

(2010) 04 MAD CK 0362
In the Madras High Court
Case No : C.M.A. No. 1484 of 2005

Tamil Nadu State Transport Corporation Ltd.	APPELLANT
Vs	
D. Narasimman	RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2011) ACJ 1836

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

Bench : Single Bench

Advocate : P. Jagadeeswaran, for the Appellant;

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above civil miscellaneous appeal has been filed by the appellant-respondent against the judgment and award dated 29.9.2004, made in the M.C.O.P. No. 331 of 2004, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Court No. II, Krishnagiri, awarding a compensation of Rs. 9,01,299 with 9 per cent interest per annum from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said judgment and award, the appellant-respondent has filed the above appeal praying to set aside the said award passed by the Tribunal.

3. The short facts of the case are as follows:

Petitioner submitted that he was working as a conductor in Tamil Nadu State Transport Corporation (Salem Division-II) Ltd., Dharmapuri. According to the allocation of duty, the petitioner was deputed to work as a conductor in the bus bearing registration No. TN 29-N 1353, which plies from Hosur to Coimbatore. On 22.6.2003, the petitioner was on duty in the said bus and proceeding from Hosur to Coimbatore and while the said bus came near R.T.O. Office, Avinasi in Perundurai to Avinasi main road, at about 3 a.m., the driver of the said bus had driven the said bus in a rash and reckless manner, without observing any rules of

the road, without applying necessary light and at an uncontrollable speed towards Avinasi. Suddenly the bus hit behind one stationed lorry bearing registration No. TAR 7734. Due to the impact, the petitioner, who was seated on the front left of the conductor seat of the bus, sustained severe injuries. In the said accident some other passengers had also sustained injuries. The said accident had occurred only due to rash and reckless driving of the driver of the said TNSTC bus bearing No. TN 29-N 1353. Regarding the said accident, the Avinasi Police have registered a case against the driver of the said TNSTC bus in Crime No. 351 of 2003, under sections 279 and 337 of Indian Penal Code.

4. Immediately after the said accident, the petitioner was admitted in Richmond Hospital, Coimbatore as an inpatient from 23.6.2003 to 20.7.2003, and then the petitioner had further taken treatment privately at Kaveripattinam. In the said accident, the petitioner's left leg below knee was completely palsied and deformed, his left knee became grossly unstable at knee joint and he also sustained severe soft tissue contusion to left calf with ischium lower leg below knee. Hence, the petitioner's left leg above knee had to be amputated. In the Richmond Hospital, the petitioner was in I.C.U. for more than 10 days, for which petitioner spent more than Rs. 15,000 for I.C.U. charges. Further, petitioner underwent several surgeries in the said hospital.

5. At the time of accident, petitioner was a conductor with Tamil Nadu State Transport Corporation Ltd., and he was drawing a monthly salary of Rs. 8,000 and also daily bhatta of minimum Rs. 100. Due to the left leg amputation, the petitioner was removed from his service by Tamil Nadu State Transport Corporation Ltd. on medical grounds stating that physically he is not fit for the said conductor's post. The petitioner had spent a sum of Rs. 2,00,000 for his medical treatment, and further he needs a sum of Rs. 1,00,000 for future medical treatment. Due to the said accident, he is unable to sit, stand, squat, bend, walk, move from one place to another and even for answering his calls of nature. He will always need an attendant for his day-to-day activities for his remaining life. As such, the petitioner claimed a sum of Rs. 33,35,000 as compensation. But, the petitioner himself restricted his claim to Rs. 15,00,000 only.

6. The respondent Tamil Nadu State Transport Corporation Ltd. has filed a counter statement and denied their liability regarding the said accident. Respondent has admitted that the accident took place on 23.6.2003 at about 3 a.m. on Erode to Avinasi National Highway Road near Avinasi R.T.O. Office. But, the accident did not take place as alleged by the petitioner. Further, the respondent has denied that the TNSTC bus hit behind the stationed lorry bearing registration No. TAR 7734. On 22.6.2003, the driver of the bus had driven the same from Hosur to Coimbatore, slowly and cautiously, observing all the rules of the road, with necessary light and keeping to the extreme left side of the road. At about 3 a.m. on 23.6.2003, while thus proceeding from Perundurai to Avinasi NH Road towards Avinasi, near Avinasi R.T.O. Office, the driver of the lorry

bearing registration No. TAR 7734 drove the same, after loading cows in the lorry, on the right side mud portion of the road. All of a sudden, without seeing both sides before turning, the driver of the lorry turned the lorry on the National Highway Road, without giving any turning signal. The driver of the said TNSTC bus had not anticipated that the lorry would come from right side mud portion to cut across the NH Road. However, he had applied sudden brakes to avoid hitting on the lorry, but due to negligent act of the driver of the said lorry, the accident had happened. The accident had occurred only due to negligent act of the driver of the said lorry. There is no fault on the part of the driver of the said TNSTC bus. Hence, the respondent is not liable to pay any compensation to the petitioner as claimed by him.

