720/2011, for the Respondent

Judgement

S. Vimala, J.—Civil Miscellaneous Appeal No. 720 of 2011 has been filed by the appellant/claimant challenging the order passed by the

Motor Accident Claims Tribunal (hereinafter called as the ""Tribunal"") in M.C.O.P. No. 721 of 2006 on the ground of inadequacy of

compensation.

2. Civil Miscellaneous Appeal No. 3366 of 2001 has been filed by the Appellant-Transport Corporation challenging the order passed by the

Tribunal in M.C.O.P. No. 721 of 2006 contending that the amount of compensation awarded is excessive and that the findings on negligence is

incorrect.

3. In both the cases, common question of fact and law arises for consideration, and hence the common Judgment is pronounced.

4. Brief facts are that the Appellant/claimant-S.Sundaramurthy, aged about 50

years is employed as Clerk in Arulmigu Parthasarathy Temple, Triplicane and was earning a sum of Rs. 7,500/- per month. On 30.01.2006, when the appellant/claimant tried to board the bus, the driver took the bus in a rash and negligent manner, due to which, the appellant/claimant had fallen down from the bus and sustained multiple injuries and Grade III compound fracture of both bones at left leg and consequently, he suffered loss of damage to the extent of Rs. 12,00,000/- and claiming the same, Claim petition has been filed.

5. The respondent filed counter denying the rash and negligent driving on the part of the driver of the respondent-Transport Corporation and further alleging that the appellant/claimant himself was guilty of negligence in trying into board the moving bus and therefore, the respondent-Transport Corporation is not liable to pay compensation. The nature of injury, period of treatment and alleged disability are all denied. The compensation claimed is said to be excessive.

6. The appellant/claimant himself has been examined as P.W.1. The Junior Assistant of Government General Hospital has been examined as

P.W.2. The doctor, who had issued the disability certificate has been examined as P.W.3. The driver of the respondent-Transport Corporation

bus has been examined as R.W.1 and on consideration of oral and documentary evidence, the Motor Accident Claims Tribunal has given a finding

that the accident had happened due to the rash and negligent driving of the driver of the bus bearing Registration No. TN-01-N-3243 and also that

the respondent-Transport Corporation is liable to pay the compensation to the extent of Rs. 4,36,000/-. As against this fair and decretal order

dated 14.09.2010, the present Civil Miscellaneous Appeals have been filed one by appellant/claimant praying for just compensation and the other

one by the respondent-Transport Corporation seeking to set aside the fair and decretal order dated 14.09.2010.

7. We have heard the learned counsel for the appellant/claimant as well as the respondent-Transport Corporation.

8. The first contention of the learned counsel for the respondent-Transport Corporation is that the finding of the Motor Accident Claims Tribunal

that the accident took place due to rash and negligent driving of the driver of the respondent-Transport Corporation has to be set aside. This

contention, in our considered view, does not merit acceptance, as the Tribunal has given a finding based upon the oral evidence of P.W.1, Ex.P.1-

Copy of First Information Report and the evidence of R.W.1. Therefore, the finding of fact, as to the negligent driving of bus recorded by the

Tribunal does not warrant any interference.

9. Main contentions are raised only with reference to the quantum of compensation awarded by the Tribunal. The Tribunal has awarded a sum of

Rs. 4,36,000/- under the following break-up details:-

S.No.	Heads	Amount
1	Loss of Income	90000
2	Transport to Hospital	10000
3	Extra Nourishment	20000
4	Damage to clothes	1000
5	Medical Expenses	25000
6	Attendant charges	10000
7	Mental Agony	50000
8	Additional Transport Expenses	10000
9	Loss of Amenities	50000
10	Pain and Sufferings	50000
11	Permanent Disability	120000
Total		436000

10. With regard to the quantum of compensation, the first contention of the learned counsel for the respondent-Transport Corporation is that once

the Tribunal has awarded compensation under the head of permanent disability, the Tribunal cannot award further compensation under the head of

loss of earning capacity. This contention is factually incorrect, because, the Tribunal has awarded compensation under the head of permanent

disability and not on loss of earning capacity but, on loss of earning alone. Considering this contention is incorrect, as awarding of compensation on

both those grounds is permissible as per decision of the Supreme Court reported in B. Kothandapani Vs. Tamil Nadu State Transport

Corporation Ltd., wherein it has been held as follows:-

Whether the Tribunal was justified in awarding Rs. 1,50,000/- towards permanent disablement in addition to the amount allowed under the head

"loss of earning capacity" - Held: Yes; permanent disability affects earning capacity of the injured but he has also to forego personal comforts and

has to depend on others for his normal avocations and day-to-day work; Tribunal's award of Rs. 5,05,053/- restored.

