

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.11.2006

Coram

The Honourable Mr. JUSTICE K.MOHAN RAM

Civil Miscellaneous Appeal No.1330 of 1999 and
Cross Objection No.36 of 2000 and
CMP No.15432 of 1999

Metropolitan Transport Corporation
Limited, Division II, Rep. by
its Managing Director, Ayanavaram, Chennai - 23.
(C.T.accepted vide order dated 07.09.99
in C.M.P.No.14808 of 1999)

.... Appellant in
A.A.O.1330/99 and Respondent
in Cross Objection 36/00
(Respondent)

A.Selvaraj

-Vs.-

.... Respondent in A.A.O.1330/99
and Cross Objector in Cross
Objection 36/00 (Petitioner)

APPEAL under Section 173 of M.V. Act against the award and decree of
the Motor Accident Claims Tribunal (No.VI Judge mall Causes Court)
at Madras made in MCOP No.3408 of 1996 dated 23.11.1998.

For Appellant : Mr. S.Ramachandran
For Respondent : Mr. M.Nagusha

J U D G M E N T

Being aggrieved by the award dated 23.11.1998 made in
M.C.O.P.No.3408 of 1996 on the file of the Motor Accident Claims
Tribunal (VI-Judge, Small Causes Court), Madras, the respondent
herein-the Transport Corporation, has filed the above appeal. Being
not satisfied with the quantum of compensation awarded the
petitioner in the said MCOP has filed Cross Objections seeking
enhancement of compensation.

2. The learned counsel for the appellant confined his
submissions to the quantum of compensation alone and has not
questioned the finding of the tribunal regarding negligence and
liability of the Transport Corporation to pay the compensation.

3. The short facts that are necessary for deciding the issue regarding the quantum of compensation payable alone is set-out hereunder:-

The respondent herein was traveling in a bus owned by the appellant and it was plying in route No.7G on 02.08.1996 and before he could get down from the bus the driver of the bus suddenly started the bus and due to that the respondent fell down and sustained very serious injuries.

4. Before the tribunal, the respondent was examined as P.W.1 and one K.Sivakumar, who is the co-worker and co-passenger was examined as P.W.2 and the Doctor was examined as P.W.3 and the following Exhibits, namely Exs.P-1-Accident Register, P-2-Discharge summary, P-3-Disability certificate were marked. On the side of the appellant the driver of the bus was examined as R.W.1 and no document was marked.

5. On a consideration of the oral and documentary evidence adduced the tribunal has found that the accident was due to the negligence on the part of the driver of the bus and on the basis of Ex.P-2 and the evidence of P.W.1 and P.W.3 found that the respondent has sustained fractures in his right hand, left leg and hip and his penis was cut. The tribunal has also found that the respondent was operated upon thrice viz., twice in his stomach and once in his penis. The tribunal has also found that since the respondent's penis has been cut, a tube has been fixed to enable the petitioner to pass urine. The tribunal has also accepted the permanent disability certificate-Ex.P-3 issued by the Doctor-P.W.3. Considering the various disabilities and the necessity to undergo another operation by the respondent in a private hospital the tribunal has awarded a total compensation of Rs.97,000/- under the following heads, viz.,:

i) Permanent Disability	-	Rs. 45,000.00
ii) Pain and Suffering	-	Rs. 5,000.00
iii) Transport charges	-	Rs. 1,000.00
iv) For Extra Nourishment	-	Rs. 1,000.00
v) Expenses towards further treatment and operation	-	Rs. 25,000.00
vii) Loss of earnings for two years-		Rs. 20,000.00

		Rs. 97,000.00

6. The learned counsel for the appellant submitted that as the permanent disability has been fixed at 35% the tribunal has erred in awarding Rs.45,000/- as compensation towards permanent disability whereas only a sum of Rs.35,000/- could have been

awarded. The learned counsel for the appellant on the misconception that a sum of Rs.20,000/- has been awarded by the tribunal towards future loss of earning submitted that such an award is unsustainable. The learned counsel further submitted that in the absence of documentary evidence regarding the income of the respondent the quantum of compensation awarded by the tribunal is on the higher side.

7. Per contra the learned counsel for the respondent submitted that the respondent has sustained very serious injuries and admittedly he had undergone three operations already and his digestive and excretory systems have been damaged and because of the permanent disability suffered by him he is unable to attend to his normal avocation as a loadman. The learned counsel further submitted that P.W.1 and the Doctor-P.W.3 have spoken in detail about the injuries sustained by the respondent, the nature of treatment given to him, the day-to-day disabilities faced by him, the necessity to undergo a further operation and the income that was earned by him, etc., but they have not been cross examined on those aspects. The learned counsel further submitted that the Doctor-P.W.3 was questioned only about the Ex.P-3-Disability certificate but P.W.3 has also not been questioned regarding the various disabilities experienced by the respondent. The learned counsel further submitted that considering the serious nature of injuries sustained by the respondent and the loss of earning power the tribunal ought to have awarded compensation towards loss of earning power. The learned counsel further submitted that a meager sum of Rs.5,000/- alone has been awarded towards pain and suffering whereas, the tribunal, according to the learned counsel, ought to have awarded more towards pain and suffering considering the very serious nature of injuries suffered by the respondent.

