

(2013) 09 MAD CK 0097
In the Madras High Court
Case No : C.M.A. No. 2716 of 2009

Sakthi Vadivel

APPELLANT

Vs

The Divisional Manager, Tamilnadu State Transport
Corporation Limited

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0097

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

Bench : Single Bench

Advocate : F. Terry Chellaraja, for the Appellant;

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/petitioner has preferred the present appeal in C.M.A. No. 2716 of 2009, against the judgment and decree

passed in M.C.O.P. No. 1096 of 2006, on the file of the Motor Accident Claims Tribunal/Additional Subordinate Judge, Thiruvannamalai. The

short facts of the case are as follows:-

The petitioner has filed the claim in M.C.O.P. No. 1096 of 2006, claiming compensation of a sum of Rs. 5,00,000/- from the respondents for the

injuries sustained by him in a Motor Vehicle Accident. It was submitted that on 12.02.2006, at about 05.00 a.m., when the petitioner was

proceeding in his Omni Van bearing Registration No. TN-23-H-0966, along with his relatives, on the Thiruvannamalai-Tindivanam Main road and

when it was proceeding on the extreme left of the road near Sirunathur Lakshmi Matriculation School, the respondent's bus bearing Registration

No. TN-32-N-1694, coming in the opposite direction from Chennai to

Thiruvannamalai and driven at a high speed and in a rash and negligent manner, dashed against the Omni van and caused the accident. Due to this, some persons died on the spot. The petitioner and some others in the Omni van sustained grievous injuries and were admitted at Thiruvannamalai Government Hospital. Subsequently, the petitioner received treatment at other private hospitals. At the time of accident, the petitioner was running a provision store and earning Rs. 4,000/- per month. Due to disability sustained by him, he is not able to do his work as before. Hence, the petitioner has filed the claim against the Tamil Nadu State Transport Corporation Limited, Villupuram.

2. The respondent in his counter has submitted that the driver of the respondent's bus was not rash and negligent in his driving, as alleged in the claim. It was submitted that on 12.02.2006, the respondent's bus bearing Registration No. TN-32-N-1694, was on its trip from Chennai to Thiruvannamalai and the bus was proceeding on the proper side at a moderate speed. Due to heavy mist, the Maruthi van bearing Registration No. TN-23-H-0966, came on the wrong side of the road. On seeing the Maruthi Van, the driver of the bus applied the brake, but in spite of it, the Maruthi Van, which was driven at a high speed and in a rash and negligent manner, hit against the right front side portion of the bus. It was submitted that the claim was bad for non joinder of necessary parties viz. the owner and insurer of the Maruthi van bearing Registration No. TN-23-H-0966. It was also submitted that the driver of the Maruthi van did not possess a valid driving licence at the time of accident. The averments in the claim regarding age, income, occupation, nature of injuries sustained, period of treatment, medical expenditure and percentage of disability sustained by petitioner was also not admitted. It was submitted that the claim was excessive.

3. On the petitioner's side, the petitioner was examined as PW 1 and one Dr. Ravindran was examined as PW 2 and 9 documents were marked as Exhibits-P1 to P9 namely: Ex. P1-Copy of F.I.R.; Ex. P2-Copy of Motor Vehicle Inspector's report; Ex. P3-Wound Certificate; Ex. P4-Copy of accident register; Ex. P5-Discharge summary issued by Hosmate Hospital, Bangalore; Ex. P6-Admission card issued at C.M.C. Hospital; Ex. P7-Prescriptions (9 in Nos.); Ex. P8-Medical bills (series); and Ex. P9-Disability

certificate. On the respondent's side, one witness was examined and no document was marked.

4. The Motor Accident Claims Tribunal framed two issues for consideration in the case namely: (1) Is the petitioner entitled to get compensation?

If so, who is liable to pay compensation? and (2) What is the quantum of compensation which the petitioner is entitled to get?

5. PW 1, adduced evidence which is corroborative of the statements made in the claim regarding manner of accident. He further deposed that due

to the accident, he had sustained fracture of bone in his neck and sustained injuries on his left forehead, right knee and left leg and that he was

admitted at Thiruvannamalai Government Hospital, wherein he received treatment as an inpatient and subsequently received treatment at Hosmate

Hospital, Bangalore from 13.02.2006 to 20.02.2006, wherein a surgery was conducted on his neck. In support of his evidence, he had marked

Exhibits P1 to P9.

6. RW 1, Veerappan, the driver of the bus had adduced evidence that on 12.02.2006 at about 5.00 a.m., when he was driving the bus near the

Sirunathur Lakshmi Matriculation School, following all traffic rules and regulations, the Omni van coming in the opposite direction and which had

been driven at a high speed and in a rash and negligent manner, had dashed against the right front Bumper of the bus.

7. On scrutiny of Ex. P1, it is seen that the complaint regarding the accident had been given by one Kasthuri, who had travelled in the Omni van

and based on that the police has filed the case against the driver of the bus for rash and negligent driving. The averments in the F.I.R. are on similar

lines to the evidence of PW 1 regarding manner of accident. It has also been mentioned that due to the accident, the relatives of the said Kasthuri,

namely her husband, her brother-in-law, Priya had died on the spot and that the petitioner herein, Mani @ Manonmani and Vanitha had sustained

grievous injuries.