11. The learned counsel for the appellant/claimant contended that the amount of compensation awarded is grossly inadequate and it has to be

enhanced. In order to appreciate the claim for enhancement of compensation, the details regarding nature of injury, nature of treatment, nature of

disability and the impact of disability on the life of the appellant/claimant are all important factors to be considered.

12. So far as the nature of injury is concerned, the injury has been sustained due to running over of the wheel of the bus over the left leg. Therefore,

the appellant/claimant has sustained crush injury. Initially, the appellant/claimant had been admitted in the hospital on 30.01.2006 and he had been

in continuous treatment for four months at the initial stage. In the evidence, the appellant/claimant has described the inconveniences caused to him

due to the accident. There had been an operation of insertion of rod to give support to the leg. Shortening of the leg was to the extent of 6 inches.

He cannot walk without a walker. Because of the crush injury, he has to be assisted in his day-to-day activities by his wife, brothers and other

attendants and this assistance will be required throughout his life. Plastic surgery has been done several times. Both the legs have lost all the energy.

13. Because of the disability, the appellant/claimant cannot fold his left leg. Consequently, he cannot use Indian toilet. He cannot squat on the floor.

It is not even possible for him to do any exercise. He cannot drive the vehicle and he cannot even climb the vehicle. He has to engage separate

transport facility to go to any place. These facts that were spoken to in the evidence of P.W.1, which is amply supported by case sheet. Ex.P.8-

Case sheet, Exs.P.2 & P.3-Discharge summary and Ex.P.13-Disability certificate and corroborated by the evidence of P.W.3-Doctor, who has

issued Ex.P.13-Disability certificate.

14. Now, the claim for just compensation has to be considered in the light of the disability and the impact of disability on the life and earnings of the

appellant/claimant. The percentage of disability is 70%, according to Ex.P.13.

A) The Tribunal has awarded attendant charges of Rs. 10,000/-. The appellant/claimant had been under treatment continuously for months

together and also having regard to the severity of the injury and the number of operations, the cost of attendant is quantified at Rs. 25,000/-.

B) A sum of Rs. 50,000/- has been awarded towards loss of amenities to life. The photographs which are filed as Ex.P.7 coupled with Ex.P.13-

disability certificate along with evidence of P.W.1, goes to show that the appellant's/claimant's legs are disfigured and that he suffered enjoyment

of amenities for a considerable period of time and it is likely to continue in future also. Therefore, the amount awarded for loss of amenities is

inadequate and a sum of Rs. 75,000/-, in our considered view, will be appropriate.

C) Rs. 50,000/- has been awarded towards pain and sufferings. As the pain and sufferings has become continuous and constant, because of the

disability the compensation is enhanced to Rs. 1,00,000/-.

D) Due to permanent disability, even though, the earnings has not been affected there is bound to be deficiency in the capacity to perform. The

appellant/claimant cannot also think of looking after any other avenues of earning. He has become a liability to the rest of the members of the

family. Therefore, in our considered view, Rs. 1,20,000/- must be enhanced to Rs. 1,50,000/-.

E) In modification, the compensation of Rs. 4,36,000/- awarded to the appellant/claimant is enhanced to Rs. 5,56,000/-, as under:-

S.No. Heads Amount

1 Loss of Income 90000

2 Transport to Hospital 10000

3 Extra Nourishment 20000

4 Damage to clothes 1000

5 Medical Expenses 25000

6 Attender charges 25000

7 Mental Agony 50000

8 Additional Transport Expenses 10000

9 Loss of Amenities 75000

10 Pain and Sufferings 100000

11 Permanent Disability 150000

Total 556000

15. In the result, the compensation of Rs. 4,36,000/- awarded by the Tribunal by order in M.C.O.P. No. 721 of 2006 dated 14.09.2010 is

enhanced to Rs. 5,56,000/-. The enhanced amount i.e. Rs. 1,20,000/- is payable with interest at the rate of 7.5% per annum from the date of

claim petition till the date of deposit and Civil Miscellaneous Appeal No. 720 of 2011 is partly allowed and Civil Miscellaneous Appeal No. 3366

of 2011 is dismissed. In the circumstances of the case, there is no order as to costs in these Appeals. The respondent-Transport Corporation is

directed to deposit the enhanced compensation of Rs. 1,20,000/- to the credit of M.C.O.P. No. 721 of 2006 on the file of IV Judge, Motor

Accident Claims Tribunal (Court of Small Causes), Chennai with interest at the rate of 7.5% per annum from the date of filing of the claim petition

till the date of date of deposit within a period of eight weeks from the date of receipt of a copy of this order.