

(2011) 06 MAD CK 0322

In the Madras High Court

Case No : C.M.A. No. 1770 of 2010 and M.P. No's. 1 of 2010 and 1 of 2011

The Managing Director, Tamil Nadu State Transport Corporation, (Coimbatore) Ltd.

APPELLANT

Vs

K. Shanmugam

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0322

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

Bench : Single Bench

Advocate : N. Anand, for the Appellant; C. Kulanthaivel, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / Tamil Nadu State Transport Corporation, against the degree and judgment in M.A.C.T.O.P. No. 1656 of 2006, dated 13.07.2009 on the file of Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court No. 2), Salem.

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

On 09.09.2006, when the Petitioner was travelling in an Auto, along with five others, from Kondalampetti to Kongarampettai, on the rear right side seat of the auto and when the auto was proceeding on the Salem to Erode main road and was near Towers Pallipalayam near Amman Kovil Pirivu, the bus bearing Registration No. TN33-N-1604, coming in the opposite direction and driven at a high speed and in a rash and negligent manner by its driver, dashed against the front side of the auto. As a result, the auto was thrown down and dragged to some distance. Due to the accident, the Petitioner sustained grievous injuries. After the accident, the Petitioner took initial treatment at Sankari Government Hospital and on the same day, he was shifted to Erode Government Hospital and after that was shifted to A.C. Hospital, Salem. Hence, the Petitioner has filed a claim for Rs. 6,00,000/against the Respondent, Tamil Nadu State Transport

Corporation (Coimbatore) Limited.

3. The Respondent, in his counter has denied the averments in the claim regarding the manner of accident. It was stated that on 09.09.2006 when the Respondent's bus driver was driving the bus bearing Registration No. TN33-N-1604 from Erode towards Salem and at 5.30 p.m., when it was near Amman Kovil Pirivu, the driver of the bus saw an auto, coming on the opposite direction and driven by its driver in a rash and negligent manner. On seeing this, the driver of the bus hooted the horn, slowed down the bus and turned the bus to the extreme left side of the road, to avoid an accident. In spite of this, the auto driver was unable to control his vehicle and hit the auto against the right side of the bus. It was stated that the accident had occurred only due to the carelessness and negligence of the auto driver, who allowed more than seven persons to travel in the auto. The Respondent had also denied the averments in the claim regarding the age, income and occupation of the Petitioner, as well as nature of injuries and disability sustained by him. It was also stated that the Petitioner has to prove that the driver of the auto had a valid driving licence and that the vehicle was covered under a valid RC, FC, M.V. Tax, Insurance through documentary evidence. It was stated that as the owner and insurance company of the auto, involved in the said accident, bearing Registration No. TN49-NE-7419 have not been impleaded in the claim, it renders the claim not maintainable. It was also stated that the claim was excessive.

4. Five other claim petitions in M.C.O.P. Nos. 1655 of 2006, 1657 of 2006, 1659 of 2006, 1709 of 2006 and 1710 of 2006, had been filed by the other persons who had travelled in the said auto against the same Respondent, for compensation. Based on a Memo for joint trial by the claimants, the Tribunal conducted a common enquiry, recorded common evidence in M.C.O.P. No. 1655 of 2006 and delivered a common order.

5. On the averments of both parties, the Tribunal had framed three issues for consideration, namely;

(i) Did the accident occur due to the rash and negligent driving by the driver of the auto, who is the Petitioner in M.C.O.P. No. 1655 of 2006? Or did the accident occur due to the rash and negligent driving of the driver of the Respondent's bus bearing Registration No. TN33-N-1604?

(ii) Is the Petitioner entitled to get compensation?

If so, what is the quantum of compensation?

(iii) To what other relief is the Petitioner entitled to get?

6. On the Petitioners side six witnesses were examined and thirty three documents were marked as Exs.P1 to P33. On the Respondent's side, one witness was examined and No. document was marked. The driver of the auto was examined as PW1 and the Petitioner was examined as PW2. PW2 had adduced evidence that on 09.09.2006, at about 05.30 p.m., when he along with

four others were travelling in the auto from Kondalampettai towards Pallipalayam through Sankagiri and when the auto was near Amman Kovil Pirivu, the Respondent's bus bearing Registration No. TN33-N-1665, coming in the opposite side and driven in a rash and negligent manner by its driver, dashed against the auto. As a result, the auto had overturned and all the occupants of the auto were thrown out and sustained injuries. On scrutiny of First Information Report, it is seen that the complaint to the Komarapalayam Police regarding the accident had been given by the injured PW1, while he was receiving treatment at Erode Government Hospital as an inpatient. It is also seen from the First Information Report that the other occupants of the auto i.e., Shanmugam, Nagabusanam, Raja, Ramkumar and Muthukumar had also sustained injuries in the said accident and were initially taken to Sankagiri Government Hospital and subsequently at Erode Government Hospital. RW1 had adduced evidence that it was the negligence of the auto driver, which had resulted in the accident. On cross examination, he had admitted that a criminal case has been registered against him and departmental action was also taken against him at the Respondent's office. The Tribunal on considering that a departmental action had been taken against him only because he was at fault and also considering First Information Report and the evidence of PW2, held that the driver of the Respondent's bus was at fault and had caused the accident.

