

(2010) 11 MAD CK 0272

In the Madras High Court

Case No : C.M.A. (MD) No. 1564 of 2010

The Managing Director, Tamil Nadu State Transport Corporation

APPELLANT

Vs

Ushman

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) 11 MAD CK 0272

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : D. Sivaraman, for Rajnish Pathiyil, for the Appellant;

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Transport Corporation against the judgment and award made in MCOP No. 127 of 2004 dated 07.07.2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tirunelveli.

2. Background facts in a nutshell are as follows:

The injured-Ushman met with motor traffic accident that took place on 05.12.2002 at about 12.30 hours. The said injured was travelling as a passenger in a bus bearing Registration No. TN-74-N-0177 belonging to the Appellant-Transport Corporation. The said bus was proceeding from Kottar to Vadaseri. The injured was sitting in the left side last seat of the bus. When the bus was coming near Duthie School, the driver drove it in a rash and negligent manner and also at high speed and hit against a pole standing on the left side of the road. Due to the said impact, the injured sustained a fracture on his left hand. The claimant claimed a compensation of Rs. 4,00,000/-before the Tribunal. The Appellant-Transport Corporation resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the bus?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the Appellant / Transport Corporation and awarded a sum of Rs. 94,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as under:

Aggrieved by that award, the Appellant / Transport Corporation has filed the present appeal.

4. Heard the learned Counsel for the Appellant and perused the materials available on record. On the side of the claimant, P.W.1 and P.W.2 were examined and documents Exs.P1 to P8 were marked. On the side of the Transport Corporation, R.W.1-the driver of the bus was examined and no document was marked. P.W.1 is the claimant. P.W.2 is the Doctor. Ex.P1 is the copy of F.I.R. Ex.P2 is the copy of charge sheet. Ex.P3 is the copy of Wound Certificate. Ex.P4 is the medical prescription. Exs.P5 and P6 are the medical bills. Ex.P7 are the bills relating to hiring of car. Ex.P8 is the Disability Certificate. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the Appellant / Transport Corporation. It is a question of fact and it is based on valid materials and evidence, and hence the same is confirmed.

5. The claimant was 45 years old at the time of accident. He was engaged in leather bag manufacturing. In his evidence, he has stated that he was earning a sum of Rs. 5000/-per month. Further it is stated that only the driver of the bus caused the accident and the driver was charge-sheeted by Traffic Police, Nagercoil in Crime No. 130 of 2002 under Sections 279 and 338 IPC. Further it is stated that due to the accident, he sustained a contusion in the middle 1/3rd left upper arm with fracture in the left humerus. He was admitted in the Thiraviam Orthopaedic Hospital, Nagercoil and he was in-patient from 05.12.2002 to 30.12.2002. P.W.2, the Doctor examined the claimant and assessed the disability at 26%. Ex.P8 is the Disability Certificate. In his evidence, the Doctor has stated that due to the injuries the claimant is unable to do the work as before. Ex.P3 is the Wound Certificate. After considering the above oral and documentary

evidence, the Tribunal has awarded Rs. 1000/-towards transport, Rs. 4000/-towards extra nourishment and Rs. 3000/-towards attendant charges. After considering the materials and evidence on record and also the facts and circumstances of the case, this Court is of the view that the amounts awarded towards these heads are very reasonable and hence they are confirmed. The Tribunal has awarded a sum of Rs. 25,000/-towards medical expenses. It is an actual expenditure and hence the same is confirmed. The Tribunal has awarded Rs. 10000/-towards pain and suffering. After considering the nature of injuries, this Court is of the view that the Tribunal has correctly awarded Rs. 10000/-towards this head. Further, the Tribunal has awarded a sum of Rs. 26000/-towards loss due to 26% disability. Ex.P8 is the Disability Certificate. Normally the Courts award a sum of Rs. 1000/-to Rs. 2000/-per percentage of disability. In the present case, the Tribunal has correctly awarded Rs. 1000/-per percentage of disability, which is very reasonable and hence the same is confirmed. After awarding Rs. 26000/-towards loss due to 26% disability, the Tribunal has awarded a sum of Rs. 25,000/-towards loss of earning power. Learned Counsel for the Appellant vehemently contended that the Tribunal ought not to have awarded an amount towards loss of earning power, when it had already awarded an amount towards loss due to disability. He relied on the Full Bench decision of this Court in the case of Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, in support of his contention. As rightly pointed out by the learned Counsel for the Appellant, the Tribunal ought not to have awarded an amount towards loss of earning power, when it had already awarded an amount towards loss due to disability as per the Full Bench decision of this Court (cited supra). Therefore, the amount awarded by the Tribunal at Rs. 25,000/-towards loss of earning power is unwarranted and accordingly it is deleted. The Tribunal has not awarded any amount towards loss of income during the treatment period. The claimant was in the hospital for nearly a period of one month and there is no dispute regarding the same. It would be reasonable to award Rs. 10000/-towards this head. Further the Tribunal has not awarded any amount towards loss of amenities. There is no dispute that the claimant sustained a fracture in his left hand. After considering the facts and circumstances of the case, it would be reasonable to award Rs. 15000/-towards this head. The Tribunal has awarded interest rate at 9% p.a. from the date of petition. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during the relevant period, this Court is of the view that the interest rate fixed by the Tribunal at 9% p.a. from the date of petition is very reasonable and hence the same is confirmed. The details of the modified compensation are as under:

Rupees	Transport	1,000/-	Extra nourishment	4,000/-	Medical expenses	25,000/-	Attendant charges	3,000/-	Pain and suffering	10,000/-	Loss due to 26% disability	26,000/-	Loss of income during the treatment period	10,000/-	Loss of amenities	15,000/-	-----	Total....	94,000/-
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Even though the total compensation awarded by the Tribunal at Rs. 94000/-with

interest at 9% p.a. from the date of petition is confirmed, the amounts awarded under various heads have been modified.

6. Under the circumstances, the Civil Miscellaneous Appeal is devoid of merits and it is not a fit case for admission. In the result, the Civil Miscellaneous Appeal is disposed of with the above modification. Consequently, M.P.(MD) No. 1 of 2010 is closed. No costs.