

(2010) 04 MAD CK 0117
In the Madras High Court
Case No : C.M.A. No. 908 of 2006

The Managing Director Metropolitan Transport Corporation
Ltd.

APPELLANT

Vs

T. Gurunathan

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0117

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

Bench : Single Bench

Advocate : A. Babu, for the Appellant; A.A. Venkatesan, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/respondent, The Managing Director, Metropolitan

Transport Corporation Ltd., Chennai, against the Award and Decree, dated 28.10.2005, made in M.C.O.P. No. 4120 of 2002, on the file of the

Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, awarding a compensation amount of Rs. 54,500/- 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 passed by the Motor Accident Claims Tribunal, the appellant/respondent, The Managing Director,

Metropolitan Transport Corporation Ltd., Chennai has filed the above appeal praying to scale down the compensation amount granted by the

Tribunal.

3. The short facts of the case are as follows:

On 10.06.2002 at about 14.30 hours, while the petitioner was carefully riding his

tricycle along the T.H. Road, near Tondiarpet Police Station, from north to south direction, at that time a Metropolitan Transport Corporation Ltd., bus bearing registration No. TN01 N2661, on Route No. 138PP, which was coming from the same direction in a very rash and negligent manner driven by its driver at terrific speed endangering the public safety and dashed against the petitioner's tricycle by its front left side bumper. Resultantly, the petitioner was thrown out and fell down and sustained fracture injury of his left leg, aggravation over left leg and multiple injuries all over the body. Regarding the said accident, a case was registered in H1, Washermanpet Police Station, in Crime No. 143/H-3/2002. Further, the petitioner submitted that the accident had happened only due to the rash and negligent act of the respondent's Corporation bus. Therefore, the petitioner has prayed that the respondent being the owner of the Corporation is vicariously liable to pay compensation of Rs. 1,25,000/- with interest and cost.

4. The respondent filed a counter statement and denies all the allegations contained in the petition. The respondent states that on 10.06.2002, M.T.C. bus bearing registration No. TN01 N2661 was on its trip from Thiruvottiyur to Periyar Nagar. When the bus was proceeding near Tondiarpet H3 Police Station the petitioner, who was riding the tricycle in the same direction, interrupted by the uneven road, could not balance his tricycle and grazed with the rear left side of the bus and courted the accident. This accident happened only due to the negligent riding of the tri-cyclist, who rode the cycle negligently and met with the accident. All other allegations are denied. Hence, this respondent Corporation is not liable to pay any compensation to the petitioner. The petitioner also has to prove his age, avocation, the place, date and time of the alleged accident, nature of injuries, the period of treatment and expenses incurred. The petitioner has sustained only simple injury. The petitioner has to prove various claims made under various heads. The amount of compensation claimed is highly exorbitant. Hence, the respondent prayed to dismiss the claim petition.

5. The Motor Accident Claims Tribunal had framed four issues for consideration namely;

(i) Whether the accident had happened due to the rash and negligent driving of

the driver of the bus bearing registration No. TN01 N2661?

(ii) Whether the respondent is liable to pay the compensation?

(iii) Whether the petitioner is entitled for the compensation?

(iv) To what relief?

6. On the side of the petitioner two witnesses were examined as PW1 and PW2 and seven documents were marked as Ex.P1 to Ex.P7. On the

side of the respondent one witness was examined as RW1 and one document was marked as Ex.R1.

7. The petitioner was examined as PW1. PW1 had adduced evidence stating that on 10.06.2002, at about 02.30 p.m. he was riding the tri-cycle

in on T.H. road from north to south towards Tondiarpet. At that time, the respondent transport corporation bus bearing registration No. TN01

N2661 came from behind and dashed against his tri-cycle. Resultantly, he sustained injuries. The claimant further adduced evidence stating that the

said accident was registered by the Investigation Officer, Washermanpet Police Station and registered FIR against the driver of the bus.

Supporting his evidence he marked FIR and sketch etc.,

8. The driver of the bus was examined as RW1. RW1 had adduced evidence stating that he had driven the bus on the date of accident from

Thiruvottiyur workshop to Periyar Nagar, a tri-cycle had dashed against the bus from behind at Tondiarpet Watch Tower bus stop. As such, the

driver was not responsible for the accident. RW1 further adduced evidence stating that he was acquitted in the criminal proceedings. Proving the

same, he has marked Ex.R1, copy of the Criminal Court Judgment.

9. PW1 further adduced evidence stating that he sustained fracture injuries on his left leg and injuries all over his body. Immediately, he was taken

to the Stanley Hospital and he had undergone treatment as inpatient for six days. Subsequently, he underwent treatment as inpatient for six months.

He further adduced evidence stating that at the time of accident he was dealing in iron scrap and earning a sum of Rs. 150/- per day.