8. On scrutiny of Ex. P2, it is seen that the accident had not been caused due to any mechanism failure of the vehicles involved in the accident. The

Tribunal further observed that the Omni van had been damaged extensively in the accident. The Tribunal on considering that the driver of the bus

had not registered any complaint with the police to show that the accident was

caused only due to negligent driving of the driver of the Omni van

and on considering that the F.I.R. has been lodged only against the driver of the bus held that the accident had been caused only by the rash and

negligent driving by the driver of the respondent's bus.

9. PW 2 Dr. Ravindran had adduced evidence that he had examined the petitioner on 03.12.2006 and scrutinised his medical records and found

that due to the injuries sustained by him in his neck, the C5 and C6 bones in his spinal cord had been affected and that both his hands and legs had

also been affected. He deposed that the petitioner walks with a limp and that the grasping power of both his hands had been reduced. He deposed

that the petitioner had sustained 35% disability due to the accident and in support of his evidence, he had marked Ex. P9-Disability Certificate.

However, the Tribunal on considering that the disability assessed by the Doctor was on the higher side, held that the disability sustained by

petitioner was 25%.

10. The Tribunal, on observing that no documentary evidence had been marked to show that the petitioner was earning Rs. 4,000/- per month,

held that the notional income of the petitioner could only be taken as Rs. 2,000/- per month. Hence, the Tribunal on scrutiny of oral and

documentary evidence, awarded a sum of Rs. 2,000/- for loss of income for one month during medical treatment and convalescence period; Rs.

35,000/- was awarded under the head of disability of 25%; Rs. 9,712/- was awarded for medical bills as per medical bills in Ex. P8; Rs. 2,000/-

was awarded for transport expenses; Rs. 2,000/- was awarded for attender charges; Rs. 3,000/- was awarded for pain and suffering and Rs.

2,000/- was awarded for nutrition. In total, the Tribunal awarded a sum of Rs. 55,712/- as compensation to the petitioner and directed the

respondent to deposit the said sum together with interest at the rate of 7.5% per annum from the date of filing the petition till date of payment of

compensation, with costs, within a period of two months from the date of its order.

11. Not being satisfied by the award passed by the Tribunal, the petitioner has preferred the present appeal. The learned counsel for the appellant

has contended in his appeal that the Tribunal failed to consider the Doctor's (PW 2) evidence, who had assessed the disability at 35% and erred in

granting compensation of only Rs. 35,000/- for disability instead of Rs. 70,000/- as per the ruling of High Court in 2008 (1) TNMAC 8. It was

contended that the Tribunal failed to note that the Doctor had deposed in his evidence that the appellant herein sustained fracture of C5 and C6

bones in his spine and that the bones had malunited and that due to this the appellant has lost the gripping power in his left hand and is unable to

discharge his duties without the support of someone. It was also contended that the Tribunal failed to consider that the appellant was running a

provision store and earning Rs. 4,000/- per month and had erroneously taken his income at Rs. 2,000/- per month while assessment of loss of

income. It was contended that the award granted under the heads of transportation, attender charges and nutrition was also on the lower side. It

was contended that the Tribunal failed to grant award for loss of amenities, loss of clothes and articles and for future loss of income. Hence, it was

prayed for grant of additional compensation of Rs. 2,00,000/-.

12. Though summon has been served on the respondent/Transport Corporation, no one appeared for the past 4 years and hence this Court is

constrained to pass final order on the basis of available records. The Doctor had assessed the disability at 35% and the claimant had undergone

treatment at Bangalore and also at Thiruvannamalai. As per the evidence of the claimant, he had sustained bone fracture injuries on his neck, left

thigh and fractures of both joints of his legs. Hence, this Court is inclined to reassess compensation as follows:-

Rs. 35,000/- is awarded for disability; Rs. 9,712/- is awarded for medical expenses; Rs. 10,000/- towards pain and suffering; Rs. 5,000/-

towards transport; Rs. 5,000/- for nutrition; Rs. 5,000/- towards attender charges; Rs. 5,000/- for loss of earning during medical treatment period

and Rs. 10,000/- for loss of amenities and Toss of comfort. In total, this Court awards Rs. 84,712/- as compensation. After subtracting initial

compensation of a sum of Rs. 55,712/-, this Court grants a sum of Rs. 29,000/- as additional compensation, as it is found to be appropriate in the

instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of

compensation. This Court further directs the State Transport Corporation herein to comply with this order, within a period of eight weeks from the

date of receipt of this order.

13. After such a deposit having been made, it is open to the claimant to withdraw the said additional compensation amount, with accrued interest

thereon, lying in the credit of M.C.O.P. No. 1096 of 2006, on the file of Motor Accident Claims Tribunal, Additional Subordinate Judge,

Thiruvannamalai, after filing a memo. along with a copy of this order. In the result, the above Civil Miscellaneous Appeal is partly allowed.

Consequently, the Award and Decree, passed in M.C.O.P. No. 1096 of 2006, dated 29.01.2009, on the file of the Motor Accident Claims

Tribunal, Additional Subordinate Judge, Thiruvannamalai, is modified. No costs.