

(2013) 09 MAD CK 0268
In the Madras High Court
Case No : C.M.A. No. 2797 of 2007

The Managing Director Tamil Nadu State Transport
Corporation Ltd.

APPELLANT

Vs

Nagaraj

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0268

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

Bench : Single Bench

Advocate : B. Vijayalakshmi, for the Appellant; M. Selvam, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/respondent has preferred the present appeal against the judgment and decree dated 01.12.2006, made in M.C.O.P. No. 136 of 2003, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. The short facts of the case are as follows:--

The petitioner had filed a claim petition in M.C.O.P. No. 136 of 2003, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, claiming a compensation of Rs. 5,00,000/- from the respondent for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that on 02.12.2001, at about 02.30 p.m., the petitioner was proceeding on a moped, as a pillion rider, along with his friend, on Pennagaram-Hogenakkal Road and when he was near Podur diversion, the respondent's Corporation bus bearing registration No. TN29 1023, which was coming from Hogenakkal to Pennagaram and driven at a high speed and in a rash and negligent manner, had dashed against the moped and caused the accident. As a result, the petitioner had sustained grievous injuries and was admitted at Pennagaram Government Hospital, wherein first aid was given and subsequently received treatment at Dharmapuri Government Hospital. As his health condition

had become serious, he was admitted at St. John Hospital, Bangalore. Due to the injuries sustained in the accident, he is not able to walk or stand and not able to do any work. Hence, he had filed the claim petition.

3. The respondent Corporation, in their counter statement, had denied the averments made in the claim petition regarding age, income and occupation of the petitioner, disability and manner of accident. It was submitted that the driver of the bus had driven it in a careful and cautious manner and that the accident was caused only due to the rash and negligent riding of the rider of the moped namely Mathaiyyan, who had dashed his moped against the rear tyre of the bus and fallen down. It was submitted that the claim was bad for non-joinder of the owner and insurer of the moped involved in the accident.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Was the accident caused by the rash and negligent driving by the driver of the respondent's bus bearing registration No. TN29 1023? and

ii. Is the petitioner entitled to get compensation as prayed for?

5. On the petitioner's side, four witnesses were examined as P.Ws.1 to 4 and nine documents were marked as Exs.P1 to P9 namely FIR, wound certificate, medical bills, college transfer certificate, educational qualification certificate, disability certificate, X-rays and medical treatment records. On the respondent's side, the driver of the bus was examined as R.W.1 and no document was marked.

6. P.W.1 had adduced evidence, which is corroborative of the statements made in the claim petition, regarding manner of accident and in support of his evidence, he had marked Exs.P1 to P9. P.W.4 Mathaiyyan, rider of the moped, had also adduced evidence on similar lines to the evidence of P.W.1 regarding manner of accident.

7. R.W.1 driver of the bus had adduced evidence that the accident had been caused by the rash and negligent driving by the rider of the moped. However, the Tribunal, on observing that the accident had occurred at the junction of four roads, opined that if the driver of the bus had driven the bus at a moderate speed and in a careful manner and if he had applied brakes and stopped the bus, he could have averted the collision of the bus with the moped. The Tribunal, on scrutiny of Ex.P1 and on scrutiny of oral and documentary evidences, had held that the accident had been caused by the rash and negligent driving of the driver of the respondent's Corporation bus.

8. P.W.1 had further adduced evidence that due to the accident, he had sustained fracture of bone in his left thigh, knee and heel and also sustained injuries on his head and stomach and that he had received treatment at Dharmapuri and Bangalore. On scrutiny of Ex.P2, it is seen that the tibia bone in the left leg of the petitioner had been fractured and that he had received treatment as an inpatient from 03.12.2001 to 22.12.2001 at St. John Medical College Hospital,

Bangalore.

9. P.W.3 Dr. Krishana Rao had adduced evidence that a surgery was conducted on 04.12.2001 by a team of doctors to set right the fracture of tibia bone in the petitioner's left leg and that a steel plate was fixed in the fractured area on 11.12.2001. He deposed further that the disability sustained on account of fracture of leg was 60% and that the total loss of earning capacity due to disability was 20% and in support of his evidence he had marked Ex.P2.

