

(2008) 01 MAD CK 0123

In the Madras High Court

Case No : C.M.A. No. 2202 of 2002 and Cross Objection No. 13 of 2004

State Express Transport Corporation (Tamil Nadu Dn. I) Ltd. APPELLANT

Vs

Habeeb Mohammed RESPONDENT

Date of Decision : 05-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0123

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; S. Sounthar, for the Respondent

Judgement

R. Banumathi, J.—Aggrieved by the award of compensation of Rs. 3,11,600/- for the injuries sustained by the respondent/claimant, by the

Motor Accident Claims Tribunal/ Sub Court Mayiladuthurai, the State Express Transport Corporation has preferred this Appeal.

2. The respondent/claimant has been working as a driver in Kuwait. In order to obtain Visa and to complete other formalities for travelling abroad,

on 06.09.1998, the respondent/claimant travelled in the bus owned by the appellant Corporation bearing registration No. TN-01-N-0710, from

Mayiladuthurai to Chennai. At about 4.00 p.m., when the bus was proceeding in Melmaruvathur - GST road, near Pappathi Kulam, the bus was

being driven in a rash and negligent manner and hit against a stationary lorry attached to a trailer. Due to collusion, the claimant, who was travelling

in the bus, sustained fractures in his right leg. The claimant was admitted in Chengalpattu Government Hospital and later, he was admitted in Private

Hospital - Bone and Joint Clinic at Madras. Due to fracture injury, claimant has suffered permanent disability. Claiming compensation of Rs.

9,00,000/- respondent/claimant has filed the claim Petition.

3. The appellant Corporation resisted the Claim Petition contending that the accident took place because the trailer was stationed without any danger signal indication and the claimant ought to have impleaded the owner of the lorry and the Insurance Company in which the lorry was insured. The quantum of compensation claimed by the claimant is on the higher side.

4. Before the Tribunal, claimant examined himself as PW-1. Dr. Rajasekaran, who issued Disability Certificate was examined as PW-2. Co-passenger Ramu was examined as PW-3. Exs.P-1 to P-4 were marked. On behalf of the Appellant Corporation, driver was examined as RW-1.

5. Upon consideration of oral and documentary evidence, the Tribunal found that the accident occurred due to the rash and negligent driving of the bus driver. The Tribunal also held that the bus driver did not take due care while proceeding on the high way and he was negligent in hitting against the trailer parked along the road side. The Tribunal rejected the plea of the Corporation that the bus driver swerved to the road side because of overtaking of another bus on the left side. Based on the evidence of PW-2 and Ex.P-8 - permanent Disability Certificate, the Tribunal fixed the disability at 35%. As the claimant was aged 38 years, Tribunal adopted multiplier of 16 and awarded compensation of Rs. 3,11,600 under various heads.

6. The contention of the appellant Corporation is two fold. Firstly, that the bus was not driven in a rash and negligent manner and secondly, the quantum of compensation awarded is excessive.

7. Claiming enhanced compensation, claimant has also filed cross objection. According to the claimant, he was employed as driver in Kuwait and since his right leg is now affected, he is incapacitated from driving the vehicle and while so, the Tribunal erred in fixing the disability at 35% and awarding lesser compensation.

8. Insofar as the first limb of argument is concerned, the learned Counsel for the Appellant Corporation contended that the Tribunal erred in discarding the evidence of RW-1. It was submitted that only to avoid another vehicle which had overtaken the bus on the left side, the bus driver was compelled to swerve the bus on the right side and in that course, hit against

the parking vehicle. The learned Counsel submitted that no negligence could be attributed to RW-1 since there was no red light/danger light indicating parking of the trailer on the right side. Evidence on record shows that the bus belonging to Corporation was driven in the right side of the road and hit against the stationary trailer, which was caused on account of the negligence of the driver of the bus in driving the bus. The bus appears to have deflected towards the right side hitting against the stationary trailer. Evidence on record clearly brings home the point that Corporation bus failed to take necessary care and caution towards the passengers. In my considered view, the Tribunal has rightly held that the accident was due to the rash and negligent driving of the bus driver.

9. Insofar as the question of quantum is concerned, the Tribunal has awarded compensation of Rs. 3,11,600 under the following heads:

Amount in Rs.

