

(2010) 03 MAD CK 0302
In the Madras High Court
Case No : C.M.A. No. 370 of 2008

The Managing Director Tamil Nadu State Transport
Corporation Ltd., Division - I

APPELLANT

Vs

Duraisamy

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 03 MAD CK 0302

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

Bench : Single Bench

Advocate : B. Vijayalakshmi, for the Appellant; V. Kumaravelan, for U.
Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/respondent against the Award and Decree, dated 31.01.2007, made in M.C.O.P. No. 845 of 2002, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Salem, awarding a compensation of Rs. 40,000/- with 7.5% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/respondent has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

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

On 09.08.2002, at about 5.30 p.m. when the petitioner was standing on the mud portion of the Kondalampatty-Seel-Naickenpatty road, opposite to Sithi Hotel, the respondent's bus bearing registration No. TNN1285, driven by its driver at a high speed and in a rash and negligent manner, dashed against the petitioner and

caused the accident. As a result of the impact, the petitioner sustained grievous injuries and was immediately taken to Government M.K.M.C. Hospital, Salem and admitted as an inpatient and took treatment.

4. The petitioner, aged about 35 years at the time of accident, was a master in a Dyeing Factory and earning a sum of Rs. 6,000/- per month. Due to the injuries sustained by him in the accident, he is not able to do any hard work and hence he could not go for work in the near future. As such, the petitioner has claimed a compensation of Rs. 3,00,000/- together with interest at the rate of 18% per annum from the date of filing the petition till the date of payment of compensation from the respondent, the owner of the said bus involved in the accident, u/s 166 of the Motor Vehicles Act.

5. Regarding the said accident, a criminal case has been registered at the Kondalampatty Police Station in Crime No. 1089 of 2002 as against the driver of the bus under Sections 279 and 337 of I.P.C.

6. The respondent, in his counter, has resisted the claim denying the averments in the claim as regards the age, income and occupation of the petitioner and has submitted that these have to be proved through documentary evidence. The respondent has also denied the averments in the claim regarding the period of treatment and permanent disability sustained by the petitioner and has stated that these should be proved through documentary evidence. The manner of accident as alleged in the claim has also not been admitted by the respondent. The respondent has submitted that the accident had occurred because the petitioner had come from a pirivu road suddenly and tried to cross the road and hence the accident had occurred. As such, it has been submitted that the accident had occurred only due to the negligence of the petitioner and that the driver of the respondent's bus had not been rash and negligent in his driving as alleged in the claim. As such, the respondent has submitted that he is not liable to pay any compensation to the petitioner. It has also been submitted that the claim is excessive and has to be dismissed with costs.

7. The first respondent, the driver of the bus remained absent and was set exparte.

8. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Whether the accident took place as alleged by the petitioner?

(ii) Whether the respondents are liable to pay compensation to the petitioner?

9. On the petitioner's side, the petitioner was examined as PW1 and six documents were marked as Exs.A1 to A6. On the respondents' side no witness was examined and no documents were marked.

10. On scrutiny of the Ex.A1, the FIR, it is seen that the complaint had been lodged against the driver of the bus, immediately after the accident. From a

reading of Ex.A2, the Wound Certificate, it is seen that the petitioner has sustained one grievous injury and simple injuries due to the accident. Ex.A3 is the Charge Sheet, which has been lodged by the Police as against the driver of the bus. From a scrutiny of Ex.A4, the Motor Vehicle Inspector's Report, it is seen that the accident did not happen due to any mechanical defects in the said bus. Ex.A6 is the CT Scan taken on the petitioner.

11. The Tribunal were of the opinion that the respondent had not let in any oral or documentary evidence to prove their case. But, the Tribunal, on scrutiny of the documents marked as Exs.A1 to A6, were of the opinion that the petitioner has established his case and hence held that the respondent is liable to pay compensation to the petitioner.

12. Though the petitioner has claimed that he was earning a sum of Rs. 6,000/- per month, no documentary evidence has been let in by the petitioner to establish this claim. As such, the Tribunal held that the notional income of the petitioner could be taken as Rs. 2,000/- per month. The Tribunal awarded a lumpsum compensation of Rs. 40,000/- to the petitioner and directed the first and second respondents to jointly and severally deposit the above said award, together with interest at the rate of 7.5% per annum from the date of petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 845 of 2002, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Salem, within a period of one month from the date of its Order. After such deposit was made, the award amount was to be invested in a nationalised bank as fixed deposit, for a period of three years and the petitioner was permitted to withdraw the interest on such deposit once in three months directly from the bank. The petitioner was directed to pay the Court fee due for the award amount within a period of ten days from the date of its Order. The Advocate fees was fixed at Rs. 1,500/- and the respondent was directed to pay the proportionate cost of Rs. 1,786/- to the petitioner.

13. The learned Counsel appearing for the appellant has contended in his appeal that the Tribunal failed to consider that the accident happened due to the negligence of the claimant. It was also contended that the Tribunal failed to consider that the claimant suffered only simple injuries and that the Doctor's evidence has also not been produced to ascertain the nature of injuries and disability. It was also contended that the Tribunal failed to consider that the claimant had not filed any medical bills and that the age and income proof had also not been filed by the claimant. As such, the learned Counsel appearing for the appellant has contended that the award of Rs. 40,000/- passed by the Tribunal was not sustainable in law and hence has prayed to set aside the award and decree passed by the Tribunal.

14. The learned Counsel appearing for the respondent argued that the claim amount was for a sum of Rs. 3,00,000/-, but the Tribunal had awarded only a sum of Rs. 40,000/-. The claimant is a coolie and has sustained grievous injury in the said accident. Due to this accident, his face has been disfigured. As such,

the award amount of the Tribunal is on the lower side.

15. Considering the facts and circumstances of the case and after hearing arguments advanced by the learned Counsel on either side, this Court is of the view that as the claimant's face has been disfigured and he had also sustained injuries in his body, the award granted by the Tribunal i.e. a sum of Rs. 40,000/- 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, made in M.C.O.P. No. 845 of 2002, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Salem, is found to be fair in the circumstances of the case and as such, this Court confirms the award and decree of the Tribunal.

16. This Court imposed a condition on the appellant that the appellant should deposit the entire compensation amount with accrued interest, into the credit of the M.C.O.P. No. 845 of 2002, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Salem, within a period of four weeks from the date of receipt of this Order. After such deposit made, it is open to the claimant to withdraw the award amount with accrued interest thereon after filing necessary payment out application in accordance with law.

17. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 31.01.2007, in M.C.O.P. No. 845 of 2002, passed by the Motor Accident Claims Tribunal, Additional Subordinate Judge, Salem, is confirmed. There is no order as to costs.