7. The Motor Accidents Claims Tribunal framed three issues for consideration, namely:

- (i) Who is responsible for the accident?
- (ii) Whether the petitioner is entitled to get compensation?
- (iii) What other relief is the petitioner entitled to get?

8. On the petitioner's side, the petitioner was examined as PW 1 and Dr. Ashok Kumar was examined as PW 2 and seven documents were marked as Exhs. P1 to P7, namely, Exh. P1-F.I.R., Exh. P2-wound certificate; Exh. P3-discharge certificate; Exh. P4-salary certificate; Exh. P5-medical expense receipts; Exh. P6-taxi receipts and Exh. P7-disability certificate. On the respondent's side, one Dhandayuthabani was examined as RW 1 and no documents were marked.

9. The petitioner, PW 1, had adduced in his evidence that on 22.6.2003, he was working as a conductor in the respondent's bus bearing registration No. TN 29-N 1353, which was proceeding from Hosur to Coimbatore. When the bus was nearing Avinasi R.T.O. Office, the driver of the bus had driven the bus in a rash and negligent manner and dashed against a lorry, which was stationed on the left side of the road.

10. RW 1 stated in his evidence that the said lorry loaded with cows came on the right side of the road. Suddenly the lorry, without giving any signal, came across the road. At this point of time, the respondent's driver applied brakes, however, the bus dashed behind the said lorry. As such, the accident had happened. After hearing evidence from both sides the Tribunal has come to the conclusion that the F.I.R. was registered against the driver of the bus. Since the driver of the bus committed a rash and negligent act, a criminal case has been registered against him, as such, he is facing the criminal case before the criminal court. Considering the contents of the F.I.R. and evidence of the claimant and respondent, the Tribunal decided that the respondent is liable to pay compensation to the claimant.

11. The petitioner further adduced in his evidence that due to the said accident, he sustained bone fracture on his left thigh, left leg knee and right leg knee; that

immediately after the accident he was taken to Richmond Hospital at Coimbatore for treatment, wherein he was admitted as inpatient from 23.6.2003 to 20.7.2003; that his left leg was amputated, because there was heavy bone fracture; that he was discharged from the hospital and underwent further treatment at Kaveripattinam Private Hospital, for which he spent more than Rs. 1,70,000.

12. Supporting the nature of injuries and mode of medical treatment, one Dr. Ashok Kumar was examined as PW 2. The PW 2 in his evidence stated that blood circulation in the claimant's left leg had stopped. On his left knee there was swelling. Further, on his right leg sole there was bone fracture and the same was deformed. On the claimant's left thigh a surgery was conducted and in that operated area, a steel rod was fixed. As such, the petitioner is unable to walk, stand and do his normal day-to-day work. Further, the petitioner experiences discomfort during his physical activities. After examining the claimant, the PW 2 certified that the claimant sustained 80 per cent disability due to the said accident. But on cross-examination, the PW 2 admitted that the petitioner had only sustained 60-65 per cent disability in the said accident.

13. On the strength of the salary certificate of the claimant, which was marked as Exh. P4, it reveals that the claimant was earning a salary of Rs. 8,000 per month after deducting his liabilities. As such, the petitioner's annual income was Rs. 96,000. Further, as per Motor Vehicles Act, Tribunal adopted a multiplier of 15 and assessed the compensation at Rs. 14,40,000. Even though the doctor certified that the petitioner sustained 60-65 per cent disability, the Tribunal considering his disability as 50 per cent awarded a sum of Rs. 7,20,000 under the head of permanent disability and loss of income. Further, the Tribunal awarded a sum of Rs. 1,68,649 as per Exh. P5, under the head of medical expenses; a sum of Rs. 5,000 under the head of pain and suffering; a sum of Rs. 3,000 under the head of nutrition, a sum of Rs. 4,650 for transport expenses. In total, the Tribunal awarded a sum of Rs. 9,01,299 as compensation to the claimant, together with interest at the rate of 9 per cent per annum from the date of filing the petition till the date of payment of the compensation and directed the respondent to deposit the above award amount into the credit of the M.C.O.P. No. 331 of 2004, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Court No. II, Krishnagiri. Further, the Tribunal directed the respondent to deposit the said award amount within a period of two weeks from the date of its order. After such deposit is made by the respondent, the said award amount is to be deposited in a nationalised bank for a period of 3 years. Further, the Tribunal directed the claimant to withdraw the interest once in three months directly from the bank. The Advocate's fees was fixed at Rs. 16,012.