Disability + Loss of earning power : 1,34,400

Medical Expenses : 1,55,200

Loss of Income for 5 months : 10,000

Extra Nourishment : 2,000

Pain and suffering : 5,000

Transport Expenses : 5,000

3,11,600

10. The respondent/claimant was working as driver in Kuwait. In the accident he sustained fracture injury on upper tibia and right leg was

fractured. Fibula comminuted with dislocation of ankle. The claimant had taken first aid treatment at Chengalpattu and had further treatment in

Madras Bone and Joint Clinic for about three months. PW-2 Dr. Rajasekar has also treated him and issued Ex.P-18 Disability Certificate. PW-2

has opined - Fegrous Ankylosis of right leg knee; Bony ankylosis of right leg ankle; non-union of thigh upper; anguluniu of right leg will shortened

by 3 c.m. and assessed claimant's permanent disability at 75%. In his evidence, PW-2 Dr. Rajasekar has also stated that movements of right knee

joint is restricted and because of fracture of Tibia and Fibula on right let, right leg is shortened by 3 c.m. and that the claimant cannot have normal

walking and other activities. Though PW-2 has assessed the permanent disability at 75%, the Tribunal took the view that the permanent disability

in Ex.P-18 is on the higher side and the Tribunal fixed claimant's permanent disability at 35%.

11. The respondent has been working as driver in Kuwait. In his evidence the claimant has stated that he has been getting 150 Dinars as wages in

Kuwait, which is equivalent to Rs. 17,000/- p.m. The respondent/claimant has not produced any document showing income, nor has he produced

material to show that he was permanently employed in Kuwait. Pointing out that the accident took place in India and that no document has been

produced evidencing permanent employment in Kuwait, Tribunal has fixed the monthly income at Rs. 3,000/-.

12. As against the finding of the Tribunal fixing income at Rs. 3,000/- p.m., the respondent/claimant has filed Cross Objection. The learned

Counsel for the respondent has submitted that the respondent was employed as driver in Kuwait and his right leg was seriously affected and

permanently disabled. While so, the Tribunal ought to have fixed the disability at 75% on the basis of evidence of PW-2 and Ex.P-8.

13. The above contention of respondent/claimant does not merit acceptance. To show that he is permanently employed in Kuwait and to establish

his income, the claimant has not produced any document. Ex.A-21 is the driving license of the respondent which indicates that the respondent was

employed in Kuwait as Driver. But the respondent has not produced the original driving license. On the assumption that the respondent would have

continued his employment in Kuwait, compensation cannot be ordered. Referring to the situs of the accident and the income on the basis of wages

payable in India, the Tribunal has fixed the monthly income at Rs. 3,000 p.m. In fact, the Tribunal did not choose to deduct 1/3rd for personal

expenses. It cannot be said that the Tribunal erred in fixing the monthly income at Rs. 3,000/- p.m. as per Indian standard wages.

14. The compensation awarded must be just and reasonable and cannot be a bonanza and a source of profit. In Mrs. Helen C. Rebello and

Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Hon''ble Supreme Court observed that the Tribunal constituted under

the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that the compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. Quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical impairment, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. The measure of changes cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and the attending peculiar or special features, if any. Every method or mode adopted or assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just", a wide discretion is vested on the claims Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness and non-arbitrariness.

15. All the eventualities that may surface on account of a disability, which deserves to be compensated may not be possible to be catalogued and essentially the Tribunal has to determine the claim bearing in mind the statutory mandate that what is payable is a just compensation.

16. On the assumption that the respondent/claimant would have continued his employment in Kuwait, compensation cannot be awarded. No

doubt, Motor Accidents Act is a beneficial piece of legislation but that does not mean that the Court could determine compensation so generously

and disburse the same in derogation of the decided principles. When the Medical Certificate shows that the respondent/claimant sustained bone

fracture, assuming that the respondent is permanently disabled, compensation cannot be fixed on the higher side. It may be that there is slight

difficulty in carrying on his normal avocation - driving but the respondent is not completely disabled from doing any work.

17. The basis of the medical bills and expenses of the treatment and the hospital bills, which are evidenced by Ex.P-8 to P-16 series, the Tribunal

has ordered an amount of Rs. 1,55,200/- for medical expenses.