8. A reading of the testimony of P.W.1 and the Doctor-P.W.3 and a perusal of Exs.P-1 to P-3 makes it clear that the respondent has suffered fracture in his right elbow, left leg and in his hip and his penis has been cut. The respondent has undergone already three surgeries. The injury sustained by the respondent on his right elbow is a grievous injury and the muscles have been damaged and even after treatment the muscles have become hardened and because of that the movement of the muscles have been reduced by 20 degrees. The hip bones of both sides have been fractured and there is dislocation in the middle of the hip joint. According to the Doctor-P.W.3 the movement of the hip is fully reduced due to the fracture of the hip. The Doctor has also stated that the ureter has been torn/ruptured and because of that a tube has been fixed and cystectomy has been performed. The Doctor has also opined that another operation is necessary in a private hospital and for that a sum of Rs.25,000/- have to be spent.

9. As rightly pointed out by the learned counsel for the

respondent, the Doctor-P.W.3 has been questioned only regarding Ex.P-3-Disability certificate on the percentage of disability and no other question has been put to him regarding the treatment undergone by the respondent and the necessity to undergo further operation. It is pertinent to point out that the accident has occurred on 02.08.1996 and the respondent was examined by the tribunal on 13.10.1998 and even at that time the tube fixed has not been removed. There is no dispute that the respondent was treated as an inpatient from 02.08.1996 to 19.08.1996, from 23.08.1996 to 26.08.1996 and thereafter he was being treated as an outpatient in the Government General Hospital. It has to be pointed out that with all the disabilities that have been pointed out by the Doctor and as spoken to the respondent has to be held that the respondent, who was a loadman, could not attend to his normal avocation as a loadman. This aspect has not been kept in mind by the tribunal while fixing the pecuniary damages.

10. The tribunal instead of awarding Rs.45,000/- towards permanent disability ought to have considered the loss of earning power of the respondent and fixed the pecuniary damages taking into account his age, his monthly income, etc., The tribunal has rightly awarded a sum of Rs.20,000/- towards loss of earning during the period of his treatment viz., for a period of two years. As rightly pointed out by the learned counsel for the respondent considering the very serious nature of the injuries sustained by the respondent, at least a sum of Rs.25,000/- should have been awarded towards pain and suffering whereas the tribunal has awarded only a meagre sum of Rs.5,000/-. Also considering the fact that the respondent was aged 35 years only on the date of accident the tribunal ought to have considered the damages payable towards loss of expectations of life and other amenities of life like loss of marital pleasure, etc.,

11. It has to be kept in mind that loss of physical capacity is not always coextensive with the loss of earning capacity or vice-versa. But the loss of earning capacity has to be assessed based on the nature of work that a person has to do as well as the nature of injuries sustained and other environmental circumstances. If the above principles are applied to the facts of this case, it could be easily seen that with the nature of injuries sustained by the respondent and the disabilities experienced by him in his day-today life the respondent cannot continue his normal avocation as a loadman and for that matter he cannot attend to any other job where physical exertion is required. Therefore the loss of earning capacity of the respondent has to be assessed at 100%.

12. Considering the above said aspects and also the fact that the respondent has to lead rest of his life with all the above said disabilities the sum of Rs.97,000/- awarded by the tribunal is too low. The respondent could have easily earned Rs.75/- per day as a loadman and per month it comes to Rs.2,250/- and even if a

multiplier of '10' is adopted the pecuniary damages available will come to Rs.2,70,000/- (Rs.2,250 x 12 x 10). Therefore the claim of the respondent in the cross objections for the enhanced compensation of Rs.1,53,000/- is just and reasonable. Accordingly, the above appeal is liable to be dismissed and the cross objections is liable to be allowed.

13. In the result, the above appeal is dismissed and the cross objection is allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) and the appellant shall deposit the enhanced compensation of Rs.1,53,000/- with interest at 7.5% from the date of claim petition and the cost of Rs.10,000/- to the credit of MCOP No.3408 of 1996 on the file of the Motor Accident Claims Tribunal (No.VI Judge Small Causes Court), Chennai, within a period of 8 weeks from the date of receipt of a copy of this order. Consequently, the connected CMP is closed.

Sd/-
Asst. Registrar.

Sub Asst. Registrar.

srk

To

1. The Registrar,
Court of Small Causes
(Motor Accidents Claims Tribunal)
Chennai.

2. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to Mr.S. Ramachandran, Advocate, Sr. 52954
1 cc to Mr.N. Nagusah, Advocate, Sr. 53047

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