

(2010) 08 MAD CK 0379
In the Madras High Court
Case No : C.M.A. No. 939 of 2000

The Managing Director, State Express Transport Corporation
(Tamilnadu Division-I) Ltd.

APPELLANT

Vs

R. Arumugam

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 337

Citation : (2010) 08 MAD CK 0379

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

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; N.M. Muthurajan, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the transport corporation against the award dated 11.06.1999 made in M.C.O.P No. 3823 of 1996 by the Motor Accident Claims Tribunal, (V Judge, Court of Small Causes), Chennai.

2. Background facts in a nutshell are as follows:

One injured Arumugam met with motor traffic accident on 04.11.1996 at about 03.40 P.M. The said injured along with his friend Mariyappan were walking in Anna Salai in west to east direction. While they were crossing the Zebra line opposite to Tamilnadu Housing Board, a bus bearing registration No. TN.01-N-6077 belonging to the appellant transport corporation came in a rash and negligent manner from south to north direction and hit the injured. Due to the impact, the claimant sustained grievous injuries and Mariyappan died. The claimant claimed a sum of Rs. 2,75,000/- as compensation. The appellant transport corporation resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Who is responsible for the accident?
2. What is the compensation, the claimant is entitled to?

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 compensation of Rs. 88,500/- with interest @ 12% per annum from the date of claim and the details of the same are as under:

Loss of earning during

Treatment period = Rs. 7,500/-

Transportation = Rs. 500/-

Extra nourishment = Rs. 500/-

Pain and suffering = Rs. 10,000/-

Loss due to disability 55% = Rs. 50,000/-

Loss of earning power = Rs. 20,000/- ----- Total = Rs. 88,500/-

Aggrieved by that award, the appellant transport corporation has filed the present appeal.

3. The learned Counsel appearing for the appellant insurance company questioned only the quantum of the award and vehemently contented that the award passed by the Tribunal is excessive, exorbitant and also without any basis and justification. Further, the Tribunal after awarding a sum of Rs. 50,000/- towards loss due to 55% disability, ought not to have awarded a sum of Rs. 20,000/- towards loss of earning power. Therefore, the award passed by the Tribunal is not in accordance with law and the same should be set aside.

4. The Learned Counsel appearing for the claimant submitted that the Tribunal has considered all the facts and circumstances of the case and awarded a just, fair and reasonable compensation is based on valid materials and evidence. It is a question of fact and it is not a perverse order. Therefore, the award passed by the Tribunal is in accordance with law and the same should be confirmed.

5. Heard the counsel. On the side of the claimant, P.Ws.1, 3 and 4 were examined and documents Exs.P1, P2, P9, and P10 were marked. On the side of the appellant insurance company, R.W.1 one Ravi, who is the driver of the transport corporation bus was examined and no document was marked to substantiate their claim. P.W.1 is the claimant. P.W.3 is Dr. Thiagarajan. P.W.4 is one Mohammed Yusuf, who is the Sub -Inspector of Police was examined. Ex.P1 is the copy of the accident register, Ex.P2 is the discharge summary, Ex.P9 is the disability certificate, Ex.P10 X-ray were marked. After considering the above oral and documentary evidence, the Tribunal has 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. The finding is based on valid materials and evidence and therefore, the same is

confirmed.

6. At the time of the accident, the injured was aged about 32 years. P.W.1 is the claimant. In his evidence, it is stated that he is doing the business of weaving chairs by wire. He claimed that he was earning Rs. 125/- per day and the claimant is a blind and physically challenged person. In his evidence, it is further stated that only the driver of the bus caused the accident and the driver was also charge sheeted in VAR No. 4661/S.1/96, Cr. No. 4862/96 u/s 337 of IPC. Due to the accident, he sustained head injury and also multiple injuries all over the body. After the accident, he was admitted in Royapettah Hospital, where, he was taken treatment from 04.11.1996 to 08.11.1996 i.e., for a period of five days as inpatient later, he was taking treatment for a period of three months as outpatient. After taking into consideration of the above, the Tribunal was of the view that the injured would have earned a sum of Rs. 2,500/- per month and presumed that he would have taken treatment for a period of three months. Therefore, the Tribunal awarded a sum Rs. 7,500/- (Rs. 2,500 x 3) towards loss of income during the period of treatment. After taking into consideration of the facts and circumstances of the case, the award amount of Rs. 7,500/- towards loss of income during the period of treatment is reasonable and the same is confirmed. Further, the Tribunal awarded a sum of Rs. 500/- towards transport charges. He was taking treatment in the hospital from 04.11.1996 to 08.11.1996 as inpatient and after discharge also, he was taking treatment for a period of three months as outpatient. Taking into consideration of the same, it is reasonable to award a sum of Rs. 1,000/- towards transport charges as against Rs. 500/- awarded by the Tribunal. The Tribunal also awarded a sum of Rs. 500/- towards nourishment. After taking into consideration of Ex.P1 is the copy of the accident register, Ex.P2 is the discharge summary and Ex.P9 is the disability certificate, it is reasonable to award a sum of Rs. 2,000/- as against Rs. 500/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 10,000/- towards pain and suffering. After taking into consideration of the nature of injuries, disability certificate and the oral evidence of P.W.3 doctor, the Tribunal rightly awarded a sum of Rs. 10,000/- towards pain and suffering which is reasonable and therefore, the same is confirmed. Further, the Tribunal awarded a sum of Rs. 50,000/- towards loss due to 55% permanent disability. He was in the hospital for a period of five days as inpatient and after discharge also, he was taking treatment for a period of three months as outpatient. P.W.3 is Dr. Thiagarajan. In his evidence, it is stated that because of the injury sustained in the accident, the claimant is unable to do work as before and also getting giddiness very often. Normally Courts award a sum of Rs. 1,000/- to 2,000/- per percentage of disability. In this case, it is stated in the doctor evidence that the injuries are simple in nature. Therefore, it is reasonable to award a sum of Rs. 1,000/- per percentage of disability. If Rs. 1,000/- is awarded, the loss due to 55% disability is works out to Rs. 55,000/-. Therefore, the claimant is entitled to a sum of Rs. 55,000/- towards loss due to 55% disability as against Rs. 50,000/- awarded by the Tribunal. After awarding a sum of Rs. 55,000/- towards loss due

to 55% disability, the Tribunal awarded a sum of Rs. 20,000/- towards loss of earning power which is unwarranted and therefore, the same is deleted. The interest rate awarded by the Tribunal is 12% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that period, the interest rate awarded by the Tribunal is reasonable and therefore the same is confirmed. The modified amount of the compensation are as under:

Loss of earning during treatment period = Rs. 7,500/-

Transport charges = Rs. 1,000/-

Extra nourishment = Rs. 2,000/-

Pain and suffering = Rs. 10,000/-

Loss due to 55% disability = Rs. 55,000/- ----- Total = Rs. 75,500/-

7. In the result, the claimant is entitled to modified compensation of Rs. 75,500/- with interest @ 12% per annum as against Rs. 88,500/- awarded by the Tribunal. It is stated by the learned Counsel for the appellant transport corporation that the entire award amount with interest has already been deposited by the Court order dated 14.09.2000 and the claimant was also permitted to withdraw 50% of the award amount. Under these circumstances, the claimant is permitted to withdraw the modified compensation of Rs. 75,500/- with interest @ 12% per annum, less the amount already withdrawn, on making proper application. The appellant transport corporation is also permitted to withdraw the balance amount on making proper application.

8. With the above modifications, the appeal is disposed of. No costs.