
(2003) 07 MAD CK 0106

In the Madras High Court

Case No : C.M.A. NPD. No. 1353 of 1995 and C.M.P. No. 15338 of 1995

The Managing Director, Thanthai Periyar Transport Corporation Ltd.

APPELLANT

Vs

Kala

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Citation : (2003) 07 MAD CK 0106

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : R. Balakrishnan, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the award of the Motor Accident Claims Tribunal(Sub Court), Chidambaram, dated 4.7.1995 made in M.C.O.P. No. 345 of 1993, the erstwhile Thanthi Periyar Transport Corporation Limited, Villupuram, has filed the above appeal before this Court.

2. In respect of the grievous injuries sustained in a motor vehicles accident that took place on 7.06.1993, the respondent herein filed a claim petition for Rs. 2, 00, 000/-. Before the Tribunal, the claimant herself has been examined as P.W. 1 and one Dr. Pandian as P.W. 2 and Exs.P. 1 to P33 have been marked in support of her claim for compensation. On the side of the Transport Corporation, no one was examined and no document was marked in support of the defence.

3. The Tribunal, on appreciation of the oral and documentary evidence, holding that the accident was caused due to negligence of the driver of the Corporation bus, passed an award of Rs. 1, 18, 000/- with interest at 9% per annum from the date of petition till the date of deposit. Questioning the said award, the Transport Corporation has filed the above appeal.

4. Heard the learned counsel for the appellant.

5. After taking us through the award of the Tribunal, the learned counsel for the appellant would contend that the Tribunal has committed an error in holding that the accident was caused due to the negligence of the driver of the Corporation bus. She further contends that in any event, the award is on the higher side. We are unable to accept both the contentions for the following reasons.

6. In so far as the finding regarding negligence is concerned, admittedly, the respondent/claimant was a passenger of the Corporation bus. On 7.6.1993 while she was travelling in the bus from Chidambaram and when the bus was nearing Arulmozhithevan Village, it capsized on the roadside ditch and thereby, she sustained grievous injuries. Inasmuch as the injured was a passenger and sustained grievous injuries because of the fact that the bus capsized on the roadside ditch, we are of the view that the appellant transport Corporation is liable to pay compensation for the injuries. Accordingly, we concur with the Tribunal on the aspect of negligence and hold against the Transport Corporation.

7. Coming to the quantum of compensation, the injured-claimant was examined as P.W. 1. According to her, at the time of accident, she was aged about 30 years. She sustained fracture in her right leg and also sustained injuries in other parts. It is further seen from Ex.P3, Accident Register that immediately after the accident, she was taken to the Government Hospital, Chidambaram for first aid and thereafter, she was admitted at Government Hospital, Cuddalore. Ex.P3 further says that since there is a fracture in the right leg, a steel rod has been inserted. The Accident Register further discloses that the first injury is a grievous one and the other one is simple in nature. Apart from the evidence of P.W. 1, she was examined by one Doctor Pandian. The said doctor deposed before the Court as P.W. 2 and explained the nature of injuries suffered by the claimant, the treatment given to her etc. He assessed her disability to the extent of 50% and issued a disability certificate, which has been marked as Ex.P32 and X-ray, marked as Ex.P33. He has narrated in the disability certificate that her knee movement has been restricted and she cannot do her normal work. He has further explained that her right leg has lost sensation.

8. In respect of the expenses incurred for treatment and the purchase of medicines etc. the claimant has produced Exs.P. 4 to P21. It is also seen from the evidence of P.W. 1 that her husband is unwell and he is not in a position to earn. On the other hand, it is the case of P.W. 1 that she alone was getting sizeable income prior to the accident. Taking note of all these aspects, the Tribunal granted a sum of Rs. 3, 000/- towards loss of income, Rs. 2, 000/- towards transport charges, Rs. 35, 000/- towards medical expenses, Rs. 1, 000/- towards nutritious food, Rs. 2, 000/- towards miscellaneous expenses, Rs. 20, 000/- towards pain and suffering, Rs. 30, 000/- towards permanent disability(50%) and Rs. 25, 000/- towards loss of future income.

9. Learned counsel for the appellant would contend that the amount of Rs. 35, 000/- towards medical expenses is not warranted, particularly in the absence of any acceptable evidence. We have already referred to the fact that Exs.P. 4 to

P21 have been marked through P.W. 1. A perusal of those documents show that the claimant had spent considerable amount for the purchase of medicines etc. We are satisfied that the amount of Rs. 35, 000/- is quite reasonable, particularly in the light of the documents Exs.P. 4 to P21. The other amounts viz., for the loss of income, transport, nutritious food, miscellaneous expenses are also quite reasonable and acceptable. Insofar as the grant of Rs. 20, 000/- towards pain and suffering is concerned, it is seen from the evidence of P.W. s.1 and 2 that she underwent three operations and at one stage, she was suggested for amputation of right leg. In such circumstances, the grant of Rs. 20, 000/- towards pain and suffering cannot be said to be excessive or unreasonable. Likewise, though the Doctor, P.W. 2 has assessed her disability to the extent of 50% as evident from Ex.P32, the Tribunal has granted only a sum of Rs. 30, 000/-. In the light of the said disability and ailment, she cannot continue her avocation and earn, as she was doing prior to the accident. On this ground, we are of the view that the Tribunal is fully justified in granting a sum of Rs. 25, 000/- towards loss of future income. The Tribunal has also granted interest at the rate of 9% which is also reasonable and acceptable.

10. Looking from any angle, we do not find any ground for interference particularly, in the light of the clear oral and documentary evidence let in by the claimant. Accordingly, the appeal is dismissed. No costs. Consequently, C.M.P. No. 15338 of 1995 is also dismissed.