7. On scrutiny of Ex.P6, Wound Certificate issued by A.C. Hospital, Salem, it is seen that the Petitioner had sustained four injuries in the said accident and that the third and fourth injuries were grievous injuries. Ex.P7, P8 and P9 are the medical treatment records and Ex.P10 is the discharge summary issued at the said hospital. It is seen from the discharge summary that the Petitioner had been admitted on 11.09.2006 and had been discharged on 13.09.2006. It is seen from a reading of discharge summary that the Petitioner had sustained fracture of bones in his thigh and hip and that he had taken treatment to set right these injuries. The photograph of affected areas had been marked as Ex.P11, to show the extent of damage which the said injuries had caused. Ex.P13 and Ex.P14 are the medical bills. The doctor who had examined the Petitioner was examined as PW7. PW7 had adduced evidence that due to the said accident, the Petitioner had sustained fracture of the femur bone in his left knee joint and that the asitapulam and penburami bones in his right hip were also fractured; that he had initially received treatment at Government Hospital, Erode and subsequently received treatment at A.C. Hospital, Salem, where a surgery had been conducted to set right the fractures; He had further adduced evidence that as the fractured bone in his left leg knee joint had thickened and mal-united, the movements of his left knee had become restricted and as such he experiences pain while folding his leg and sitting in a cross legged position. He also adduced evidence that the left thigh flesh had become weak and the fractured right hip bone had also been thickened and mal-united and hence the Petitioner would find it difficult to use this section of his body to do his everyday work. He had further stated that the disability sustained by the Petitioner was 20% in his left knee joint and that the

disability sustained by Petitioner was 20% in his right hip and had certified that the total disability sustained by the Petitioner was 40%.

8. Based on the oral and documentary evidence, the Tribunal awarded a compensation of Rs. 2,30,100/-to the Petitioner. The breakup of compensation as follows:

Loss of income to the Petitioner family due to disability of 40% sustained by Petitioner (Rs. 3,000 x 1/3 x 2 x 12 x 16 x40/100)

.. Rs. 1,53,600/-

For pain and suffering

.. Rs. 15,000/-

For nutrition

.. Rs. 5,000/-

For transport expenses

.. Rs. 5,000/-

For medical expenses

(as per Ex.P13 and P14)

.. Rs. 51,500/-

The Tribunal further directed the Respondent to deposit the above said award together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of deposit, within two months from the date of its order.

9. Aggrieved by the said award passed by the Tribunal, the Appellant / Tamil Nadu State Transport Corporation (Coimbatore) Limited has filed the present appeal to scale down the compensation awarded.

10. The learned Counsel for the Appellant has argued that the Tribunal erred in concluding that the accident took place only due to the carelessness and negligence of the driver of the first Respondent. Further, the Tribunal had failed to consider the age of the claimant while applying multiplier and ought to have adopted a lower multiplier as per rulings of the Apex Court. Further, it was argued that the Tribunal failed to take into consideration the evidence of RW1, the driver. It was also pointed out that the award granted under the various heads have been given without any basis. Hence, the learned Counsel for the Appellant has prayed this Court to scale down the compensation awarded.

11. The learned Counsel for the claimant argued that the claimant was aged about 29 years and he was engaged as a silver ornaments maker and as such he was earning a sum of Rs. 5,000/-per month. He had sustained grievous injuries including bone fractures. The doctor had examined the claimant and assessed

the disability as 40%. The Tribunal had not assessed the compensation under the heads of attender charges, loss of earning during medical treatment period and convalescent period.

12. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the multiplier method adopted by the Tribunal and the compensation assessed at Rs. 1,53,600/-under the head of "loss of income due to disability" is not pertinent. Hence, this Court modifies the compensation as follows:

Rs. 80,000/- towards loss of income due to disability;

Rs. 51,500/- towards medical expenses;

Rs. 15,000/- for pain and suffering;

Rs. 5,000/- towards nutrition;

Rs. 5,000/- towards transport;

Rs. 5,000/- towards attender charges;

Rs. 10,000/-towards loss of income during medical treatment and convalescent period.

In total, this Court awards a sum of Rs. 1,71,500/-as compensation to the claimant as it is found to be fair and justifiable. Therefore, this Court scales down the compensation from Rs. 2,30,100/-to Rs. 1,71,500/-. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

13. On 14.07.2010, this Court imposed a condition on the Appellant / State Transport Corporation Limited to deposit a sum of Rs. 1,00,000/-to the credit of M.A.C.T.O.P. No. 1656 of 2006, on the file of Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court No. 2), Salem. Now, this Court directs the Appellant / State Transport Corporation to deposit the balance compensation amount, as per findings of this Court to the credit of M.A.C.T.O.P. No. 1656 of 2006, on the file of Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court No. 2), Salem, within a period of eight weeks from the date of receipt of this order. After such deposit has been made, it is open to the claimant to withdraw the entire modified compensation amount with accrued interest lying in the credit of M.A.C.T.O.P. No. 1656 of 2006, on the file of Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court No. 2), Salem, after filing a Memo along with this order. Subject to deduction of withdrawals, if any made, already.

14. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.A.C.T.O.P. No. 1656 of 2006, dated 13.07.2009 on the file of

Additional District Court, Fast Track Court No. 2, Salem is modified. There is No. order as to costs. Consequently, connected miscellaneous petitions are closed.