

(2010) 10 MAD CK 0305

In the Madras High Court

Case No : C.M.A. (MD) No. 1542 of 2010

The Managing Director, State Express Transport Corporation
Ltd.

APPELLANT

Vs

Karuppasamy and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0305

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

Bench : Single Bench

Advocate : D. Sivaraman, for Rajnish Pathiyil, for the Appellant;

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Transport Corporation against the judgment and award made in MCOP No. 64 of 2000 dated 22.04.2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Srivilliputhur.

2. Background facts in a nutshell are as follows:

The injured-minor Karuppasamy met with motor traffic accident that took place on 18.03.1998 at about 20.20 hours. The said injured travelled in a tractor bearing Registration No. TTR-6220. The tractor was proceeding in the Madurai Road from North to South direction. At that time, a bus belonging to the Appellant / Transport Corporation, bearing Registration No. TN-01-N-6275 came from the opposite direction, i.e. from South to North direction and hit the tractor. Due to the said impact, the injured sustained fracture on his left leg and also multiple injuries all over the body. He claimed compensation of Rs. 1, 25,000/- before the Tribunal. The Appellant-Transport Corporation resisted the claim. On pleadings, the Tribunal framed the following issues :

Whether the accident had occurred due to the rash and negligent driving of the driver of the bus?

Whether the claimant is entitled to compensation? If so to what extent?

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 driver of the bus belonging to the Appellant / Transport Corporation and awarded a sum of Rs. 95,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as under :

Rupees Loss due to 25% disability 72,000/- Loss of income 18,000/- Pain and suffering 5,000/- ----- Total.... 95,000/- =====

3. Learned Counsel for the Appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and submitted that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal is not in accordance with law and the same should be set aside.

4. Heard the learned Counsel for the Appellant and perused the materials available on record. On the side of the claimants, P.W.1 to P.W.4 was examined and documents Exs.P1 to P5 were marked. On the side of the Transport Corporation, R.W.1-the driver of the bus was examined and no document was marked. P.W.1 is the mother of the injured. P.W.2 is one Kannan. P.W.3 is Dr. Mahadevi. P.W.4 is Dr. Kamalasekaran. Ex.P1 is the certified copy of F.I.R. Ex.P2 is the copy of the Motor Vehicle Inspection Report. Ex.P3 is the copy of the Wound Certificate. Ex.P4 is the Certificate for having taken treatment of teeth. Ex.P5 is the Disability Certificate. After considering the above 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 driver of the bus belonging to the Appellant / Transport Corporation. It is a question of fact and it is based on valid materials and evidence, and hence the same is confirmed.

5. The claimant was 16 years old at the time of accident. P.W.1 is the mother of the claimant. In her evidence, it is stated that the injured is an agricultural coolie and he was earning a sum of Rs. 1,500/- per month. Further in her evidence it is stated that after the accident, the injured was treated in the Government Hospital, Srivilliputhur and later he was referred to Government Rajaji Hospital, Madurai, where he took treatment as in-patient for 17 days. Due to the accident, he sustained left leg fracture and lost 4 teeth and a deep cut in the right leg. Ex.P4 is the Certificate issued for taking treatment of teeth, by the Dentist. Ex.P3 is the Wound Certificate. P.W.3 is Dr. Mahadevi. She treated the injured on 18.03.1998. In her evidence it is stated that there was a wound on the right knee of the injured to the extent of 7 cm x 3 cm x 1 1/2 cm and another injury in the left leg to the extent of 6 cm x 6 cm. She also stated that the injured lost his 5 teeth in the upper jaw and also he sustained grievous injuries all over the body. After treatment, he was referred to the Government Rajaji Hospital, Madurai. Further it is stated that there were two fractures on the left leg of the

