
(2010) 11 MAD CK 0267

In the Madras High Court

Case No : C.M.A. (MD) No. 1633 of 2010

Tamil Nadu State Transport Corporation Ltd.

APPELLANT

Vs

Prakasam

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304

Citation : (2010) 11 MAD CK 0267

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

Bench : Single Bench

Advocate : Royce Emmanuel, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Transport Corporation against the judgment and award dated 28.4.2008 made in MCOP No. 1869 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court No. II), Trichy.

2. Background facts in a nutshell are as follows:

The injured-Prakasam met with motor traffic accident that took place on 22.05.2004 at about 19.20 hours. The said injured was walking along with his two bullocks in the Salem-Trichy Road from West to East direction. When he reached near Periyar Bridge, a bus bearing Registration No. TN-45-N-1081, belonging to the Appellant-Transport Corporation, came in a rash and negligent manner and also at high speed and hit the injured. Due to the said impact, the injured sustained multiple grievous injuries all over the body. Both the bullocks died in the accident. The claimant 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. Who is responsible for the accident?

2. Whether the claimant is entitled to compensation?

3. If so from whom and to what extent?

After considering the oral and documentary evidence, the Tribunal held that both the driver of the bus belonging to the Appellant-Transport Corporation as well the injured, are responsible for the accident and therefore, fixed the liability at 75% on the part of the driver of the bus and 25% on the part of the injured, and awarded a sum of Rs. 1,45,820/-withinterest at 7.5% p.a. from the date of petition. The liability on the part of the Transport Corporation works out to Rs. 1,09,365/-. The details of the compensation are as under:

Rupees Permanent disability	60,000/-	Pain and suffering	20,000/-	Transport to hospital, attendant charges and extra nourishment	10,000/-	Loss of income during the treatment period	5,000/-	Medical bills	30,820/-	Death of two bullocks	20,000/-	-----	Total...	1,45,820/-	Less: 25% claimant's liability	36,455/-	-----	1,09,365/-	=====
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Aggrieved by the award, the Appellant / Transport Corporation has filed the present appeal, in respect of its liability of Rs. 1,09,365/-.

3. Learned Counsel for the Appellant/ Transport Corporation has submitted that the Tribunal is wrong infixing the liability at 75%:25%, since it was only the injured responsible for the accident. It is also submitted that the quantum of compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal is not in accordance with law and the same should be set aside.

4. Heard the learned Counsel for the Appellant 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 P12 were marked. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1 and Ex.R1-copy of the judgment passed by the Judicial Magistrate, Musiri, was marked. P.W.1is the claimant. P.W.2 and P.W.3 are Doctors. Ex.P1 is the F.I.R. Ex.P2 is the Accident Register. Ex.P3 is the Discharge Report of Balaji Hospital, Trichy. Exs.P4 and P5 are the medical bills. Exs.P6 and P7 are the Postmortem Reports of the bullocks, respectively. Ex.P8 is the Disability Certificate. Exs.P9, P11 and P12 are the X-rays. Ex.P10 is the Disability Certificate issued by Dr. Ravi. After considering the above oral and documentary evidence, the Tribunal has given a categorical finding that both the driver of the bus belonging to the Appellant-Transport Corporation as well the injured, are responsible for the accident and therefore, fixed the liability at 75% on the part of the driver of the bus and 25% on the part of the injured, and awarded the compensation. It is a question of fact and also it is based on valid materials and evidence. Hence the same is confirmed.

5. The injured was 35 years old at the time of accident. He was examined as P.W.1. He is an agricultural coolie. In his evidence, he stated that hews earning a sum of Rs. 150/-per day. Further it is stated that it was only the driver of the bus

who came in a rash and negligent manner and caused the accident and the driver was charge-sheeted by Musiri Police Station in Crime No. 383 of 2004 under Sections 279, 337, 338 and 304-A IPC. Further, in his evidence, it is stated that he sustained multiple injuries all over the body including fractures in the left hand, grievous injuries in the head, right forehead and right side of the face. Immediately he was taken to the Government Hospital, Musiri and given first aid, and then he was taken to the Government Hospital, Trichy where he was in-patient for a period of 3 days. Thereafter, he was admitted in the Balaji Hospital, Trichy from 25.05.2004 to 31.05.2004, for better treatment. A surgery was also done on the head and he was out-patient for a period of two months. Ex.P2-Accident Register also corroborates the same. P.W.2-Doctor, examined the claimant and fixed the disability at 32%. Ex.P8 is the Disability Certificate. In his evidence, P.W.2 stated that due to the injury sustained in the head, the claimant is often getting headache and giddiness. He also stated that there is a cut injury of size 3 x 2cm on the fore head. P.W.3-Doctor, also stated that there is a fracture on the left wrist of the claimant and due to the same, the movement of the wrist was restricted and he assessed the disability at 40%. Ex.P10 is the Disability Certificate issued to that effect. Considering the evidence of both the Doctors, the Tribunal fixed the disability at 60% and awarded a sum of Rs. 60,000/- towards Permanent Disability. Normally the Courts award a sum of Rs. 1,000/- to Rs. 2,000/- per percentage of disability. In this case, the Tribunal has correctly awarded a sum of Rs. 1,000/- towards each percentage of disability, and awarded Rs. 60,000/- towards Permanent Disability. The amount awarded towards this head is also very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 20,000/- towards pain and suffering. Taking into consideration of the nature of injuries, this Court is of the view that the amount awarded by the Tribunal towards this head is very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 10,000/- towards Transport to hospital, attendant charges and extra nourishment. The amount awarded by the Tribunal towards these heads, is very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 5,000/- towards loss of income during the treatment period. The claimant was in the hospital and he was out of work for more than 3 months. The amount awarded by the Tribunal towards this head is also very reasonable and hence the same is confirmed. The Tribunal has awarded a sum of Rs. 30,820/- towards medical bills. Exs.P4 and P5 are the series of medical bills. It is an actual expenditure and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 20,000/- towards the death of two bullocks. The amount awarded towards this head is very reasonable and hence the same is confirmed. The Tribunal has awarded interest rate at 7.5% p.a. from the date of petition. 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 7.5; p.a. is reasonable and hence the same is confirmed. I do not find any error or illegality in the order of the Tribunal warranting interference. The order passed by the Tribunal is based on valid materials and

evidence. It is a question of fact and it is not a perverse order. Therefore, the award passed by the Tribunal is in accordance with law and hence, the same is confirmed. Under the circumstances, this is not a fit case for admission.

6. In the result, the Civil Miscellaneous Appeals dismissed. Consequently, M.P. (MD) No. 1 of 2010 is closed. No costs.