

(2010) 10 MAD CK 0204

In the Madras High Court

Case No : C.M.A. No. 2037 of 2006 and M.P. No. 1 of 2006

Tamilnadu State Transport Corporation Ltd.

APPELLANT

Vs

B. Senthil Kumaran @ Senthil rep. by his guardian and next
friend father A.K. Balasubramaniam and C. Sundararaj

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

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

Citation : (2011) 1 TAC 94

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

Bench : Single Bench

Advocate : A. Babu, for the Appellant; A.K. Kumarasamy, for R1, for the
Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree, dated 05.01.2006, made in M.C.O.P. No. 108 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Erode, awarding a compensation of Rs. 93,200/- together with 7.5% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/second 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 04.01.2004, at about 06.45 p.m. the petitioner was walking on the Erode to Arachalur road, near Avalpondurai bus stop, on the left side of the road, and at that time, the first respondent drove the second respondent Corporation bus bearing registration No. TN33 N1356 in a rash and negligent manner with an uncontrollable speed from north to south and dashed against the petitioner, who sustained injuries on his left shoulder and head and all over the body. He was

taken to the Lotus Hospital at Erode, where he was treated as an inpatient for 30 days and now he is undergoing treatment as an outpatient. He underwent in calculable pain and sufferings. At the time of the accident, he was aged about 17 years and was hale and healthy and was studying plus one in the Government Higher Secondary School at Avalpoondurai. Due to the fractures caused the petitioner sustained permanent disability and is not able to concentrate in his studies and is sufferings from headache, loss of memory and giddiness. The accident had occurred only due to the rash and negligent driving of the driver of the second respondent's Corporation bus. Therefore, the petitioner claimed a compensation of Rs. 3,00,000/- before the Tribunal.

4. The second respondent, in their Counter, had resisted the claim petition that the petition is false, frivolous, vexatious and is not maintainable either in law or on facts. The petitioner is put to strict proof of all the allegations except those that are specifically admitted herein. The first respondent stopped the bus at Avalpoondurai bus stop, for the passengers to get down from the bus. At that time, the petitioner ran across the road and tripped himself and fell down in front of the bus. No such accident as, alleged had occurred. The injuries, the treatment, the age, the expenses and the after effects are all put to strict proof. The compensation claimed is excessive. The petitioner is entitled to 6% interest. Hence, the petition is liable to be dismissed with costs. As such, the second respondent prayed before the Tribunal.

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

(i) Whether the accident was due to the negligence of the first respondent, the driver of the bus bearing registration No. TN33 N1356?

(ii) Whether the petitioner is entitled to compensation? If so to what sum?

6. On the petitioner's side, the petitioner's father was examined as PW1 for the claimant, one Munusamy, eye witness was examined as PW2, Dr. John Gurupatham was examined as PW3 and Dr. A.S.A.Samathu was examined as PW4 and forty documents were marked as Exs.A1 to P40 namely Ex.A1-Certified copy of the First Information Report, Ex.A2-Certified copy of the Rough Sketch, Ex.A3-Certified copy of the Observation Mahazar, Ex.A4-Certified copy of the Wound Certificate, Ex.A5-Certified copy of the Motor Vehicle Inspector's Report, Ex.A6-Certified copy of the Charge Sheet, Exs.A7 to A15-Prescription Chits, Exs.A16 to A32-Medical Bills, Ex.A33-Hospital Receipt, Ex.A34-Doctor fees receipt, Ex.A35-Discharge Summary, Ex.A36-Consolidated list of medical bill, Ex.A37-Certificate given by J. M. No. II at Erode, Ex.A38-Disability Certificate, Ex.A39-EEC Brain Map Analysis and Ex.A40-Doctor Receipt. On the respondents' side the first respondent, the driver of the bus, was examined as RW1 and no documents were marked.

7. After perusing the arguments advanced on either side and perusing the documents and records and evidence, the Tribunal has passed an Order as

follows:

P.W.2, an eye-witness to the occurrence and a nearby biscuit shop as owner and the informant to the police, deposes in his evidence that the petitioner was walking along the left side of the road and at that time, the first respondent drove the bus towards south in a rash and negligent manner with a high speed and dashed against the minor petitioner, and he saw the occurrence. Ex.A1, the First Information Report also reveals that he had averred to the very same facts in his complaint made to the Police. PW2 has stoutly denied the suggestion that it was PW1, who ran across and fell down and sustained injuries. Ex.A2-Rough Sketch, also corroborates the case of the petitioner. It shows that the scene of occurrence is a four road junction and a duty is cast on the first respondent, as the driver of mechanically propelled heavy vehicles to be careful and it become all the more necessary in such a four road junction, where he should have taken more care to avoid any possible danger to the safety of other road users. It is clear that the first respondent is found short of that duty under the circumstances projected. The observation mahazer Ex.A3 and rough sketch Ex.A2 also support the case of the petitioner. Ex.A5 the charge sheet reveals that the Arachalur Police, on investigation, have found the first respondent to have committed the offences under Sections 279 and 338 I.P.C. and had prosecuted him. As against this, overwhelming evidence, the evidence of RW1 staking a contrary claim that it was the petitioner who ran across the standing bus and fell down and sustained injuries, is highly unbelievable. He concedes that he had been prosecuted by the police. But he claim that he had been acquitted of the charge. But, this claim is not substantiated by production of the copy of the Judgment. Therefore, the overwhelming evidence pointed out on record clearly establishes the fact that the accident was only due to the negligence of the first respondent. As such, the Tribunal answered the first point in favour of the petitioner.