10. One Dr. J.R.R. Thyagarajan was examined as PW2. PW2 stating that he examined the claimant and verified the medical records after

examining the claimant and verifying the medical records. He assessed the disability as 35% sustained by the claimant. PW2 also took X-ray,

which was marked as Ex.P7. The disability certificate was marked as Ex.P7.

11. After considering the evidence of either side and the documents marked as exhibits, the Tribunal had granted a compensation as follows:

1. Rs. 7,500/- under the head of loss of earning for three months,
2. Rs.500/- under the head of transport expenses,
3. Rs.500/- under the head of extra nourishment,
4. Rs.500/- under the head of attender charges,
5. Rs.500/- under the head of damages to clothes,
6. Rs.10,000/- under the head of pain and suffering,
7. Rs.25,000/- under the head of partial permanent disability,
8. Rs.10,000/- under the head of loss of earning power,

In total, the Tribunal awarded a sum of Rs. 54,500/-, as compensation to the petitioner, together with interest at the rate of 7.5% per annum from

the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 4120 of 2002, on the file of the Motor

Accident Claims Tribunal, Small Causes Court No. VI, Chennai. The Advocate fees was fixed at Rs. 1,800/-. Further, the learned Tribunal

directed the respondent to deposit the entire compensation within a period of two months from the date of its Order.

12. Aggrieved by the said Award and Decree passed by the Motor Accident Claims Tribunal, the appellant/respondent, The Managing Director,

Metropolitan Transport Corporation Ltd., Chennai has filed the above appeal praying to scale down the compensation amount granted by the

Tribunal.

13. The learned Counsel appearing for the appellant submits that the learned Tribunal awarded a sum of Rs. 7,500/- under the head of loss of

income is not pertinent. Further, the Tribunal awarded under the head of loss of earning power is on the higher side. Rs. 10,000/- under the head

of pain and suffering is on the higher side, since the claimant was an inpatient. Learned Counsel further argued that there was no independent eye-

witness examined to prove the negligence on the part of the appellant's driver. The learned Counsel further argued that the Doctor issued disability,

which was marked as Ex.P6. The assessment of the disability is an erroneous one. Hence, the learned Counsel prayed before this Court to scale

down the compensation awarded by the Tribunal.

14. Learned Counsel appearing for the respondent argued that the Tribunal had not properly assessed the compensation. Actually, the claimant is

entitled to get more compensation. The claimant claimed a compensation of Rs. 1,000/- and Rs. 2,000/- under the head of transport and nutrition

respectively and also claimed a sum of Rs. 25,000/- under the head of attender charges. But, the Tribunal awarded a sum of Rs. 500/- under the

head of transport, nutrition and attender charges respectively. The learned Counsel appearing for the respondent further submitted that the claimant

at the time of accident was 47 years old and he was dealing in iron scrap business. Further, the claimant claimed a sum of Rs. 1,25,000/-, which is

fair and reasonable. But, the Tribunal awarded only a sum of Rs. 54,500/- with interest at the rate of 7.5% per annum, which is on the lower side.

15. Considering the facts and circumstances of the case, scrutiny of findings of the Tribunal and the arguments advanced by the learned Counsel

appearing on either side, this Court is of the view, to modify the award passed by the Tribunal as follows:

1. Under the head of transport expenses, the Tribunal awarded a sum of Rs. 500/-. This Court enhances the same to Rs. 1,000/- under the same

head,

2. Under the head of partial disability, the Tribunal awarded a sum of Rs. 25,000/-. This Court enhances the same to Rs. 50,000/- under the same

head,

Rest of the award amount granted by the Tribunal under the various heads are confirmed by this Court. As such, this Court grants an additional

compensation amount of Rs. 25,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment

of compensation, which is found to be fair and equitable.

16. On 17.03.2006, this Court directs the appellant to deposit the entire compensation amount with accrued interest, into the credit of the

M.C.O.P. No. 4120 of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, within a period of eight

weeks from the date of its Order. The same was complied by the appellant herein.

17. Now, this Court hereby directs the appellant to deposit the additional compensation amount of Rs. 25,500/-, together with interest at the rate

of 7.5% per annum, into the credit of the M.C.O.P. No. 4120 of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court

No. VI, Chennai, within a period of four weeks from the date of receipt of a copy of this Order.

18. As the accident had happened in the year 2002, it is open to the claimant to withdraw the additional compensation amount with accrued

interest, lying in the credit of the M.C.O.P. No. 4120 of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI,

Chennai, after filing necessary payment out application in accordance with law, subject to deduction of earlier withdrawal if any made.

19. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 28.10.2005, made in M.C.O.P. No. 4120

of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, is modified. There shall be no order as to the

costs.