
(2014) 12 MAD CK 0344

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 647 of 2012 and Cross Obj. No. 44 of 2014

The Managing Director, Metropolitan Transport Corp. Ltd.

APPELLANT

Vs

B. Kannan

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0344

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.—The Civil Miscellaneous Appeal is filed by the Metropolitan Transport Corporation Ltd., Chennai, challenging the order dated 18.04.2011 passed in M.C.O.P. No: 120 of 2009 by the learned V Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai, granting a sum of Rs. 25,53,000/- as against the claim of Rs. 30,00,000/-. Challenging the very same award, the injured claimant has filed the Cross Objection as the compensation claimed was not granted in toto.

2. One B. Kannan, a resident of Chennai, is the claimant. On 18.04.2008, he was travelling from Chennai to Cheyyar as a passenger in the bus bearing Registration No: TN 32 N 2152 belonging to the Tamil Nadu State Transport Corporation Limited, in short referred to as T.N.S.T.C., the 3rd respondent herein. At about 02.10 hours, when the said bus was proceeding in Poonamallee High Road, opposite to Government Hospital near Palayathamman Kovil at Poonamallee, it colluded with another bus bearing Registration No: TN 01 N 4519 belonging to the Metropolitan Transport Corporation, Chennai, in short referred to as M.T.C., the appellant in the C.M.A. and the 1st respondent in the Cross Objection. The driver of both the buses are arrayed as R.2 and R.4. In the accident, the injured suffered serious injuries in his left leg and his right leg, below knee, was amputated. The Doctor, who treated the injured, assessed the disability at 90%. With such a disability, the injured claimant, who is an advocate

by profession, filed a claim petition claiming a sum of Rs. 80,57,150/- and restricting it to a sum of Rs.30,00,000/-. After contest, the Tribunal granted a total sum of Rs.25,53,000/- as compensation to the injured claimant. While M.T.C. contends that the said amount is on the higher side in the C.M.A., the injured, finding fault with the Tribunal in not awarding the full compensation claimed, has preferred the Cross Objection.

3. Before going further into the contentions raised by the parties, we would like to make a mention here that initially, while filing the C.M.A., the appellant - M.T.C., had dispensed with the appearance of R.2 to R.4, the driver of the M.T.C. Bus, the Tamil Nadu State Transport Corporation Ltd., Thiruvannamalai II Depot and its driver respectively. However, subsequently, vide order dated 07.08.2014 made in M.P. No: 1 of 2014 in C.M.A. No: 647 of 2012, this Court permitted to the petitioner / appellant to serve notice to the 3rd respondent, T.N.S.T.C. Ltd., ignoring the endorsement for dispensed with. Accordingly, on service of notice, Mr. Paramasivadosh learned counsel appeared for the 3rd respondent both in the C.M.A. and in the Cross Objection.

4. We have heard Mr. S.S. Swaminathan learned counsel appearing for the appellant Metropolitan Transport Corporation Ltd.; Mr.T.D. Vasu learned counsel appearing for the claimant / Cross Objector and Mr. Paramasivadosh learned counsel appearing for the 3rd respondent Tamil Nadu State Transport Corporation Ltd. and perused the material documents made available on record.

5. The contentions raised by the learned counsel appearing for the appellant M.T.C. in the C.M.A. are that even according to the pleadings of the claimant, the drivers of both the Transport Corporation buses were responsible for the accident and the Tribunal ought to have held that the accident was a head on collision and so both the Corporations were equally liable to pay compensation. As to the amount of compensation fixed, it is his contention that the Tribunal erred in applying the multiplier method, the permanent disability fixed at 90% is disproportionate to the nature of injuries; the income of the injured fixed at Rs.10,000/- per month is without any material and that the compensation awarded is highly excessive, exorbitant and not sustainable in law. In the Cross Objection, the claimant pleaded that while deciding the quantum of compensation, the Tribunal ought to have taken a sum of Rs.25,000/- per month as his income and it ought to have added 30% for future prospects in view of the fact that the claimant had suffered 100% disability and had lost his advocate profession as a result of this accident. According to the injured claimant, the Tribunal should have allowed the claim petition as prayed for.

6. It is the evidence of P.W.1 that the driver of the offending vehicle bearing Registration No: TN 01 N 4519 was negligent due to which the accident had occurred and it appears from Ex.P.3, copy of the complaint given by the conductor of the Tamil Nadu State Transport Corporation bus bearing Registration No: TN 32 N 2152 that a complaint was lodged against the driver of the bus bearing Regn. No: TN 01 N 4519 for causing the accident. From Ex.P.4, it is clear

that the police had registered a FIR against the driver of the bus bearing Regn. No: TN 01 N 4519 for rash and negligent driving. From the rough sketch drawn - Ex.P.19 and the charge sheet laid by the police - Ex.P.21 it is seen that the police had investigated the case and laid charge sheet against the driver of the MTC Bus bearing Regn. No: TN 01 N 4519. It is also clear from Ex.P.20 - copy of the Motor Vehicle Inspector's Report - that there was no mechanical defect in the TNSTC bus. Though the driver of the Metropolitan Transport Corporation had adduced evidence stating that the accident had occurred only due to the rash and negligent driving of the Tamil Nadu State Transport Corporation bus bearing Registration No: TN 32 N 2152, either he himself or the conductor of his bus, ought to have lodged a complaint in this regard. But, on the contrary, only the conductor of the bus belonging to the Tamil Nadu State Transport Corporation bus had lodged the complaint against the 2nd respondent and police have also verified and investigated into the said complaint and then laid the charge sheet against R.W.1. In the above circumstances, the argument of the learned counsel for the appellant that the 4th respondent, the driver of the 3rd respondent, was also liable on the ground of contributory negligence is not at all acceptable at the present stage. On the evidence adduced by the claimants and from the documents filed, it is very clear that the accident had occurred only due to the negligence on the part of the driver of the offending vehicle and therefore, the appellant viz. The Tamil Nadu State Transport Corporation alone is liable to pay the compensation due to the claimant.