14. Aggrieved by the said award and decree, dated 29.9.2004, in M.C.O.P. No. 331 of 2004, passed by the Chief Judicial Magistrate No. II, Motor Accidents Claims Tribunal, Krishnagiri, the appellant Tamil Nadu State Transport Corporation Ltd. has filed the above said appeal and challenged the same on

various grounds, stating that the claimant's age was taken as 45 years by the Tribunal without any documentary evidence; that the Tribunal had wrongly concluded that the petitioner's income was Rs. 8,000 per month; that Tribunal wrongly adopted 50 per cent as disability and assessed the compensation of Rs. 7,20,000 towards permanent disability and loss of income, which is also erroneous; that the Tribunal's award of a sum of Rs. 5,000 for pain and suffering, a sum of Rs. 1,68,649 for medical expenses, a sum of Rs. 3,000 for nourishment and a sum of Rs. 4,650 for transport expenses, are all not pertinent in the said case. Without documentary proof, the Tribunal had awarded the said compensation amount of Rs. 9,01,299 under the above-mentioned heads, with 9 per cent interest and hence it is not sustainable in law. Hence, the appellant prays to set aside the compensation awarded by the Tribunal in M.C.O.P. No. 331 of 2004.

15. Further, the learned counsel argued that the gross salary of the claimant is Rs. 8,000 and the rate of interest at the relevant time is only 7.5 per cent. But, the Tribunal granted interest at the rate of 9 per cent to the claimant and hence this is also against the law. The multiplier adopted by the Tribunal as 15 instead of 11, as per the Motor Vehicles Act, Second Schedule, is also erroneous. Dr. Ashok Kumar, PW 2, issued a disability certificate stating that the claimant sustained 80 per cent disability in the said accident. The said doctor is not an authorised person to give disability certificate to the claimant. In fact, he has not treated the claimant at the time of accident. As such, the certificate issued by PW 2 is not valid.

16. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal and the arguments advanced by the learned counsel appearing for the appellant, this court is of the view that the award amount of Rs. 9,01,299, together with interest at the rate of 9 per cent per annum granted by the Tribunal is on the higher side. Hence, this court decides to scale down the compensation as follows:

(1) The Tribunal has awarded a sum of Rs. 7,20,000 under the head of loss of income due to the disability of 50 per cent, after adopting a multiplier of 15. This court, on considering that a multiplier of 11 is relevant to the instant case, considering the age of the claimant as per the Motor Vehicles Act, 1988 and disability of 50 per cent, awards a sum of Rs. 5,28,000 as compensation to the claimant.

(2) The Tribunal has awarded a sum of Rs. 1,68,649 towards medical expenses, on the strength of Exh. P5, medical bills series. This court confirms the award granted under the said head.

(3) The Tribunal has awarded a sum of Rs. 5,000 under the head of pain and suffering. This court enhances the award granted under this head to Rs. 25,000.

(4) The Tribunal has awarded a sum of Rs. 3,000 under the head of nutrition. This court enhances the award granted under this head to Rs. 10,000.

(5) The Tribunal has awarded a sum of Rs. 4,650 under the head of transport expenses. This court enhances the award granted under this head to Rs. 10,000.

This court awards a sum of Rs. 7,41,649 as compensation to the claimant, together with interest at the rate of 7.5 per cent per annum from the date of filing of the claim petition till the date of payment of compensation. As observed above, this court has scaled down the compensation from Rs. 9,01,299 to Rs. 7,41,649, as it is found to be fair and equitable.

17. On 15.6.2005, this court imposed a condition on the appellant to deposit the entire compensation amount with accrued interest into the credit of M.C.O.P. No. 331 of 2004, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Court No. II, Krishnagiri.

18. Therefore, this court permits the claimant to withdraw the compensation amount, as per this court order, of a sum of Rs. 7,41,649 together with accrued interest thereon at the rate of 7.5 per cent per annum, lying in the credit of the M.C.O.P. No. 331 of 2004, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Court No. II, Krishnagiri, after filing necessary payment out application in accordance with law, subject to deduction of withdrawals, if any, made.

19. Likewise, the appellant is at liberty to withdraw excess compensation amount lying in the credit of M.C.O.P. No. 331 of 2004, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Court No. II, Krishnagiri, after observing necessary formalities before the court below.

20. In the result, the above civil miscellaneous appeal is partly allowed and the award and decree dated 29.9.2004 in the M.C.O.P. No. 331 of 2004, passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Court No. II, Krishnagiri, is modified. There shall be no order as to costs.