

(2010) 08 MAD CK 0234
In the Madras High Court
Case No : C.M.A. No. 1758 of 2005

The Managing Director, Tamil Nadu State Transport Corporation Ltd.

APPELLANT

Vs

Gopalakrishnan and Selvan

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 08 MAD CK 0234

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

Bench : Single Bench

Advocate : A. Babu, for the Appellant; V. Nicholas, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Transport Corporation against the award and decretal order passed by the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court No. 1, Coimbatore) in MACTOP No. 637 of 2000, (Sub Court, Coimbatore No. 650/2000) dated 25.08.2003 praying to set aside the same.

2. Background facts in a nutshell are as follows:

The injured Gopalakrishnan met with motor traffic accident on 10.04.2000 at about 03.30 p.m. The said injured was proceeding in his bicycle on the extreme left side of Coimbatore - Mettupalayam main road. When he was nearing Thoppampatti pirivu bus stop, the bus bearing registration No. TN-38-N-0226 belonging to the appellant-Transport Corporation came in a rash and negligent manner and hit the cyclist. Due to the same, the injured fell down and sustained grievous injuries all over the body. The injured claimed a sum of Rs. 2,00,000/- as compensation, before the Tribunal. The appellant-Transport Corporation resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the claimant is entitled to the compensation? If so who is entitled to pay the compensation?

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 rash and negligent driving of the driver of the appellant-Transport Corporation bus and awarded a compensation of Rs. 1,40,000/- with interest at 9% per annum from the date of the claim petition. The details of the compensation are as under:

Medical expenses = Rs. 25,000/- Loss due to 35% disability = Rs. 1,05,000/-
Pain and suffering = Rs. 10,000/- Total = Rs. 1,40,000/-

Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

3. The learned Counsel appearing for the appellant-Transport Corporation questioned only the quantum of the award passed by the Tribunal and contended that the Tribunal has awarded an excess and exorbitant amount as compensation that which is without any basis and justification. The Tribunal has wrongly awarded a sum of Rs. 1,05,000/- towards loss due to 35% disability. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the 1st respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel and perused the documents available on record. On the side of the claimant P.Ws.1 and 2 were examined and documents Exhibits P1 to P7 were marked. P.W.1 is the 1st respondent/claimant. P.W.2 is the Doctor Thiru.Sekar. Ex.P.1 is the Certified copy of the First Information Report, Ex.P.2 is the Certified copy of the Motor Vehicle Inspector's report, Ex.P.3 is the Xerox copy of the Accident Register, Ex.P.4 is the Wound Certificate of the claimant. Ex.P.5 is the Medical Bills, Ex.P.6 is the Photograph of the claimant, Ex.P.7 is the Disability Certificate of the claimant. On the side of the appellant-Transport Corporation, R.W.1, - Selvam, who is the driver of the bus was examined and no documents were marked to substantiate their claim. 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 appellant-Transport Corporation bus and the finding is based on valid materials and evidence. It is a question of fact and the same is confirmed.

6. At the time of the accident, the injured claimant was 19 years old. In his evidence he has stated that he is a welder in G.K. Industries, Coimbatore and also claimed that he was earning Rs. 2,500/- per month. Further, in his evidence, he has stated that the driver of the bus caused the accident and a case has been registered against the bus driver in Crime No. 266/2000 of Thudiyalur Police

Station under Sections 279 and 337 of IPC. The claimant/injured further submitted that, due to the accident he sustained grievous injuries in the left arm, left side of face, left side of chest, left ear, left hand, left leg and loss of upper two teeth. P.W.2 - the Doctor, who examined the injured, has determined the disability at 35%. Ex.P.7 is the disability certificate, Ex.P.6 is the X-Ray, Ex.P.4 is the wound certificate. Further in the Doctor's evidence, it is stated that due to the injury, the left side shoulder was completely affected and movement is also restricted and also there is disfiguration of face. After considering the above oral and documentary evidence, the Tribunal accepted the disability determined by the Doctor at 35% and awarded a sum of Rs. 1,05,000/- for the loss due to 35% disability. The counsel for the appellant-Transport Corporation vehemently contended that the Tribunal is wrong in applying the multiplier of 3 for determining loss due to 35% disability. Normally, the Courts award a sum of Rs. 1,000/- of Rs. 2,000/- for each percentage of disability. If Rs. 2000/- is awarded per percentage, the loss of income for 35% disability works out to Rs. 70,000/- ($2000 \times 35 = 70,000$). Therefore, the claimant is entitled to a sum of Rs. 70,000/- for loss due to 35% disability as against the sum of Rs. 1,05,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 25,000/- towards medical bills. Ex.P.5 is the series of medical bills. The claimant was in the hospital from 10.04.2000 to 05.06.2000. It is actual expenditure incurred by the claimant. Therefore, the Tribunal is correct in awarding a sum of Rs. 25,000/- towards Medical Bills and the same is confirmed. The Tribunal has also awarded a sum of Rs. 10,000/- towards pain and suffering. After taking into consideration the nature of the injury and also he was in the hospital from 10.04.2000 to 05.06.2000 in CMC hospital, Coimbatore, the amount awarded towards pain and suffering is very low. Therefore, it is reasonable to award Rs. 15,000/- under this head as against Rs. 10,000/- awarded by the Tribunal. The Tribunal has not awarded any amount towards transport charges and extra-nourishment. There is no dispute that he was in hospital for a period of 60 days i.e., in CMC Hospital, Coimbatore. Therefore, it would be reasonable to award a sum of Rs. 5,000/- towards transport charges and another sum of Rs. 5,000/- towards extra-nourishment. The Tribunal has not awarded any amount towards loss of income during treatment period. He claims that his monthly salary is Rs. 2,500/-. He was in the hospital for two months and later he took rest for about four months. Therefore, it would be appropriate to award a sum of Rs. 15,000/- towards loss of income during treatment period. The Tribunal awarded the interest at 9% p.a. The date of accident is 10.04.2000. Taking into consideration the prevailing rate of interest at the time of the accident, the interest awarded by the Tribunal is confirmed. The details of the compensation amount are as given under:

for loss due to 35% disability :	Rs. 70,000/-	for medical bills :	Rs. 25,000/-
for pain and suffering :	Rs. 15,000/-	for transportation charges :	Rs. 5,000/-
for extra-nourishment :	Rs. 5,000/-	loss of income during the treatment period :	Rs. 15,000/-
----- Total amount :		Rs. 1,35,000/- -----	

Therefore the claimant is entitled to the modified compensation of Rs. 1,35,000/-

(Rupees One Lakh and Thirty Five Thousand Only) with interest at 9% p.a. as against the sum of Rs. 1,40,000/- awarded by the Tribunal.

7. It is submitted by the learned Counsel for the appellant-Transport Corporation that they have deposited entire award amount by order dated 29.06.2005 and the claimant was also permitted to withdraw 50% of the award amount by the order of this Court dated 22.11.2006. Under these circumstances, the injured claimant is permitted to withdraw the modified compensation amount of Rs. 1,35,000/- with interest at 9%, 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 modification, the Civil Miscellaneous Appeal is disposed of. No costs.