
(2010) 03 MAD CK 0168

In the Madras High Court

Case No : C.M.A. No. 1708 of 2008 and M.P. No. 1 of 2008

The Managing Director, Tamilnadu State Transport Corporation	APPELLANT
Vs	
V. Mageshkumar rep. by his father, R. Venkatesan	RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2010) 03 MAD CK 0168

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

Bench : Single Bench

Advocate : B. Vijayalakshmi, for the Appellant; J. Mahalingam, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/respondent against the Award and Decree, dated 28.06.2004, made in M.C.O.P. No. 224 of 2001, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Chengalpattu, awarding a compensation of Rs. 1,35,000/- with 9% 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 10.07.2000, at about 5.30 p.m. when the petitioner was standing at the Thirukazhukundram bus stand, the TNSTC bus bearing registration No. TN29 N0091, coming from Chengalpattu towards Mamallapuram and driven by its driver in a rash and negligent manner and without adhering to traffic rules, dashed against the petitioner. As a result of this, the petitioner sustained fracture of his hip bone and other multiple grievous injuries all over his body. Immediately, he was admitted in C.M.C.H. Hospital and he was treated there, as

inpatient, upto 22.07.1992. Later on, he underwent treatment under Dr. Sivakumar from 10.07.2000 and subsequently was admitted in Best Hospital, Chinglepet and has been taking treatment. The petitioner is now, permanently disabled and is not able to walk, squat and do his normal avocation as before. He has suffered severe pain and mental agony. The petitioner is a student and he could not attend school. His future life has been completely spoiled on account of the accident. The accident was caused due to the rash and negligent driving by the driver of the bus and hence the respondent, being the owner of the bus involved in the accident, is vicariously and statutorily liable to pay the compensation to the petitioner with interest and costs. As such, the petitioner has claimed a compensation of Rs. 2,00,000/- from the respondent, together with interest and costs under Sections 140 and 166 of the Motor Vehicles Act, 1988.

4. Regarding the said accident, a criminal case has been registered at Thirukazhukundram Police Station, in Crime No. 680/2000.

5. The respondent, in his Counter, has resisted the claim denying the averments in the claim as regards the age, occupation and income of the petitioner as well as the nature of alleged injuries sustained by the petitioner, the period of treatment and the disability of the petitioner and has submitted that all these should be established and proved through documentary evidence. The respondent has also denied the averments in the claim regarding the manner of the accident. It has been submitted that on 10.07.2000, when the bus bearing registration No. TN29 N0091 was proceeding on the proper side of the road and when it was nearing Thirukazhukundram bus stop, the minor petitioner accompanied by an aged person, suddenly ran across the road, without seeing the oncoming bus. As such, the respondent has submitted that the accident had occurred only due to the negligence of the custodian of the minor petitioner. It has further been submitted that as the custodian of the minor petitioner has not been impleaded in the instant case as a necessary party, it renders the claim not maintainable, and hence the respondent cannot be held liable to pay any compensation. The respondent has also submitted that the claim is excessive and has to be dismissed with costs.

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

(i) Was the accident caused due to the negligence of the driver of the respondent Corporation's bus?

(ii) What is the quantum of compensation, which the petitioner is entitled to get?

7. On the petitioner's side, two witnesses were examined as PW1 and PW2 and five documents were marked as Exs.P1 to P5. On the respondent's side, no witness was examined and no documents were marked.

8. The minor petitioner's father was examined as PW1. The PW1, in his evidence, has stated that on 10.07.2000, at about 05.30 p.m. his son Mageshkumar, after attending school, was waiting at the Thirukazhukundram bus stop to board a bus in order to return to home. At that time, the respondent's bus bearing registration No. TN29 N0091, on route No. 108B, driven at a high speed and in a rash and negligent manner by its driver, dashed against his son Mageshkumar and caused the accident. In support of his evidence, he has marked Ex.P1, the FIR. No witness was examined and no documents were marked on the respondent's side to refute the manner of accident as alleged by the petitioner. As such, the Tribunal held that the accident had been caused only by the negligence of the driver of the respondent's bus.

9. The PW1 has stated in his evidence that in the accident, the front tyre of the bus had run over the hip of his minor son and that due to this, his son had sustained fracture of his hip bone and injuries on his right and left knee, right hand and left hand joint. In support of his contention, he has marked Ex.P2, the copy of Accident Register and Ex.P3, the Out-patient Chit issued at Best Hospital. On scrutiny of the Ex.P2, it is seen that the minor petitioner has been admitted as an inpatient on 10.07.2000 at the Chinglepet Medical Hospital and discharged on 22.07.2000. Further, it is seen from a reading of Ex.P2 that the minor petitioner had been at full consciousness and was not having any bed sores and also did not have any disability at the time of his discharge from hospital. It has been further stated in Ex.P2 that the minor petitioner had sustained fracture of bones in his left and right portion of his hip and that X-rays had been taken of the affected portion of these areas and on his thigh and that further treatment would be given after a period of ten days. Ex.P3 is the Out-patient Chit issued at the Best Hospital.

