

(2010) 11 MAD CK 0451
In the Madras High Court
Case No : C.M.A. No. 140 of 2004

Tamil Nadu State Transport Corporation Ltd.	APPELLANT
Vs	
Mohammed Ashraf rep. by his father and natural guardian, M. Ismail and Moorthy	RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

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

Citation : (2010) 11 MAD CK 0451

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : R. Arunmozhi, for the Appellant; N. Murugesan, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Transport Corporation against the judgment and decree made in MCOP No. 253 of 1997 dated 28.07.2003 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Dindigul.

2. Background facts in a nutshell are as follows:

The injured-Minor Mohammed Ashraf met with motor traffic accident that took place on 16.10.1996 at about 8.25 a.m. The said injured and others were standing in a bus stop near Arya Bhavan Hotel in the Batlagundu Main Road. At that time, a bus bearing Registration No. TN-57-0161 belonging to the Appellant-Transport Corporation came from West to East direction and stopped in the bus stop. When the injured was entering into the bus, the driver took the bus suddenly in a rash and negligent manner without giving any signal. Due to the same, the injured fell down from the bus and sustained injury in his right leg from knee to the ankle. The injured claimed a compensation of Rs.2,00,000/- before the Tribunal. The Appellant-Transport Corporation resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the bus?
2. Whether the claimant is entitled to compensation ?If so to what extent?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the Appellant/Transport Corporation and awarded a sum of Rs. 1,70,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as under:

Rupees Transport to hospital 500/- Extra nourishment and medical expenses 20,000/- Loss due to 38; disability 80,000/- Pain and suffering 19,500/- Loss of future earning 50,000/- capacity ----- Total.... 1,70,000/- =====
Aggrieved by that award, the Appellant / Transport Corporation has filed the present appeal.

3. Learned Counsel for the Appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and submitted that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. He further submitted that the interest rate fixed by the Tribunal at 9% p.a.from the date of petition is excessive .Hence the order passed by the Tribunal is not in accordance with law and the same should be set aside .

4. Learned Counsel appearing for the first Respondent / claimant has submitted that the Tribunal had considered all the materials and evidence available on record and awarded the compensation which is just, air and reasonable. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed .

5. Heard the learned Counsel on either side and perused the materials available on record. On the side of the claimant, P.W.1 to P.W.3 were examined and documents Exs.P1 to P7 were marked. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1 and no document was marked. P.W.1 is the claimant. P.W.2 is the eye-witness to the accident.P.W.3 is the Doctor. Ex.P1 is the First Information Report .Ex.P2 is the Wound Certificate. Ex.P3 is the Discharge Certificate issued by the Government Hospital, Periyakulam. Ex.P4 is the Medical Certificate. Ex.P5 is the Note Book containing the details regarding the treatment taken by the claimant in the hospital as in-patient. Ex.P6 is the Disability Certificate .Ex.P7 is the X-ray. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the Appellant/Transport Corporation. It is a question of fact and it is based on valid materials and evidence, and hence the same is confirmed.

6. The injured-claimant was 14 years old at the time of accident. He was examined as P.W.1. In his evidence he stated that he was studying IX Standard

at the time of accident in N.S.V.V. Higher Secondary School ,Pattiveeranpatti. Further in his evidence he stated that it was only the driver of the bus caused the accident and the driver was charge-sheeted by Batlagundu Police Station in Crime No. 485 of 1996 under Sections 279 and 337 IPC. Due to the accident, he sustained the following injuries:

Crush injury (R) lower leg, lacerated wound 3 cm x 2 cm x 2 cm over the inner aspect of the lower lip extending till the outer aspect. Patient underwent major surgery-As per plastic surgeon's opinion, injury is grievous in nature.

Immediately after the accident, he was treated in the Government Hospital, Periyakulam from 17.10.1996 to 03.01.1997 as in-patient and later, he was taking treatment as out-patient. Ex.P2 is the Wound Certificate .Ex.P5 is the treatment record. P.W.3, the Doctor ,who examined the claimant, determined the disability at 38%. Ex.P6 is the Disability Certificate. Ex.P7 is the X-ray. In his evidence, the Doctor stated that there is a crush injury in the right lower leg of the claimant and he took treatment for a period of four months .Due to the injuries, the injured is unable to walk and also unable to attend the school and he discontinued his education. The Doctor further stated that due to the injuries, there is a restricted movement of the right leg to the extent of 60%. Further, it is stated that the disability affects the future earning capacity of the claimant. After considering the oral and documentary evidence, the Tribunal has awarded a total compensation of Rs. 1,70,000/ under various heads. The Tribunal has awarded Rs. 500/ towards transport to hospital and Rs. 20000/-towards extra nourishment and medical expenses .There is no dispute that the claimant was admitted in the hospital and he took treatment and a plastic surgery was also done and he was in the hospital for a period of four months. After considering the same, I am of the view that the amounts awarded by the Tribunal towards transport to hospital, and also towards extra nourishment and medical expenses, are very reasonable and hence they are confirmed. The Tribunal has awarded Rs. 19,500/-towards pain and suffering .After taking into consideration of the injuries ,I am of the view that the amount awarded by the Tribunal towards this head is very reasonable and hence it is confirmed. The Tribunal has awarded a sum of Rs. 80000/-towards loss due to 38% disability and another Rs. 50000/-towards loss of future earning capacity .The claimant was 14 years old at the time of accident .Because of the accident, he discontinued his education .His right lower leg was also completely crushed .Therefore, this Court is of the view that the amounts awarded towards these heads are very reasonable and hence they are confirmed. The Tribunal has awarded interest rate at 9% p.a. from the date of petition. Learned Counsel for the Appellant vehemently contended that the interest rate awarded by the Tribunal is excessive and hence the same has to be reduced. After taking into consideration, the date of accident, the date of award and the prevailing rate of interest during the relevant time, this Court is of the view that the interest rate fixed by the Tribunal at 9% p.a.is excessive. It would be reasonable to award the interest at 7.5% p.a. from the date of petition. Therefore, the claimant is entitled to the compensation of Rs. 1,70,000/-as

awarded by the Tribunal, but the interest rate alone is modified from 9% p.a. from the date of petition to 7.5% p.a. from the date of petition.

7. It is stated that the Appellant-Transport Corporation has already deposited the entire award amount as per the order of this Court dated 16.02.2004 and the claimant has also withdrawn a sum of Rs.70,000/-. Under the circumstances, since the claimant is entitled to the compensation of Rs.1,70,000/- with interest at 7.5% p.a. from the date of petition, he is permitted to withdraw Rs. 1,70,000/- with interest at 7.5% p.a. from the date of petition, less the amount already withdrawn, on making proper application. The Appellant-Transport Corporation is also permitted to withdraw the balance amount on making proper application.

8. The Civil Miscellaneous Appeal is disposed of with the above modification. Consequently, CMP No. 277 of 2004 is closed. No costs.