

(2010) 01 MAD CK 0119
In the Madras High Court
Case No : C.M.A. No. 1931 of 2005

The Managing Director, Metropolitan Transport Corporation	APPELLANT
Vs	
M. Ramesh	RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Citation : (2010) 01 MAD CK 0119

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : P. Jagadeeswaran, for the Appellant; V. Jagannathan, for the Respondent

Judgement

N. Kirubakaran, J.—The appeal has been preferred by the Transport Corporation against the award of Rs. 6,00,000/-.

2. The case of the respondent before the Tribunal is that:

When the accident was occurred on 16.03.2001, the respondent was riding his motorcycle which was hit by the appellant Corporation bus driven

in rash and negligent manner. As a result, the respondent sustained severe crush injuries of right arm leading to amputation of thumb and two and

three fingers and injuries all over his body. Hence, the respondent filed claim petition before the Tribunal which was resisted by the Transport

Corporation.

3. On appreciation of pleadings and evidence the Tribunal came to the conclusion that the accident occurred because of rash and negligent driving

of the Corporation Bus and taking into consideration of the injuries caused to the Crane Operator claimant, awarded a sum of Rs. 6,00,000/- as

compensation. This said award is being challenged before this Court by the

Transport Corporation.

4. Mr. P. Jagadeeswaran, learned Counsel for the appellant submitted that the appellant is confining the challenge only with regard to the

compensation and not with regard to the liability. The learned Counsel submitted that the Tribunal awarded Rs. 60,000/- for 60% disability. When

the amount was awarded towards disability, there cannot be any award with regard to loss of income and that would amount to double payment.

Learned Counsel submitted that based on second schedule of the Motor Vehicles Act, the loss of income was arrived by the Tribunal to the tune

of Rs. 4,80,000/-. Assailing the said award on the ground of double payment, the learned Counsel pleaded for deletion of Rs. 4,80,000/-.

5. Mr. V. Jagannathan, learned Counsel for the claimant submitted that the claimant is a Crane Operator with amputation of thumb and to other

fingers in the right hand, he is unable to do his work as Crane Operator. Therefore, the Tribunal rightly awarded the amount towards disability as

well as to as loss of income as per the second schedule of the Motor Vehicles Act. Learned Counsel relied upon the Judgment of Supreme Court

in Senthilkumar v. Ram Singh Gaud and others reported in Sunil Kumar Vs. Ram Singh Gaud and Others, . In that case the driver sustained three

fractures including three fractures in the leg. The Tribunal awarded Rs. 72,000/- as compensation which was confirmed by the High Court. In

appeal the Hon''ble Supreme Court taking into consideration of the appellants income per month and permanent disability of 45% suffered by him,

the reduction of monthly income was calculated at Rs. 1,800/-. After deducting 1/3 towards Miscellaneous Expenses Rs. 1,200/- was determined

as loss of income. Based on the age of the claimant's namely 34 years, the loss of income was arrived at Rs. 2,59,200/- The aforesaid amount

was given in addition to what was given by the Tribunal. By relying upon the said Judgment the learned Counsel submitted that there is no

prohibition for awarding amount towards disability as well as towards loss of income and it would not amount to double payment. In nutshell the

learned Counsel submitted that the award is very reasonable and does not want any interference from this Court.

6. A perusal of the pleadings and evidence and the award would show that the respondent/claimant sustained injury in the accident which was

proved before the Tribunal as per Ex.A.1, A.3, A.5, A.6, A.7 and A.8 apart from P.W.1 evidence. The Tribunal after considering evidence of

P.W.1, Ex.A.1 FIR, elaborately discussing that aspect in paragraph 5 of the award, came to the conclusion that the accident occurred because of

the rash and negligent driving of the appellant Corporation Bus. Therefore, this Court confirms the findings given by the Tribunal with regard to

liability.

7. The Respondent/Claimant immediately after the accident was admitted in Hospital and he was operated seven times and his right hand thumb

2nd and 3rd fingers were removed. As a result claimant is unable to hold anything firmly and properly and is unable to drive any vehicle including

Cranes. The avocation of the claimant is crane operation, when the right hand is affected definitely it would affect his avocation. Ex.A.8 and P.W.2

Doctors evidence would show that the claimants sustained 60% disability. It was also proved by the Court that the claimant was admitted inpatient

from 16.03.2001 to 02.05.2001. Subsequently, he was admitted 06.03.2002 to 19.03.2002 which was proved by discharge summary Ex.A.3. It

is the further case of the respondent that he is unable to work as a Crane Operator because of the amputation in the right which was proved by

Ex.A.11.

8. The claimant was drawing about Rs. 8,513/- as monthly salary as per Ex.A.10. The Tribunal considering 60% disability of the claimant took

50% of the monthly income as loss of income and fixed it at Rs. 4,000/- and arrived the loss of income at Rs. $4,000 \times 12 \times 10 = \text{Rs. } 4,80,000/-$.

However, as per the Supreme Court Judgment, he has arrived the loss of income. The monthly income at the time of accident is Rs. 8,513/-.

i) Permanent disability of the petitioner is 60%

ii) Therefore, the reduction of income per month is

8153 x 60

----- = Rs. 5,108/-

100

iii) From Rs. 5,108/-, 1/3 as to be deducted towards Miscellaneous Expenses and the loss of monthly income Rs. $5,108 \times 1/3 = \text{Rs. } 3,458/-$. The

loss of income Rs. 3,458/- (Per month).

9. The victim at the time of accident was aged about 34 years and the appropriate multiplier would be 12 taking into consideration facts and circumstances of the case. The loss of income would be Rs. 3,458 x 12 x 12 = Rs. 4,97,952/-. Towards disability a sum of Rs. 60,000/- was awarded by the Tribunal and the same is confirmed. Towards pain and suffering a sum of Rs. 60,000/- was awarded and the same is on the other side and therefore it is reduced to Rs. 30,000/-. As far as extra nourishment is concerned no amount was awarded. Taking into consideration of the fact that the claimant underwent six surgeries and subsequent continuous treatment, this Court awards a sum of Rs. 10,000/- towards extra nourishment.

10. The award of the Tribunal is modified as follows:

1. Towards loss of Income - Rs. 4,97,952.00
2. Towards disability - Rs. 60,000.00
3. Towards Pain and suffering - Rs. 30,000.00
4. Towards Extra Nourishment - Rs. 10,000.00
5. Towards Transportation - Rs. 2,000.00

Total Rs. 5,99,952.00

The aforesaid amount is rounded up to Rs. 6,00,000/-.

11. Considering the date of the accident, this Court reduces the rate of interest from 9% to 7.5%. The learned Counsel on both sides submit that

the award amount was already deposited at 50% is ordered to be paid. Therefore, the Tribunal is directed to pay the balance amount within two

weeks from the date of receipt of a copy of this order. Since, the rate of interest is reduced in any amount is found to be payable by the appellant

Corporation the same may be impressed to the appellant Corporation.

12. Accordingly, the appeal is disposed of. No order as to costs.