

(2013) 04 MAD CK 0144

In the Madras High Court

Case No : C.M.A. (MD) No. 1035 of 2005

The Managing Director, Tamil Nadu State Transport
Corporation (Div. 2) Limited

APPELLANT

Vs

Kumar, Durairaj, The Manager, Oriental Insurance Company
Limited and Murugesan

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 MAD CK 0144

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

Bench : Single Bench

Advocate : P. Thilak Kumar, for the Appellant; S. Gokul raj for R1, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The 1st respondent herein/claimant had filed a claim petition in M.C.O.P. No. 365 of 2002, against the appellant herein

and two others, stating that on 01.01.2002, at about 08.30 p.m., when the petitioner was travelling as a pillion rider on the motor cycle bearing

registration No. TN-39B-7335, along with one Murugesan, who was the rider of the motorcycle and when the motorcycle was proceeding on the

Karur to Trichy Main Road, the appellants State Transport Corporation Bus, bearing registration No. TN-45N-1217, coming in the opposite

direction and driven by its driver at a rash and negligent manner dashed against the motorcycle. As a result, he had sustained multiple bone fracture

injuries. Hence, the claimant has filed the claim petition claiming Rs. 15,00,000/- with interest. The Tamil Nadu State Transport Corporation, had

filed a counter statement and refuted the averments in the claim. The

respondent stated that the driver of the bus had driven the bus in a cautious manner and that the accident was caused only due to the high speed and the rash and negligent riding of the rider of the motorcycle, who had dashed against the bus. The respondent further submitted that the motorcycle, was ridden in the middle of the road and if hit against the bumper of the bus. The claim amount is an excessive one. The respondent denied the averments in the claim regarding age, income and occupation of the claimant.

2. The 1st respondent had filed a counter statement and denied that the accident had been committed by him. It was stated that the rider of the motorcycle came at a high speed and dashed his motorcycle against the bumper of the bus and this caused the accident due to his negligence.

3. On verifying the averments of all parties, the Tribunal had framed two issues namely:

(1) Was the accident caused due to the negligence of the driver of the bus bearing registration No. TN-45N-1217?;

(2) Whether the claimant is entitled to receive compensation from the respondent?.

On the side of the claimant, three witnesses were examined and twelve documents were marked namely: Ex. P1-F.I.R.; Ex. P2-wound certificate;

Exs. P3 and P4-Motor Vehicle Inspector's Report; Ex. P5-charge sheet; Ex. P6-driving licence; Ex. P7-medical bills; Ex. P8-discharge summary;

Ex. P9-X ray, Ex. P10-salary certificate; Ex. P11-permanent disability certificate; Ex. P12-X ray.

4. PW. 1, had adduced evidence that on 01.01.2002, at about 08.30 p.m., when he and one Murugesan, were travelling on the motorcycle

bearing registration No. TN-39B-7335, on the Karur to Trichy Road and at that point of time, the Transport Corporation Bus bearing registration

No. TN-45N-1217, coming in the opposite direction and driven by its driver at a rash and negligent manner, dashed against the motorcyclist. PW.

1, further stated that he was travelling in the said motorcycle as pillion rider and that in the criminal case has been registered against the driver of the

bus. He further stated that he was working as a mason at the time of accident and he was earning Rs. 140/- per day. He stated that he had

undergone treatment at a Private Hospital from 02.01.2002 to 04.02.2002 and

that he had spent a sum of Rs. 1,06,199/- towards medical expenses. During medical treatment period, a surgical operation was conducted on his right hand and his right leg had been amputated. He further

stated that he had also sustained bone fracture injuries on his right thigh and that steel plates and screws were fixed in the operated area.

5. The Doctor, had adduced evidence stating that the claimant's right leg had been amputated just above the knee level and a surgical operation was conducted on his right hand and steel plate with screws were fixed on the operated area. The Doctor had assessed the disability at 80%.

6. PW. 3, had adduced evidence that the claimant was working with Puliyoor South India Corporation, as Contract Labour. RW. 1, had adduced evidence that the rider of the motorcycle had ridden the motorcycle after consuming alcohol.

7. After considering the evidence of both the sides and on perusing the exhibits marked by the claimants, the Tribunal had awarded a sum of Rs.

7,31,000/- with interest at the rate of 9% per annum. Against the said award, the Transport Corporation has filed the above appeal. The highly

competent counsel contended that the Doctor had assessed the disability at 80% which is on the higher side. Further, in the said accident, two

vehicles were involved and therefore contributory negligence has to be attributed. The learned counsel further submits that the accident had been

caused by the negligence of the motorcyclist. The Tribunal had awarded a sum of Rs. 1,00,000/- under the head of permanent disability which is

erroneous. Further, the Tribunal had awarded a sum of Rs. 1,00,000/- under the head of pain and suffering which is also not appropriate. Hence,

the learned counsel entreats the Court to scale down the compensation.

8. The highly competent counsel for the claimant contended that the claimant is aged about 29 years at the time of accident and he was earning Rs.

140/- per day. The same was continued through evidence of PW. 3. The Tribunal, had adopted multiplier method 4 awarded the said

compensation and also followed case laws reported in Bhagwan Dass Vs. State of Himachal Pradesh and Others, . The learned counsel further

submits that the claimant had been hospitalized for a period of 45 days and that during medical treatment period, two surgical operation was

conducted and steel plates with screws were fixed on the operated area. The

Tribunal had not granted compensation under the head of attender charges, loss of amenities due to disfigurement.

9. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the

impugned award of the Tribunal, this Court does not find any short comings in the conclusions arrived at regarding negligence and liability.

However, the quantum of compensation is slightly on the higher side. Therefore, this court restructures the compensation as follows: The Tribunal

had awarded a sum of Rs. 4,00,000/- after adopting multiplier method by fixing the income of the claimant as Rs. 2,250/- per month, which is

reasonable and as such this Court accepts the same. Rs. 1,06,000/- is awarded by the Tribunal towards medical expenses is appropriate and it is

also confirmed. This Court awards Rs. 30,000/- towards pain and suffering; Rs. 15,000/- towards transport; Rs. 15,000/- towards attender

charges; Rs. 15,000/- towards nutrition; Rs. 30,000/- towards loss of earning during medical treatment period; Rs. 1,50,000/- towards loss of

amenities, loss of comfort due to disfigurement. In total, this Court awards Rs. 7,61,000/- as compensation, it is found to be appropriate. The rate

of interest fixed by the Tribunal at 9% per annum remains unaltered. As per Court records, it is seen that this Court imposed a condition on the

appellant to deposit the entire compensation amount with accrued interest thereon. Further, this Court permitted the claimant to withdraw 50% of

the award amount with interest.

10. Now, it is open to the claimant to withdraw balance compensation amount, as per this Courts findings lying in the credit of M.C.O.P. No. 365

of 2002, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Karur, after filing a memo, along with a copy of this order.

Likewise, the appellant herein is permitted to withdraw the excess compensation amount from the Trial Court after filing a memo. In the result, the

above appeal is partly allowed. Consequently, the award and decree passed in M.C.O.P. No. 365 of 2002, on the file of the Motor Accident

Claims Tribunal, Chief Judicial Magistrate, Karur, dated 07.01.2005, is modified. No costs.