In view of the findings recorded earlier that the accident was due to the rash and negligent act of the first respondent it follows that the first respondent as the driver and the second respondent, the owner and the third respondent, as the insurer of the said offending vehicle are liable to compensate the petitioner for the loss occasioned. As such, it now remains to determine the quantum of compensation which the petitioner is entitled to.

The PW1, the petitioner's father, deposed evidence that after admission of the injured petitioner at the Lotus Hospital at Erode, he went to see his son and he had injuries on his left shoulder and head and was treated as an inpatient for about eight days and C.T. Scan revealed fracture of the skull and injury to the brain and due to the injury. The minor petitioner is undergoing headache, giddiness and unconsciousness and lack of concentration and his studies are affected. Ex.A4 the copy of the wound certificate reveals that at the time of the admission to the hospital. The petitioner had the following injuries on him:

i. a swelling 3 x 3 x 3 cm over the left side of the right toe occipital region with

underlying and fracture of skull,

ii. Head injury with SDH Ex.A4 Ex.A4 further reveals that a C.T. Scan of the brain and showed occipital fissure fracture and right front parietal thin acute SDH and left parietal contusion of the brain, with minimal mass effect. Ex.A35 the discharge summary also confirms the wound certificate. Ex.A5 as well as the fact that the petitioner was treated as an inpatient in the Lotus Hospital from 04.01.2004 to 13.01.2004. PW3 the Doctor attached to the Lotus Hospital, confirms this fact that and the treatment given and the expenses incurred. PW4 another Doctor deposes that he examined the petitioner on 05.12.2005 with reference to the E.E.G. and brain map analysis and the treatment records and found that the petitioner has frequent headache of the parietal region and most of the times it is followed by vertigo and some times by loss of awareness for a fissure and it is post traumatic seizures following second degree head injury and the E.E.G. also confirms this fact and the petitioner had difficulty in retaining recent memory and sleep disturbance and he estimates the neurological disability at 15%.

The above evidence clearly establishes the nature of the head injury and the resultant disability and the pain and sufferings and the mental agony and the frustration and trauma that must have been undergone by the school boy and it requires to be adequately justly compensated. Considering the nature of the injury to the head and the brain, awarding a sum of Rs. 50,000/- for the said grievous injury and the resultant disability and the pain and sufferings and agony etc. will meet the ends of justice.

The petitioner contends that due to the head injury, the petitioner has developed a disability as narrated by the Doctor PW4 and the disability certificate Ex.A38 and it had resulted in the loss of concentration from the studies of the petitioner and consequent to the loss of earning power and he should be adequately compensated for the same. It is not the case of the petitioner that he had any income. Therefore, it has to be notionally reckoned as Rs. 15,000/- per annum. The petitioner contends that at the time of the accident he was aged about 17 years Ex.A35 discharge summary gives his age as 16 years. Therefore, the claim of the petitioner is accepted and his age is fixed as 17, considering the fact that he was doing his plus one course in the Government Higher Secondary School, Avalpoondurai. For the age 17 years the multiplier that is applicable. PW4 the Doctor has already pointed out that he estimated the partial permanent disability due to the neurological defects, suffered by the petitioner due to the second degree head injury and traumatic seizures at 15%. The respondents claims it to be magnified. But, he has failed to give the basis for such a suggestions. PW4 the Doctor would aver that he had estimated the percentage of disability only from his experience and he has not based the same on any particular guideline. Therefore, the estimation of the Doctor PW4 deserves to be restricted and the partial permanent disability under the circumstances projected is fixed at 10%. Applying the value fixed above, the loss of earning power is Rs. 24,000/- (Rs.

15,000/- X 10/100).

To substantiate the claim for medical expenses the petitioner has adduced in evidence Ex.A16 to Ex.34 for a total sum of Rs. 17,632.15 has listed out in Ex.A36. PW3 the Doctor attached to the Lotus Hospital, which treated the petitioner also corroborates the prescriptions in Ex.A7 to Ex.A15 and the bills in Ex.A16 to Ex.A34. No reason or basis brought at on records to doubt the veracity and genuiness of these bills and the evidence of the Doctor PW3. Though Ex.A40 the petitioner had substantiated another sum of Rs. 600/- towards the brain map analysis. Therefore a total sum of Rs. 18,232.50 is established as the medical expenses incurred in the treatment of the petitioner and the same is allowed as compensation for the medical expenditure.