7. Originally , though the claimant sought a compensation of a sum of Rs.80,57,150/-, he restricted his claim to a sum of Rs.30,00,000/- whereupon the Tribunal had granted a sum of Rs. 25,53,000/- as compensation. Therefore, as against the sum of Rs. 4,47,000/- the claimant had filed a Cross Objection. The appellant herein admitted the liability of a sum of Rs.10,53,000/- and only against the sum of Rs.15,00,000/- it had filed this appeal.

8. The learned counsel appearing for the claimant / Cross Objector contended that the Tribunal was wrong in granting only a sum of Rs.25,53,000/- and it ought to have awarded more than the claim amount considering the fact that the Cross Objector had lost his noble profession, we are afraid that we may not be able to accept the said submission. Unlike other cases, the claimant, who was a victim, in this case is not a lay-man. He is an advocate by profession. He would have had the complete knowledge about the law and legal position upto date and what are the reliefs to which he would be entitled under various heads. Only with such complete knowledge, he had decided to restrict his claim to a sum of Rs. 30,00,000/-. If that be so, before us, at the stage of appeal, he cannot contend that the Tribunal ought to have awarded more than the claim amount sought by him.

9. Now let us consider the amount awarded by the Tribunal under various heads one by one. The Tribunal, while considering the question of monthly income of the injured, had fixed a sum of Rs. 10,000/- per month as his income. The

injured is a practising advocate. P.W.2, his senior advocate, had deposed that the injured was practicing under him as an advocate at High Court and that he was paid a sum of Rs. 15,000/- per month. It is also the contention of the claimant that he was also earning a sum of Rs.10,000/- by way of private practice and that his total income per month is a sum of Rs. 25,000/-. In support of his statement, P.W.2 had issued a certificate Ex.P.17 to show that he was paying a sum of Rs. 15,000/- per month to the injured. But, the Tribunal has taken only a sum of Rs.10,000/- per the monthly income of the injured. This, in our opinion, is not correct. May be the Tribunal does not want to rest itself on the evidence of the injured that he was totally earning a sum of Rs. 25,000/- per month. But, the evidence of the advocate under whom the injured was practicing definitely needs acceptance. Therefore, we would like to fix Rs.15,000/- including conveyance charges, deducting Rs.1,000/- for conveyance, it will be appropriate to fix the monthly income of the injured at a sum of Rs. 14,000/- instead of Rs.10,000/- as fixed by the Tribunal.

10. Next comes the question of percentage of disability and the multiplier to be adopted. Undoubtedly, the claimant had sustained serious injuries in the accident. It is on record that to save the claimant's life, the right leg below knee had to be amputated and for the fractured bones, surgery was performed with fixation of rods and screws and an artificial limb had been fixed to him. The Tribunal has taken the disability due to the amputation at 50% and for the effects of fracture of femur and nasal bone, the disability was taken at 40% and in all the percentage of disability was fixed at 90%. But, it appears from Ex.P.22 the disability certificate issued by Government Institute of Rehabilitation Medicine that the claimant had suffered a disability of 65%. In our considered opinion, it would be safe for us to accept the said document and fix the percentage of disability at 65%. The age of the claimant at the time of accident was 38 years. As per the decision rendered in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate multiplier for the age group of 38 years is 16. Therefore, the multiplier adopted by the Tribunal is not altered.

11. Thus calculated, the loss of earning is computed at Rs. 17,47,200/-. [Rs.14,000/- x 12 x 16 x 65 % = Rs.17,47,200/-] The Tribunal has awarded a sum of Rs. 50,000/- each under the heads (i) Pain and Suffering, (ii) Mental Agony, (iii) Expectancy of Life and (iv) Loss of amenities. While granting compensation under the above heads, one has to bear in mind the injuries suffered by the claimant. In this case the claimant had suffered amputation of his right leg below knee and had undergone surgery for the fractured bones. For the injuries reported, the amount granted under the aforesaid heads are very low. Hence, considering the injuries sustained by the claimant, the amount awarded under all the four heads viz. (i) Pain and Suffering, (ii) Mental Agony, (iii) Expectancy of Life and (iv) Loss of amenities are increased and a sum of Rs. 1,00,000/- is fixed as compensation under each of the headings. The compensation awarded by the Tribunal under the various other heads remains unaltered.

12. Accordingly, while dismissing the Civil Miscellaneous Appeal filed by the Metropolitan Transport Corporation Ltd. without cost, we allow the Cross Objection filed by the claimant in part with proportionate costs. The new break-up details of the award are as follows:

13. It is seen that, by an order dated 07.03.2012, this Court has granted a conditional order of interim stay and directed the appellant Metropolitan Transport Corporation Limited to deposit a sum of Rs. 15,00,000/- and also permitted the claimant to withdraw the same. In view of the same, we hereby direct the appellant Transport Corporation to deposit the remaining amount of award with accrued interest @ 7.5% from the date of petition till the date of realization, as modified above, to the credit of concerned Tribunal within a period of eight weeks from the date of receipt a copy of this order. It is needless to mention that on such deposit, the claimant is entitled to withdraw the said amount. Connected miscellaneous petitions are closed.