

(2010) 09 MAD CK 0008

In the Madras High Court

Case No : C.M.A. No. 2010 of 2006 and M.P. No. 1 of 2006

Tamil Nadu State Transport Corporation Ltd.

APPELLANT

Vs

L.K. Arumugam

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) 09 MAD CK 0008

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

Bench : Single Bench

Advocate : A. Babu, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/Respondent against the Award and Decree, dated

17.11.2005, made in M.C.O.P. No. 65 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Fast

Track Court, Thirupathur, awarding a compensation of Rs. 2,14,832/- together with 7.5% interest per annum, from the date of filing the claim

petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the Appellant/Respondent has filed the above appeal praying to scale down the award and decree

passed by the Tribunal.

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

On 30.08.2003, at about 12.00 hours, the Petitioner was proceeding in his TVS50 motorcycle bearing registration No. TN29 Z9855, from

Aandiyappanur to Mittur, by slowly, cautiously, observing all the rules of the road

with sounding horn, keeping to the extreme left side of the road.

When he was nearing Aandiyappanur Manicka Gounder's Coconut Thope, the Respondent's Corporation bus bearing registration No. TN23

N1333, driven by its driver, was coming in the opposite direction, in a rash and reckless manner, without observing any rules of the road, without

sounding horn and at an uncontrollable speed and suddenly hit against the Petitioner's motorcycle. Due to the impact, the Petitioner was thrown

out at a distance and sustained severe injuries and his motorcycle was also completely damaged in the accident. Immediately, after the said

accident, he was taken to the Government Hospital, Tiruppattur, after given first aid he was referred to Ortho Surgeon G.V.M.C. Hospital,

Vellore for management of multiple fractures and blood transfusion. Thereafter, he was admitted in Vellore C.M.C.Hospital as inpatient from

31.08.2003 to 08.09.2003. In the said accident, his right leg both bones were fractured and sustained injuries over just above right eyebrow,

below right eye, left elbow and also sustained multiple injuries all over his body. Regarding the said accident, a criminal case has been registered by

the Kurisilappattu Police Station, in Crime No. 232/2003, under Sections 279 and 338 I.P.C. The accident had been occurred only due to the

rash and negligent driving of the driver of the Respondent's Corporation bus. As such, he claimed a compensation of Rs. 5,00,000/- with interest

before the Tribunal.

4. The Respondent, in their Counter, had resisted the claim petition. The allegations made by the claimant stating that the road accident had been

committed by the Respondent's Corporation bus driver, which is stoutly denied by them. Actually the driver of the bus had observed all traffic

rules and had driven the bus cautiously. But, the claimant rode his motorcycle at high speed and in a rash and negligent manner and dashed against

the bus, while the bus was in a stationary position at the left side of the road. As such, the accident had been occurred. The Respondent has not

admitted the age, income and profession of the claimant. In the said claim petition, the owner and the insurer are also not included in the claim case.

Hence, the Respondent prays to dismiss the claim petition.

5. The learned Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Who is responsible for the said accident?

(ii) Whether the Respondent is liable to pay compensation to the Petitioner?

6. On the Petitioner's side, the claimant himself was examined as PW1 and Dr. Elangovan was examined as PW2 and seven documents were

marked as Exs.P1 to P8 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Xerox copy of the Wound Certificate issued by the

C.M.C.Hospital, Vellore, Ex.P3-Xerox copy of the Registration Certificate registered at Thiruppattur Hospital regarding the accident, Ex.P4-

Receipts issued by the C.M.C.Hospital, Ex.P5-Disability Certificate, Ex.P6-X-ray, Ex.P7-Rental Car Receipt, Ex.P8-Receipts for getting

treatment in Puthur Bone Hospital. On the Respondent's side one Seetharaman, the driver of the bus, was examined as RW1 and and the

judgment copy of the Judicial Magistrate was marked as Ex.R1.

7. The claimant, PW1 had adduced evidence stating that on 30.08.2003 he was proceeding on his TVS50 motorcycle bearing registration No.

TN29 Z9855 from Aandiyappanur to Mittur. While he was nearing the Alangayam main road, the Respondent's Corporation bus was coming in

the opposite direction at high speed and dashed against him. In the result, he sustained bone fracture injuries. Immediately, he was taken to the

Government Hospital, Thiruppattur for preliminary treatment. Thereafter, he was referred to the C.M.C.Hospital, Vellore for specialized treatment.

Further he adduced evidence stating that he had sustained injury on his right thigh, right leg bone fracture, right eye brow and the right eye below,

left hand fore arm had sustained injuries. In order to prove the nature of the accident, type of injuries, mode of treatment and duration of treatment,

he had marked Ex.P1-First Information Report, Ex.P2-Wound Certificate, Ex.P3-Accident Register, Ex.P4-Medical Bill Series, Ex.P5-Disability

Certificate, Ex.P6-X-ray, Ex.P7-Taxi fare receipt and Ex.P8-Puthur Bone Setting Hospital Treatment particulars.