injured. P.W.3 is the Dentist. He assessed the disability of the injured at 25% and issued Ex.P5-Disability Certificate to that effect. Due to the loss of teeth, the Dentist fixed the artificial teeth. After considering the income of the injured at Rs. 1500/-per month, the Tribunal calculated the annual income at Rs. 18000/-. In Ex.P3-Wound Certificate, the age of the injured is stated as 18 years. Therefore, the Tribunal has taken the age of the injured as 18 years at the time of accident. After taking into consideration the age of the injured, i.e. 18 years, the Tribunal adopted the multiplier of 16 and determined the loss of income at Rs. 2, 88,000/-(Rs. 18000/-x 16). Thereafter, the Tribunal determined the loss of income due 25% disability at Rs. 72,000/-(Rs. 2, 88,000 /-xs 25/100). The Tribunal has also awarded a sum of Rs. 18000/-towards loss of income. Counsel for the Appellant vehemently contended that this is not a case where multiplier method has to be adopted, since there is no documentary evidence on record to show that the said 25% disability affects the earning capacity of the injured. Therefore, the counsel submitted that only percentage method has to be adopted. Normally the Courts award a sum of Rs. 1000/-to Rs. 2000/-per percentage of disability. After taking into consideration the nature of injuries stated above, it would be reasonable to award Rs. 2000/-per percentage of disability. If Rs. 2000/-is awarded per percentage of disability, the loss due to 25% disability works out to Rs. 50,000/-. Therefore, the loss due to 25% disability stands modified to Rs. 50,000/-as against Rs. 72,000/-awarded by the Tribunal. Since an amount has been awarded towards loss due to 25% disability, the amount awarded by the Tribunal at Rs. 18000/-towards loss of income is unwarranted and accordingly it is deleted, in view of the Full Bench decision of this Court in the case of Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, . The Tribunal has awarded Rs. 5000/-towards pain and suffering, which I feel, is very low and meagre. The injured was in the Government Rajaji Hospital, Madurai for 17 days and he was also treated in various hospitals. Therefore, it would be appropriate to award Rs. 20,000/-towards pain and suffering. The Tribunal has not awarded any amount towards medical expenses. Even though there is no evidence on record with regard to medical expenses, there is no dispute that the injured was treated in the Government Hospital, Srivilliputhur, and he took treatment from a Dentist in a Private Hospital at Rajapalayam and he was in the Government Rajaji Hospital, Madurai for 17 days as in-patient. Taking into consideration of the same, it would be reasonable to award Rs. 7500/-towards medical expenses. The Tribunal has not awarded any amount towards transport expenses. The injured-claimant travelled from Srivilliputhur to Rajapalayam and from Rajapalayam to Madurai and therefore, certainly he would have incurred expenses towards transport. It would be reasonable to award Rs. 7500/-towards transport expenses. Further the Tribunal has not awarded any amount towards loss of amenities. It would be reasonable to award Rs. 5000/-towards this head. The Tribunal has not awarded any amount towards extra nourishment. The injured was in the Government Rajaji Hospital, Madurai as in-patient for 17 days and after discharge from the hospital, certainly he would have taken nutritious and healthy food for speedy recovery. Therefore,

it would be appropriate to award Rs. 5000/-towards this head. The Tribunal has awarded interest rate at 9% p.a. from the date of petition. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during the relevant period, this Court is of the view that the interest rate fixed by the Tribunal at 9; p.a. from the date of petition is very reasonable and hence the same is confirmed. The details of the modified compensation are as under :

Rupees	Loss due to 25% disability	50,000/-	Pain and suffering	20,000/-
	Medical expenses	7,500/-	Transport expenses	7,500/-
	Loss of amenities	5,000/-	Extra nourishment	5,000/-
			-----	Total....
				95,000/-
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Even though the compensation awarded by the Tribunal at Rs. 95,000/-with interest at 9% p.a. from the date of petition is confirmed, the amounts awarded under various heads have been modified.

6. Therefore, this is not a fit case for admission and the Civil Miscellaneous Appeal is disposed of with the above modification. Consequently, M.P.(MD) No. 4 of 2010 is closed. No costs.