18. Tribunal has adopted multiplier of 16. The learned Counsel for the Appellant/ Corporation has submitted that in personal injury, excess

multiplier cannot be adopted and even if the multiplier is to be adopted, same standard as that of fatal injury cases has to be taken.

19. Countering the arguments and placing reliance upon United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , the

learned Counsel for the respondent/claimant has submitted that in appropriate cases, the Court could adopt multiplier method even in personal

injury cases. Referring to I (2006) ACC 123 (SC) and 2002 (2) TAC 108 (Mad.) - P. Kalavathi v. G. Murali, Division Bench of this Court has

set out the following principles in adopting the multiplier in personal injury cases and held as under:

The following principles emerge from the above discussion:

(a) In all case of injury or permanent disablement ""multiplier method"" cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent ?

(c)(1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely

and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying ""multiplier method"" as provided

under Second Schedule to the Motor Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

20. The learned Counsel for the respondent/Corporation has submitted that even if such multiplier is to be adopted, 1/3rd amount has to be

deducted from the monthly income. In support of his contention, the learned Counsel placed reliance upon New India Assurance Co. Ltd. Vs.

Charlie and Another, . Referring to various case laws on adopting proper multiplier, in the said case, Supreme Court has held that in personal

injury cases also, 1/3rd deduction has to be made for personal expenditure. In paragraph 6 of the Judgment, the Supreme Court has observed that

what would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It

would depend upon circumstances of each case.

21. No doubt, whatever be the earning, the claimant would have spent some amount for his personal expenditure. The respondent/claimant being a

driver, the Tribunal has fixed his monthly income at Rs. 2000/-. In my considered view, the monthly income fixed at Rs. 2,000/- appears to be

very low. Even if we fix monthly income as Rs. 3,000/- and 1/3rd deduction is given for personal expenditure, the monthly income of the claimant

would be Rs. 2,000/-. Hence based on the principles laid down in New India Assurance Co. Ltd. Vs. Charlie and Another, , no further amount

need be deducted.

22. The learned Counsel for the respondent/claimant has submitted that respondent has taken treatment for three months and even then the

Tribunal has awarded less amount of Rs. 5,000/- towards pain and suffering. It was also submitted that no compensation was awarded under the

head "loss of amenities" and "discomfort" because of the restricted movement of the right leg. Though the Tribunal has not awarded compensation

under separate heads - "loss of amenities and loss of discomfort, inconvenience" etc., the Tribunal has awarded just compensation under the head

permanent disability. Referring to two decisions of Division Bench in 1995 (2) MLJ 571 and National Insurance Co. Limited Vs. A. Kala Mohan

and another, , first bench of this Court in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , held as follows:

5. ...Supreme Court and this Court repeatedly held and reiterated that the compensation to be awarded by the Tribunals under any head should

not be a token compensation, but it should be adequate and reasonable to achieve the statutory goal. The Tribunals are well advised to take into

account the facts and circumstances of the individual case, the age of the injured or the deceased on the date of the accident, social and economic

status of the deceased or injured, the prospects of the deceased/injured earning more income if the accident had not taken place. The Court and

Tribunals, in bodily injury cases while assessing compensation should take into account all the relevant circumstances, evidence, legal principles

governing quantification of compensation.

23. In the said Judgment dated 3.8.2006, Full Bench has observed that in order to avoid any future confusion and to bring more clarity and

transparency in the award of damages, it is necessary that the Tribunal while awarding damages should itemize the award for various heads, as

indicated in paragraph 19 of the said decision. In the present case, though the heads - "loss of amenity, loss of expectation of life and

inconvenience" were not itemized, the Tribunal has awarded a consolidated amount as compensation under the head "compensation for permanent

disability and loss of earning". No further amount need be awarded under other heads - "loss of amenities and inconvenience".

24. After taking into consideration the entire materials on record, including the oral and documentary evidence and having regard to the facts and

circumstances of the case, in my considered view, the compensation awarded is just and reasonable.

25. The award dated 25.9.2001 passed in MACTOP No. 59/1999 on the file of the Motor Accident Claims Tribunal (Principal Subordinate

Judge), Mayiladuthurai is confirmed and this CMA is dismissed. CMP No. 16042/2002 is closed.

26. Cross objection filed by the respondent/claimant is also dismissed.