10. P.W.3 Dr. Thiruvengadam, Orthopedist at Dharmapuri Government Hospital, had adduced evidence that the petitioner had sustained fracture of tibial lantern bone in his left knee joint and that after surgery, it had malunited and due to this the petitioner would not be able to stretch and bend his knee. He certified that the petitioner had sustained 30% disability and in support of his evidence, he had marked Ex.P6 disability certificate.

11. On scrutiny of Ex.P4, it is seen that the petitioner was aged 19 years at the time of the accident. The Tribunal had observed that due to fracture of bone in his leg, the petitioner would not be able to continue his work as a tailor. The Tribunal, on adopting a multiplier of 16 and on taking the notional income of the petitioner as Rs. 3,500/-, had awarded a sum of Rs. 1,58,760/- under the head of loss of income due to disability of 30% ($3500 \times 12 \times 30/100 \times 16$), Rs. 3,000/- was awarded for transport expenses, Rs. 5,000/- was awarded for nutrition, Rs. 33,903/- was awarded for medical expenses, Rs. 20,000/- was awarded for pain and suffering, Rs. 20,000/- was awarded under the head of loss of amenities and loss of comfort. In total, the Tribunal had awarded a sum of Rs. 2,40,663/- as compensation to the petitioner and directed the respondent to deposit the said sum together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, with costs, within a period of one month from the date of its order.

12. Aggrieved by the award passed by the Tribunal, the respondent Corporation has preferred the present civil miscellaneous appeal.

13. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal had failed to consider that the accident had occurred only due to the rash and negligent driving of the moped by the claimant. It is contended that the Tribunal had failed to consider that there was no loss of earning capacity to the claimant and hence awarding Rs. 1,58,760/- for 30% disability is not proper. It is also contended that the Tribunal had erred in adopting multiplier method for assessing loss of income for disability and also erred in fixing the monthly income of the claimant at Rs. 3,500/-, without any evidence on record. Hence, it is prayed to set aside the award passed by the Tribunal.

14. The very competent counsel for the claimant has argued that the claimant had sustained multiple one fracture injuries on his legs, head and injury to abdomen. He underwent treatment at G.H. Dharmapuri and at a private hospital at Bangalore, as an inpatient for 20 days, wherein a surgical operation was

conducted and a steel plate with screws was fixed in the operated area. The Doctor had assessed the disability at 60%. Therefore, the Tribunal had adopted multiplier method and awarded compensation.

15. On verifying the factual position of the case and arguments advanced by the very competent counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any lapse in the conclusions arrived at regarding negligence and liability. However, the quantum of compensation assessed by the Tribunal, after adopting multiplier method, is not pertinent in the instant case. Therefore, this Court reassesses the compensation as follows:

- i. Rs. 60,000/- is awarded for disability,
- ii. Rs. 34,000/- is awarded for medical expenses,
- iii. Rs. 15,000/- is awarded for pain and suffering,
- iv. Rs. 10,000/- is awarded towards transport expenses,
- v. Rs. 15,000/- is awarded for nutrition,
- vi. Rs. 10,000/- is awarded for attender charges,
- vii. Rs. 10,000/- is awarded for loss of earning during medical treatment period, and
- viii. Rs. 10,000/- is awarded for loss of amenities and loss of comfort.

In total, this Court awards a sum of Rs. 1,64,000/- as compensation, as it is found to be appropriate. The rate of interest remains unaltered. As such, this Court scales down the compensation awarded.

16. This Court had already directed the appellant Corporation to deposit a sum of Rs. 1,50,000/- with proportionate interest thereon, to the credit of M.C.O.P. No. 136 of 2003, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. Now, this Court directs the appellant to deposit the balance compensation amount i.e., Rs. 14,000/- with proportionate interest thereon, as per this Court's findings, within a period of four weeks from the date of receipt of a copy of this Order.

17. After such a deposit having been made, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon, as per this Court's findings, lying in the credit of M.C.O.P. No. 136 of 2003, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, after filing a memo along with a copy of this Order. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 01.12.2006, made in M.C.O.P. No. 136 of 2003, on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, is modified. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.