The petitioner has claimed a sum of Rs. 10,000/- each towards the extra-nourishment and transportation expenses. These claims are not sustained in evidence. But, however considering other attending circumstances a total sum of Rs. 1,000/- is awarding towards the transportation to the hospital and extra-nourishment expenses.

The petitioner has claimed a sum of Rs. 10,000/- towards the loss of earning which has not been spoken to in any way in the evidence. Therefore, for want of substantiation in evidence. The same is rejected.

Finally, summing up the total amount of compensation to which the petitioner is entitled to can be worked out as follows:

a) Compensation towards the pain and sufferings and mental agony and the grievous injury and the resultant disability etc. Rs. 50,000.00 b) Compensation towards the loss of earning power Rs. 24,000.00 c) Compensation towards the medical expenses incurred Rs. 18,232.50 d) Compensation towards the transportation to hospital and extra-nourishment expenses assessed notionally Rs. 1,000.00 ----- Rs. 93,232.50 ----- When founded of the material Rs. 100% Rs. 93,200.00 -----

This sum is fixed as the compensation to which the petitioner is entitled to and the respondents are liable to pay the same jointly and severally. Therefore, the Point No. 2 is accordingly answered in the above terms in favour of the petitioner.

In the result, this petition is partly allowed with proportionate costs against the respondents 1 to 3 awarding a sum of Rs. 93,200/- is compensation payable by the respondent Nos. 1 to 3 jointly and severally and the petitioner is entitled to an interest at the rate of 7.5% per annum on the award from the date of this petition, to the date of its realisation, except for the period, if any, specifically excluded by a prior order of this Court and one month time is granted for the purpose of depositing the amount in court, after which the same and it is further directed that the petitioner shall not be entitled to withdraw any amount in the award without the permission of this Court and the excess court fee is ordered to be refunded to the petitioner and the advocate fee is fixed at Rs. 4,541/-.

Accordingly, this petition is ordered by the Tribunal.

8. Aggrieved by the said Award and Decree, the appellant/second respondent has filed the above appeal praying to scale down the award and decree passed by the Tribunal.

9. The learned Counsel appearing for the appellant State Transport Corporation Ltd., argued that the Tribunal had awarded a sum of Rs. 50,000/- under the head of pain and suffering, which is not pertinent to the present case. Further, the Tribunal had also awarded a sum of Rs. 24,000/- under the head of loss of earning power. As such, there is some discrepancy in the award passed by the Tribunal. Hence, he prays before the Court to scale down the compensation.

10. The learned Counsel appearing for the first respondent/claimant argued that the claimant aged about 17 years at the time of accident and who is a student. After the accident he is unable to concentrate on his studies. Further, his physical position does not permit him to participate in any type of games or sports. As such, he lost his further prospects. In this case, attender charges was also not granted. For transport and medical expenses he had incurred more. Further, the learned Counsel argued that the compensation amount had been awarded by the Tribunal is inadequate, since the claimant is a student aged about 17 years. Therefore, he prays before this Court to dismiss the case.

11. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing on either side and the award and decree passed by the Tribunal, this Court is of the view that the quantum of compensation is fair and equitable. As such, this Court confirms the award and decree passed by the Tribunal. But, there is a discrepancy in the break up of the compensation, this Court decided to restructure the compensation as follows:

- i. Rs. 30,000/- under the head of 15% disability,
- ii. Rs. 18,232/- under the head of medical expenses,
- iii. Rs. 5,000/- under the head of nutrition,
- iv. Rs. 5,000/- under the head of transport expenses,
- v. Rs. 5,000/- under the head of attender charges,
- vi. Rs. 20,000/- under the head of loss of future prospects,
- vii. Rs. 5,000/- under the head of mental agony,
- viii. Rs. 5,000/- under the head of pain and suffering,

12. On 12.07.2006, this Court directed the appellant/second respondent to deposit 50% of the award amount, into the credit of the M.C.O.P. No. 108 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Erode. Now, this Court hereby directed the appellant/second respondent to deposit the remaining compensation amount with accrued interest and costs as

observed by the Tribunal, into the credit of the M.C.O.P. No. 108 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Erode, within a period of six weeks from the date of receipt of a copy of this order.

13. As the accident had happened in the year 2004, the claimant/first respondent is at liberty to withdraw the entire compensation amount with accrued interest thereon and costs, lying in the credit of the M.C.O.P. No. 108 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Erode, by making proper payment out application, subject to the deduction of withdrawals, if any, in accordance with law.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 05.01.2006, in M.C.O.P. No. 108 of 2005, passed by the Motor Accident Claims Tribunal, II Additional Sub Court, Erode is confirmed. Consequently, connected miscellaneous petition is closed. No costs.