

(2010) 03 MAD CK 0049

In the Madras High Court

Case No : C.M.A. No. 613 of 2007 and M.P. No. 1 of 2007

Velu

APPELLANT

Vs

Tamil Nadu State Transport Corporation Ltd.

RESPONDENT

Date of Decision : 24-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166A
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) 03 MAD CK 0049

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

Bench : Single Bench

Advocate : P. Seshadri, for the Appellant; U. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated

06.04.2005, made in M.C.O.P. No. 165 of 2002, on the file of the Motor Accident Claims Tribunal, Sub Court, Arni, awarding a compensation

of Rs. 35,800/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/petitioner, Velu, has filed the above appeal praying for additional compensation of Rs.

2,14,200/- together with interest and costs.

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

On 16.10.2001, at about 06.00 p.m. when the petitioner attempted to board the Tamil Nadu State Transport Corporation Bus bearing registration

No. TN23 N0579 at Timiri Village Bus stop in order to go to Arcot, the driver of the bus suddenly moved the bus forward at a high speed and in

a rash and negligent manner. As a result of this, the petitioner fell down from the bus and the back wheel of the bus ran over the left leg thigh of the petitioner and consequently the petitioner sustained multiple injuries all over the body and also sustained fracture of his left thigh. He was admitted in the Government V.M.C. Hospital, Vellore, where he took treatment as an inpatient from 16.10.2001 to 09.02.2002. Subsequently, he took treatment at Government Stanley Hospital, Chennai. Due to the injuries sustained in the said accident, the petitioner is unable to stand or walk and has sustained permanent disability.

4. As the accident had happened due to the rash and negligent driving of the respondent's bus driver, the respondent is vicariously liable to pay compensation to the petitioner. The petitioner has claimed a compensation of Rs. 2,50,000/- with interest ad costs from the respondent u/s 166A of the Motor Vehicles Act.

5. Regarding the said accident, a criminal case has been registered at Timiri Police Station in Crime No. 374 of 2001, as against the driver of the bus Under Sections 279 and 338 of I.P.C.

6. The respondent in his counter statement has resisted the claim denying the averments in the claim regarding the age, income and occupation of the petitioner, as also the manner of accident. It has been stated that on 16.10.2001, the bus bearing registration No. TN23 N0579 was started on its trip from Arcot at 16.05 hours and was proceeding on its journey towards Chenganavaram. Whiles, when the bus was nearing Kaniyanur lake area, it was seen that an uprooted tamarind tree was lying across the road blocking the route. As there were no other alternate routes, the driver of the bus turned the bus towards Arcot. The bus was stopped at Timiri Village bus stop to facilitate passengers to board the bus. After this, the bus was moved forward and when the bus was turned at a place, further away from the said bus stop, a person had tried to board the moving bus by grasping the rails near the window seat at the back of the bus. The said person, as he was in an inebriated state was unable to grasp the railings and as his left foot had hit against the side railings in the back entrance steps of the bus, he had fallen down. As such, it was submitted that the petitioner had invited the accident due to his negligence. It was further submitted that the bus driver, on humanitarian grounds, had admitted the

petitioner in the Vellore Government Hospital for treatment. It was also submitted that the driver of the bus had informed his employer ie.the

respondent herein and had also informed about the accident to the Timiri Police. As such, it was stated that as the accident had not been caused by

the negligent of the respondent's bus driver, the respondent is not liable to pay any compensation to the petitioner. It was also submitted that the

claim was excessive and has to be dismissed with costs.

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

(i)Who is responsible for the accident?

(ii)Is the petitioner entitled to get compensation?

8. The Tribunal, on considering that the driver of the respondent's bus had not given any evidence to prove that he had been acquitted in the

criminal case filed against him and also considering that the respondent had not produced contra-evidence to refute the averments made in the first

information report marked as Ex.P1, accepted the contentions of the petitioner regarding the manner of accident and hence held that the

respondent is liable to pay compensation to the petitioner.

9. The Tribunal, on scrutiny of the wound certificate and discharge summary issued by the Stanley Government Hospital marked as Exs.P2 and P3

respectively were of the opinion that the petitioner had sustained one grievous injury in the said accident and taking this into consideration, awarded

a sum of Rs. 5,000/- as compensation under the head of grievous injury.

10. The Doctor, who had assessed the disability of the petitioner was examined as PW2. PW2 in his evidence deposed that due to the said

accident, the petitioner's left thigh bone had been fractured and resultantly the size of that bone had been reduced by 3 Cms.; that due to this

defect, the petitioner walks with a limp and the movements of his left knee had become restricted and hence the petitioner is unable to squat; that

the petitioner would also not be able to do any hard work; that the petitioner had sustained a disability of 35% on this count. In support of his

evidence, he has marked Ex.P4, the disability certificate and Ex.P5, the X"ray series.

11. The Tribunal was of the opinion that the Doctor had assessed the disability only on 31.01.2005 for an accident, which had happened on

16.10.2001. The Doctor had admitted that he had seen the earlier medical records of the petitioner for coming to a conclusion on disability. As

such, the Tribunal held that the disability of the petitioner could be taken as 25% only and accordingly awarded a compensation of Rs. 25,000/-

under the head of disability.

