(2013) 10 MAD CK 0074

In the Madras High Court

Case No : C.M.A. No. 2226 of 2012 and M.P. No. 1 of 2012

The Managing Director, Tamil Nadu State Transport Corporation Ltd. — APPELLANT

Vs

S. Pradeep Kumar — RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0074

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : B. Vijayalakshmi, for the Appellant; C. Prabakaran, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Subbiah, J.—Aggrieved over the quantum of compensation awarded by the Tribunal, in and by award dated 14.12.2010 made in

M.C.O.P. No. 403 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal (Chief Judicial Magistrate), Vellore, the Transport

Corporation/appellant has filed the present appeal. It is the case of the respondent/claimant before the Tribunal that on 16.03.2008 at 12.30 p.m.,

when he was riding his two-wheeler bearing Registration No. TN-23-AC-8672 from Vellore to Arani Road, from East to West, a bus bearing

Registration No. TN-23-N-1447 belonging to the appellant/Transport Corporation came in a rash and negligent manner from opposite direction

and dashed against the two-wheeler and thus, caused the accident. In the said accident, the respondent/claimant sustained grievous injuries all over

the body. Immediately, he was admitted in CMC Hospital at Vellore, where he took treatment as in-patient from 16.03.2008 to 05.06.2008 and again from 16.07.2008 to. 24.07.2008, totally for a period 88 days in hospital. Even after discharge from the hospital, he is taking treatment as

out-patient. Hence, he made a claim for a sum of Rs. 20 lakhs as compensation before the Tribunal.

2. Before the Tribunal, the case of the respondent/claimant was resisted by the appellant herein/Transport Corporation contending that the accident

had occurred only due to the rash and negligent driving of the respondent/ claimant and the driver of the bus cannot be held responsible for the

accident. At the time of accident, actually the bus was stopped at a bus-stop in order to enable the passengers to get down from the bus and at

that time, the respondent/claimant came from opposite direction in his two-wheeler in a rash and negligent manner and dashed against another two-

wheeler and lost his balance and fell in front of the bus. But, a false complaint has been lodged against the driver of the bus, as if he is responsible

for the accident, to claim exorbitant amount as compensation from the Transport Corporation.

3. Before the Tribunal, in order to prove the claim, on the side of the respondent/ claimant, the claimant examined himself as P.W. 1 besides

examining three other witnesses as P.W. 2 to P.W. 4 and marked 16 documents as Ex. P. 1 to Ex. P. 16. On the side of the appellant

herein/Transport Corporation, the driver of the bus was examined as R.W. 1 and no document was marked.

4. The Tribunal, after analysing the entire evidence, has rejected the defence put forth by the appellant herein/Transport Corporation and has come

to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus. By coming to such a conclusion,

the Tribunal has assessed the compensation under different heads and passed an award for a total sum of Rs. 41,37,742/- as against the claim of

Rs. 20 lakhs. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the Transport

Corporation.

5. The learned counsel for the appellant/Transport Corporation submitted that in order to prove the disability, on the side of the

respondent/claimant, one Dr. Lionel Gnanaraj, who is working as a Professor in the Department of Urology Unit in CMC Hospital at Vellore, was examined as P.W. 3 and one Dr. Arun Sankar, who is working as Ortho Specialist in CMC Hospital, was examined as P.W. 4. P.W. 3 assessed

the disability suffered by the claimant at 100%. The learned counsel for the appellant/Corporation further submitted that the very fact that the

claimant appeared before the Court itself would show that the disability suffered by him cannot be 100% and hence, it is clear that P.W. 3 has

given such an evidence by exaggerating the disability suffered by the victim only in order to enable the claimant to get more compensation. Hence,

the evidence of P.W. 3 ought to have been rejected in toto. Further, the Tribunal while calculating the loss of earning power, had fixed a sum of

Rs. 23,562/- as monthly income of the claimant and thereafter, by fixing the disability at 50% as against the assessment of 100% made by P.W. 3,

by applying the multiplier of 17, has awarded an exorbitant sum of Rs. 24,03,324/- under the head of loss of income alone. In fact, fixing disability

at 50% by the Tribunal as against 100% disability assessed by P.W. 3 itself would show that the claimant can continue his avocation for rest of his

life. Therefore, the question of awarding compensation under loss of income by applying multiplier method is not correct and therefore, proper

reduction has to be made in the award made by the Tribunal under the head of loss of income. Further, the learned counsel for the appellant also

submitted that the amounts awarded by the Tribunal under other heads also on the higher side and hence, proper reduction has to be made in the

other heads also.

6. Per contra, the learned counsel for the respondent/claimant submitted that though P.W. 3 had assessed the disability suffered by the claimant at

100%, the Tribunal fixed the disability suffered by the claimant only at 50%. But, the evidence on record would show that on account of the

injuries sustained by him in the accident his urinary track had been blocked and even as on date the claimant is not having any control over nature''s

call and he has become impotent. Further, since he is not having control over passing urine and motion, he cannot attend regular office works.

Under such circumstances, the compensation amount awarded by the Tribunal by applying multiplier method cannot be found fault with. In support

of his contentions, the learned counsel for the respondent/claimant has also relied upon a judgment of the Hon''ble Supreme Court reported in S.

Manickam Vs. Metropolitan Transport Corporation Ltd., wherein it has been held as follows:-

While computing compensation, the approach of the Tribunal or a Court has to be broad based and sometimes it would involve some guesswork

as there cannot be any precise formula to determine the quantum of compensation. Thus, the learned counsel for the respondent/claimant prays that

the compensation amount awarded by the Tribunal may be confirmed.

7. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

8. Since in this appeal the quantum of compensation alone is challenged, We are not dealing with the other aspects of the case.

9. On a careful perusal of the materials available on record, We find that the claimant/victim has sustained fracture and dislocation of hip bones and

damage to nerves and sustained other internal injuries and other injuries all over his body. He took treatment in the hospital more than 88 days as

in-patient. In order to prove the disability suffered by the respondent/claimant/ victim, on his side, two doctors were examined as P.W. 3 & 4. The

evidence of P.W. 3, Urologist, would show that on account of the fracture injury sustained by the respondent/claimant/victim in his hip bones, he

would find it difficult to answer his nature''s call and due to injury sustained by him, his urinary track had been blocked, which was set right by a

major operation, but however, he is not having control over passing of urine & motion and he cannot do his normal office works by sitting along

with others and there is no possibility for regaining his urinary continence.

10. P.W. 2, Mr. Balaji, who is working as Administrative Officer in Secure next Softwares Pvt., Ltd. at Chennai, has adduced in his evidence that

since the respondent/claimant/victim was not in a position to carry on his work, he was discharged from the service. Ex. P. 15-Salary Certificate

marked on the side of the respondent/claimant would show that the respondent/ claimant was drawing a sum Rs. 15,708/- per month at the time

accident. Considering the nature of injuries and the disability suffered by the respondent/claimant/victim, We are of the opinion that it is a fit case to

apply multiplier method to arrive at a just and proper conclusion for compensation.

11. Though P.W. 3 had stated in his evidence that the disability suffered by the

respondent/claimant/victim is 100%, the Tribunal has chosen to fix

the disability suffered by the respondent/claimant at 50% only, which cannot be found fault with considering the nature of injuries sustained by the

respondent/claimant. But, at the same time, We find that the Tribunal while calculating the quantum of compensation, had taken a sum of Rs.

15,708/- as monthly salary of the deceased, and added 50% of the salary towards future prospects and arrived at a sum of Rs. 23,562/-.

Thereafter, the Tribunal deducted 50% from the said amount and arrived at a sum of Rs. 11,781/- as loss of monthly income and thereby, arrived

at a sum of Rs. 1,41,372/- as loss of annual income. By applying multiplier of 17, the Tribunal fixed a sum of Rs. 24,03,324/- as compensation

under the head of loss of earring power. But, in our considered opinion, since the disability suffered by the respondent/claimant/victim is only 50%,

the question of adding 50% towards future prospects does not arise in this case. Therefore, the amount awarded under the head of loss of earning

capacity needs proper modification.

12. Considering the evidence available on record, We are of the opinion that it would be appropriate to fix a sum of Rs. 15,000/- as monthly loss

of income. Thus, annual loss of income works out to a sum of Rs. 1,80,000/- (15,000 x 12). If multiplier of 17 is applied, then the total loss of

income comes to Rs. 30,60,000/- (1,80,000 x 17 = 30,60,000). Since the disability suffered the respondent/claimant is fixed at 50%, the

compensation amount has to be calculated by apportioning the amount to 50% disability. Then, the compensation works out to Rs. 15,30,000/-

(30,60,000 X 50/100 = 15,30,000), which is a just and proper compensation under the head of loss of earning power. Therefore, a sum of Rs.

24,03,324/- awarded by the Tribunal under the head of loss of earning power, is hereby reduced to a sum of Rs. 15,30,000/-.

13. Further, We find that the Tribunal has awarded a sum of Rs. 5,18,364/- under the loss of earnings for a period of 33 months. We are of the

opinion that the sum of Rs. 5,18,364/- awarded by the Tribunal under the head of loss of earnings for a period of 33 months is totally on the higher

side. Moreover, in the instant case, after awarding an amount by applying multiplier method under the head of loss of earning power, once again

awarding an amount based on the monthly income for a period of 33 months is totally unwarranted. However, considering the fact that the

respondent/claimant might not have attended the work atleast for a period of six months, a consolidated amount of Rs. 1 lakh could be awarded as

loss of income during the treatment period. Hence, the amount of Rs. 5,18,364/- awarded by the Tribunal under the head of loss of income for 33

months, is hereby set aside and a sum of Rs. 1,00,000/- is hereby awarded under the head of loss of income during treatment period.

14. Further, We are of the opinion that a sum of Rs. 2,00,000/- under loss of amenities and a sum of Rs. 50,000/- under the head of loss of

prospects of marriage awarded by the Tribunal, are liable to be set aside and accordingly, they are hereby set aside. The compensation amounts

awarded by the Tribunal under other heads are hereby confirmed. Considering the nature of injuries sustained by the respondent/claimant/victim,

We are of the opinion that the respondent/claimant needs the help of the others to carry on his normal life. Hence, a sum of Rs. 50,000/- is hereby

awarded under the head of attended charges.

15. Consequently, the total compensation amount of Rs. 41,37,742/- awarded by the Tribunal is hereby modified and reduced to Rs. 24,96,054/-

. The break up details of the modified compensation amount are as follows:-

In the result, the civil miscellaneous appeal is allowed in part and the compensation amount of Rs. 41,37,742/- awarded by the Tribunal is hereby

reduced to Rs. 24,96,054/-. The appellant/Transport Corporation is directed to deposit the entire modified award amount with 7.5% per annum,

after deducting the amount that has already been deposited, within a period of six weeks from the date of receipt of a copy of this order. On such

deposit, the respondent/claimant is permitted to withdraw the entire amount.

Consequently, connected Miscellaneous Petition is closed.

There is no order as to costs.