10. The Doctor, who had assessed the disability of the minor petitioner, was examined as PW2. The PW2, in his evidence, has deposed that on 23.10.2003, he had medically examined the minor petitioner to assess his disability. He has found that the fractured bones on either side of his hip had joined in an improper manner and as a result there was restricted movement of his hip and hence the minor petitioner was not able to sit and squat. He has assessed the disability due to fracture of his left hip bone as 20% and the disability due to the fracture of his right hip bone as 20% and in support of this, the Doctor had marked the Disability Certificate as Ex.P5 and the X-rays taken as Ex.P4. The Doctor had further deposed that because of the injuries sustained by the minor petitioner, he is not able to walk and study and has frequent bouts of unconsciousness and hence he is not able to participate in any sporting activities. Hence, the Tribunal, on considering the facts and circumstances of the case and after scrutiny of evidence on record, awarded a compensation of Rs. 2,000/- under the head of transport expenses; Rs. 3,000/- under the head of nutrition, Rs. 40,000/- under the head of pain and suffering Rs. 40,000/- under the head of disability. The Tribunal further awarded a sum of Rs. 50,000/- under the head of loss of earning capacity. In total, the Tribunal awarded a sum of 1,35,000/- as compensation to

the minor petitioner and directed the respondent to deposit the award amount, together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 224 of 2001, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Chengalpattu, within a period of one month from the date of its Order. Further, after such deposit was made, the award was to be deposited in a nationalised bank, as fixed deposit, until such time, the minor petitioner becomes major and the natural guardian and father of the minor petitioner was permitted to receive the interest on the deposit of the minor petitioner, once in six months from the bank for the welfare and upkeep of the minor petitioner. The excess Court fee collected from the petitioner was to be refunded to him. The Advocate fees was fixed at Rs. 5,700/- and the respondent was directed to pay the cost of Rs. 642.50 to the petitioner.

11. The learned Counsel appearing for the appellant has contended in his appeal that the Tribunal had erroneously fixed the negligence on the appellant's driver, who drove the bus carefully and cautiously. It has also been contended that the Tribunal had erroneously awarded a sum of Rs. 40,000/- for 20% disability and at the same time had awarded a sum of Rs. 50,000/- for loss of earning capacity to this case of an injury to a minor, failing to consider that there was no Wound Certificate, Medical Bills and Discharge Summary produced by the claimant. As such, the counsel appearing for the appellant has contended that the award of Rs. 1,35,000/- granted by the Tribunal is not sustainable in law and has to be set aside.

12. The learned Counsel appearing for the respondent argued that the claimant is a minor, School going boy and that due to this accident, his physical condition has deteriorated even at the age of 12 years. As such, he is unable to continue his studies. A competent Doctor had stated that the claimant has sustained 20% disability in his left rib bone due to fractures sustained in the accident. The Tribunal had well considered the oral and documentary evidence and had then awarded the compensation, which is fair and proper. As such, the Civil Miscellaneous Appeal is not maintainable.

13. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal, arguments advanced by the learned Counsels on either side, this Court is of the view that there is a discrepancy in the said award granted by the Tribunal and the quantum of compensation assessed by the Tribunal is on the higher side. As such, this Court awards the compensation as under:

1. For 40% disability (20% + 20%) sustained by the claimant, this Court awards a sum of Rs. 80,000/- to the claimant as the claimant is a minor and was aged about 12 years at the time of accident.

2. This Court awards a sum of Rs. 10,000/- only to the claimant under the head of pain and suffering.

3. This Court awards a sum of Rs. 5,000/- for transport expenses and Rs.

5,000/- for nutrition.

The Tribunal had awarded a sum of Rs. 1,35,000/- as compensation. This Court has scaled down the compensation awarded to the claimant to Rs. 1,00,000/- together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation as it is found to be fair and equitable.

14. On 24.06.2008, this Court imposed a condition on the appellant/State Transport Corporation to deposit a sum of Rs. 1,00,000/- together with proportionate interest and entire costs, into the credit of the M.C.O.P. No. 224 of 2001, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Chengalpattu.

15. As the accident happened in the year 2000, it is open to the claimant to withdraw the compensation amount, as per this Court Order, with accrued interest thereon, which is lying to the credit of the M.C.O.P. No. 224 of 2001, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Chengalpattu, after filing necessary payment out application in accordance with law, subject to the claimant's attaining the age of a major and also subject to deduction of withdrawals, if any.

16. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 28.06.2004, in M.C.O.P. No. 224 of 2001, passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Chengalpattu, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.