8. PW2, Dr. Elangovan had adduced evidence stating that he had examined the claimant on 30.06.2005 and scrutinised the relevant medical

records of the claimant and also took an X-ray and assessed the disability of the claimant as 65% sustained. Further, he adduced evidence stating

that the claimant's right leg tibia bone had dislocated and a surgical operation was performed on his right leg. His right shoulder bone is also bent

and deformed and his right leg got shortened by 3.5 Cms., Further, he adduced evidence stating that he is unable to walk squat and stand without any support.

9. RW1, Seetharaman had adduced evidence stating that he is working as a driver of the Respondent's Corporation. On 30.08.2003 at about

11.30 a.m. he took a trip from Alangayam and when the bus was nearing Aandiyappanur and at that point of time the claimant was coming in the

opposite direction at high speed and on noticing the same he stationed the bus on the side of the road, despite this precaution taken, he dashed

against the bus and in this way the accident had happened. Further, he adduced evidence stating that the accident case was registered against him

and subsequently he was acquitted from the criminal proceedings.

10. After considering the evidence of PW1, PW2 and PW3 and documents, which were marked by the claimant, the learned Tribunal had come

to the conclusion that the driver of the Respondent's Corporation bus had committed the accident, therefore the Respondent/Transport

Corporation Ltd., is liable to pay compensation and awarded the compensation as follows:

- i. Rs. 65,000/- under the grievous injuries and 65% disability,
- ii. Rs. 40,000/- under the head of pain and suffering,
- iii. Rs. 10,000/- under the head of transport expenses,
- iv. Rs. 5,000/- under the head of nutrition,
- v. Rs. 3,000/- under the head of attender charges,
- vi. Rs. 10,000/- under the head of loss of income,
- vii. Rs. 20,000/- under the head of medical expenses to remove the steel plate from his hand,
- viii. Rs. 10,000/- under the head of loss of earning capacity,
- ix. Rs. 46,942/- under the head of medical expenses,
- x. Rs. 1,800/- under the head of Taxi fare,
- xi. Rs. 3,090/- under the head of medical expenses, treatment taken in Putthur Bone Hospital.

In total, the Tribunal awarded a sum of Rs. 2,14,832/- as compensation to the Petitioner, together with interest at the rate of 7.5% per annum from

the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal directed the Respondent to deposit the

compensation amount of Rs. 2,14,832/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of

payment of compensation, within a period of sixty days from the date of its order. In turn, the said amount to be deposited, under a fixed deposit

scheme, in a nationalised bank for a period three years. Accordingly ordered.

11. Aggrieved by the said Award and Decree, the Appellant/Respondent has filed the above appeal praying to scale down the award and decree

passed by the Tribunal.

12. The learned Counsel appearing for the Appellant argued that the Doctor assessed the disability at 65%, which is on the higher side. Further,

the Tribunal awarded a sum of Rs. 40,000/- under the head of pain and suffering, which is also on higher side. Further, the learned Counsel argued

that the Tribunal awarded a sum of Rs. 10,000/- under the head of transport expenses, which is also on higher side, since the Tribunal had

awarded a sum of Rs. 1,800/- as taxi fare. Therefore, he submitted that the award passed by the Tribunal is an excessive and exorbitant one.

Hence, he prays to scale down the compensation amount awarded by the Tribunal.

13. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing for the Appellant and the

award and decree passed by the Tribunal, this Court is of the view that the quantum of compensation is fair and equitable. Therefore, this Court

concurs with the same. However, the award amount of Rs. 40,000/- under the head of pain and suffering is on higher side. Hence, this Court

reduces it to Rs. 15,000/-. The excess amount of Rs. 25,000/- is ordered with attender charges, since the claimant's right leg got shortened by 3.5

cms. and he requires help for mobility. Consequently, there is no discrepancy in the award and decree passed by the Tribunal.

14. On 13.07.2006, this Court directed the Appellant to deposit 50% of the award amount, into the credit of the M.C.O.P. No. 65 of 2005, on

the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Fast Track Court, Thirupathur and on 16.03.2007, this

Court permitted the claimant to withdraw the 75% of the amount so deposited,

lying in the credit of the M.C.O.P. No. 65 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Fast Track Court, Thirupathur.

15. Now this Court directs the Appellant/State Transport Corporation Ltd., to deposit the remaining compensation amount as per the Tribunal

award with accrued interest thereon, into the credit of the M.C.O.P. No. 65 of 2005, on the file of the Motor Accident Claims Tribunal,

Additional District & Sessions Court, Fast Track Court, Thirupathur, within a period of six weeks from the date of receipt of a copy of this order.

After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon, lying in the

credit of the M.C.O.P. No. 65 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Fast Track

Court, Thirupathur, by making proper payment out application, subject to the deduction of withdrawals, if any, in accordance with law.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 17.11.2005, made in M.C.O.P. No. 65 of 2005,

on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Fast Track Court, Thirupathur is confirmed.

Consequently, connected miscellaneous petition is closed. No costs.