12. The Tribunal, on considering that the petitioner would have undergone pain and suffering consequent to the injuries sustained by him in the

accident and also holding that the petitioner would have required nutritious food, awarded a compensation of Rs. 3,000/- under the head of pain

and suffering and Rs. 2,000/- under the head of nutrition. The Tribunal further awarded a sum of Rs. 500/- for transport expenses and a sum of

Rs. 300/- for the cost of X-rays. The Tribunal, however did not award any sum as compensation for loss of earnings, as no documentary proof

had been let in by the petitioner to establish that he is a coolie and earning Rs. 100/- per month. In total, the Tribunal awarded a sum of Rs.

35,800/- to the petitioner and directed the respondent to deposit the award 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. 165 of 2002, on the file of the Motor Accident

Claims Tribunal, Sub Court, Arni, within a period of two months from the date of its Order. The petitioner was permitted to withdraw the award

immediately, after such deposit was made into Court. The excess Court fee paid by the petitioner was to be refunded to him. The respondent was

directed to pay the cost of Rs. 2,184.50 to the petitioner. The Advocate fees was fixed at Rs. 1,540/-.

13. The learned Counsel appearing for the appellant has contended in his appeal that the learned Judge had not considered the evidence of the

Doctor PW2, in a proper perspective and also had not considered the disability certificate issued by him. It was also pointed out that the learned

Judge had erred in awarding only a sum of Rs. 5,000/- towards grievous injuries.

14. It was also contented that the learned Judge erred in awarding only a sum of Rs. 25,000/- towards permanent disability by reducing the

percentage of disability to 25% especially when there is no contra evidence on the part of the respondent to dislodging the claim of the petitioner.

15. It was also pointed out that the award granted under the head of pain and

suffering, nutrition and transportation charges were on the lower side. It was also contended that the learned Judge erred in observing that the petitioner had not filed any proof before the Court to prove his earnings especially when he is a Coolie, and as such has pointed out that the learned Judge had erred in not awarding any amount towards loss of earnings and partial loss of earnings and also for loss of earning power. As such, the learned Counsel for the appellant has prayed for an additional compensation of Rs. 2,14,200/- with interest.

16. The learned Counsel for the respondent argued that the learned Tribunal had properly assessed the compensation and awarded the same to the claimant. The claimant has not produced any evidence to prove his income and occupation. The claimant had himself tried to board a moving bus. As such negligence lies on the part of the claimant. The learned Tribunal had awarded the compensation under the proper heads. There is no discrepancy in the said award. As such, the Civil Miscellaneous Appeal is not maintainable and hence the learned Counsel has prayed for dismissal of the case.

17. Considering the facts and circumstances of the case, scrutiny of findings of the Tribunal, this Court is of the view that there is a discrepancy in the said award granted by the Tribunal and hence, this Court enhances the compensation as follows:

1. The Tribunal awarded a sum of Rs. 5,000/- under the head of grievous injuries. This Court sets aside the same as it is not pertinent,
2. The Tribunal awarded a sum of Rs. 25,000/- under the head of permanent disability of 25%. This Court enhances the award granted under this head to Rs. 50,000/-,
3. The Tribunal awarded a sum of Rs. 3,000/- under the head of pain and suffering. This Court enhances the amount granted under this head to Rs. 10,000/- as he had been hospitalised, as an inpatient, from 16.10.2001 to 09.02.2002,
4. The Tribunal had awarded a sum of Rs. 2,000/- under the head of nutrition. This Court enhances the award under this head to Rs. 5,000/-,
5. The Tribunal awarded a sum of Rs. 500/- under the head of transport expenses. This Court enhances the amount granted under this head to Rs. 5,000/-,

6. The Tribunal awarded a sum of Rs. 300/- for cost of X"ray. This Court confirms the award granted under this head,

In total, this Court awards a sum of Rs. 70,300/- as compensation. The Tribunal had already awarded a sum of Rs. 35,800/- with 9% interest.

Now, this Court has granted an additional award of a sum of Rs. 34,500/- 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, as this is found to be fair and equitable.

18. This Court hereby directs the respondents/State Transport Corporation to deposit the additional compensation amount of Rs. 34,500/-

together with interest at the rate of 7.5% 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. 165 of 2002, on the file of the Motor Accident Claims Tribunal, Sub Court, Arni, within a period of four weeks from the date

of receipt of copy of this Order.

19. After such deposit is made, it is open to the claimant to withdraw the entire additional compensation amount, with accrued interest thereon,

lying in the credit of the M.C.O.P. No. 165 of 2002, on the file of the Motor Accident Claims Tribunal, Sub Court, Arni, after filing necessary

payment out application in accordance with law.

20. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 06.04.2005, in M.C.O.P. No. 165 of

2002, passed by the Motor Accident Claims Tribunal, Sub Court, Arni, is modified. Consequently, connected miscellaneous petition is closed.

There shall be no order as to costs.