

(2007) 12 MAD CK 0020
In the Madras High Court
Case No : C.M.A. No. 2072 of 2006

Tamil Nadu State Transport Corporation Ltd.

APPELLANT

Vs

Rajarathinam and A. Sampath

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Citation : (2007) 12 MAD CK 0020

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

Bench : Single Bench

Advocate : N. Anand, for the Appellant; V. Ayyadurai, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeal is filed by the Transport Corporation against the award and decretal order

dated 15.12.2005 made in MACT.OP No. 201 of 2005 on the file of the Motor Accidents Claims Tribunal (II Additional Sub Judge, Erode).

2. Background facts in a nutshell are as follows:

The claimant was injured in a motor accident on 16.02.2004 at about 9.30 a.m. The claimant was riding his TVS-50 moped bearing Registration

No. TN-28-V-6906 in the Erode-Perundurai Road from east to west, at a moderate speed. At that time, a bus belonging to the

appellant/Transport Corporation, bearing Registration No. TN-33-N-1756, driven by its driver in a rash and negligent manner, came from behind

and dashed against the moped. Due to the accident, the claimant sustained injuries all over the body. The claimant claimed a compensation of Rs.

2,75,000/- but restricted the claim to Rs. 2,00,000/- before the Tribunal. The appellant/Transport Corporation resisted the claim. On pleadings,

the Tribunal framed the following issues:

a) Whether the accident had occurred due to the rash and negligent driving of the bus driver or not?

b) Whether the claimant is entitled to get any compensation or not? If so, what is the amount payable and from whom?

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 bus driver and awarded a compensation of Rs. 53,300/- with interest at 7.5% p.a. from the date of petition. Aggrieved by the order, the

Transport Corporation has filed the present appeal.

3. Learned Counsel appearing for the appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and

stated that it is excessive and exorbitant, without basis and justification, and that therefore, the order passed by the Tribunal is not in accordance

with law and the same has to be set aside.

4. Learned Counsel appearing for the first respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence

available on record and awarded a just, fair and reasonable compensation. It is therefore submitted that the order passed of the Tribunal is in

accordance with law and the same should be confirmed.

5. Heard the counsel. On behalf of the claimant, witnesses P.W. 1 and P.W. 2 were examined and documents Ex. A1 to Ex. A10 were marked.

On behalf of the Transport Corporation, one Sampath, the driver of the bus was examined as R.W. 1 and no documents were marked. P.W. 1 is

the claimant. P.W. 2 is the Doctor. Given below is the list of exhibits:

Ex. A1-Certified copy of First Information Report

Ex. A2-Certified copy of Rough Sketch

Ex. A3-Certified copy of Observation Mahazar

Ex. A4-Certified copy of Motor Vehicle Inspector's Report (bus)

Ex. A5-Certified copy of Motor Vehicle Inspector's Report (TVS-50 moped)

Ex. A6-Certified copy of Accident Register

Ex. A7-Certified copy of Charge Sheet

Ex. A8-Disability Certificate (Original)

Ex. A9-X-ray film

Ex. A10-X-ray bill

After considering these 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 bus driver belonging to the appellant/Transport Corporation. The finding of the Tribunal is based on valid materials and evidence.

6. The Tribunal has awarded a compensation of Rs. 53,300/- with interest at 7.5% p.a. from the date of petition. The details of the compensation are as under:

Rupees

Pain and suffering and

the resultant disability 25,000/-

Loss of earning power 27,300/-

Transport and extra nourishment 1,000/-

Total... 53,300/-

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The claimant was 45 years at the time of accident. He was a carpenter. The claimant claimed that he was earning a sum of Rs. 7,500/- per month.

Due to the accident, the claimant sustained the following injuries:

a) Contusion left eye with black eye

b) Contusion with abrasion left frontal region

5 x 1 x 1cm with bleeding through nose and left ear.

The claimant was taking treatment as in-patient from 16.03.2004 to 30.03.2004, i.e., for a period of 14 days in the Government Hospital, Erode.

It was stated that due to the injuries, he is unable to walk substantial distance and also he is unable to stand for a long time. It was also stated that

he is unable to continue his carpentry work as before. P.W. 2, the Doctor, has given evidence that he examined the claimant on 18.11.2004 and

X-ray was also taken, which is Ex. A9. From the said X-ray, he found that there is malunion of the fractured 7th, 8th and 9th ribs on the right side

and also the chest expanding power was reduced by 3cm and it caused pain to the petitioner when he does his carpentry work. Hence the Doctor

estimated the partial permanent disability at 14%. Ex. A6 is the certified copy of Accident Register which also confirms the same. After considering

the above injuries, the Tribunal awarded a consolidated sum of Rs. 25,000/- towards pain and suffering and the resultant disability, and the break-

up of the same are as under:

a) Pain and suffering Rs. 10,000/-

b) Grievous injuries and the Rs. 15,000/-

resultant disability

After taking into consideration the injuries stated above, I feel that the amount awarded by the Tribunal at Rs. 10,000/- towards pain and suffering

is very reasonable and hence it is confirmed. Further the Tribunal has also awarded a sum of Rs. 27,300/- towards loss of earning power. After

taking into consideration the age of the claimant, i.e. 45 years at the time of accident, the Tribunal adopted the multiplier of 13 and fixed the annual

income at Rs. 15,000/- on the ground that there is no material available to substantiate the claim of the claimant that he is earning Rs. 7,500/- per

month and arrived at Rs. 27,300/- towards loss of earning power as under:

$\text{Rs. } 15,000/- \times 14/100 \times 13 = \text{Rs. } 27,300/-$

The Tribunal merely awarded Rs. 15,000/- towards grievous injuries without basis and also awarded a sum of Rs. 27,300/- towards loss of

earning power. The amounts awarded by the Tribunal towards grievous injuries and loss of earning power are not based on valid materials and

evidence and hence the same are set aside. When there is a disability of 14%, the Tribunal ought to have awarded the compensation on the basis

of the disability as there is no special circumstances in the present case. Hence it would be appropriate and reasonable to award a consolidated

sum of Rs. 30,000/- under the head disability for the disability of 14%. Further the Tribunal has awarded a consolidated sum of Rs. 1,000/-

towards transport and extra nourishment, which is very low and meagre. It would be appropriate and reasonable to award a sum of Rs. 4,000/-

towards transport and Rs. 5,000/- towards extra nourishment. Hence the amounts awarded by the Tribunal towards transport and extra

nourishment are modified to Rs. 4,000/- and Rs. 5,000/- respectively. The details of the modified compensation are as under:

Rupees

Pain and suffering 10,000/-

Disability 30,000/-

Transport expenses 4,000/-

Extra nourishment 5,000/-

Total... 49,000/-

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Therefore, the claimant is entitled to the modified compensation of Rs. 49,000/- as against the compensation of Rs. 53,300/- awarded by the

Tribunal. The interest rate awarded by the Tribunal at 7.5% p.a. from the date of petition is very reasonable and hence it is confirmed.

7. It is stated that the Transport Corporation had already deposited 50% of the compensation awarded by the Tribunal, as per the order of this

Court dated 19.07.2006. Hence, the appellant/Transport Corporation is directed to deposit the modified amount of Rs. 49,000/- with interest at

7.5% p.a. from the date of petition, after adjusting the amount already deposited, within a period of four weeks from the date of receipt of a copy

of this order. On such deposit, the claimant is permitted to withdraw the same.

8. The Civil Miscellaneous Appeal is disposed of with the above modification. Consequently, M.P.No. 1 of 2006 is closed. No costs.