

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.05.2008

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

C.M.A.No.486 of 2003

Tamilnadu State Transport Corporation (K-Dn I) Ltd.,  
rep. By the Managing Director,  
Kumbakonam. .... Appellant / Respondent

Vs.

S.Balaji .... Respondent / Claimant

Prayer: Appeal filed against the Judgment and Decree dated 31.10.2001 made in M.A.C.T.O.P.No.452 of 1998 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Cuddalore.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.R.Muralidharan

JUDGMENT

Challenge in Civil Miscellaneous Appeal is against the award dated 31.10.2001 in M.A.C.T.O.P.No.452 of 1998 passed by the Motor Accidents Claims Tribunal viz., Additional Sub Judge, Cuddalore, granting a total compensation of Rs.2,93,127/-.

2.The respondent/claimant has filed the claim petition claiming a compensation of Rs.5,00,000/- for the grievous injuries sustained resulting in permanent disability, pain and suffering, etc.

3.Brief facts of the claim are as follows:-

On 23.08.1997 at about 8.30 a.m. the claimant was riding his bicycle on the extreme southern side of the chitoor-Cuddalore road from east to west direction, the respondent's bus bearing Registration No.TN.49.N.0527 came in the opposite direction i.e. from west to east and at a very high speed and without making any sound, horn and without observing any traffic rules and regulation and in a rash and negligent manner and hit against the claimant, as a result of which, he was thrown out of his bicycle and sustained grievous injuries and multiple fracture all over his body and head. He was immediately taken to Government Hospital, Cuddalore. The accident was only due to the rash and negligent act of the respondent bus driver,

who drove the bus bearing Registration No.TN.49.N.0527. The claimant was hale and hearty at the time of accident and he was a bright student of his school. Because of the accident, he became a permanent disabled boy and he is not able to concentrate his studies. His entire career has been spoiled. Hence, a compensation of Rs.5,00,000/- was claimed under various heads, directing the respondent to pay the same at 18% per annum from the date of accident till date of realisation with costs.

The pleas of the appellant Corporation are that (i) the accident occurred only due to the sudden crossing of the claimant himself; and (ii) that the claim is unsustainable in law and on facts. The specific stand taken by the appellant is it does not admit that the accident took place due to the rash and negligent driving of the driver of the bus.

The Tribunal has examined 3 witnesses P.Ws.1 to 3 on the side of the claimant and marked Exs.P.1 to P.22 and on the side of respondent (appellant), R.W.1 was examined and no documents were marked.

After contest, the Tribunal has allowed the claim petition and has awarded a sum of Rs.2,93,127/- in favour of the petitioner, along with interest at 9% per annum from the date of filing of the petition till date of payment. The Tribunal has directed the appellant Corporation to pay the same granting two months time. It has fixed the lawyer's fee at Rs.3,864/-.

4.Dissatisfied with the award passed by the Tribunal, the Transport Corporation has projected this Civil Miscellaneous Appeal as appellant.

5.The learned counsel for the appellant contends that the award passed by the Tribunal is against law, weight of the evidence and probabilities of the case and that the Tribunal has erred in coming to the conclusion that the appellant's driver was rash and negligent in driving the bus and was responsible for the accident and that the Tribunal ought to have at least held that the claimant has equally contributed to the accident and in any event, a sum of Rs.2,93,127/- awarded as compensation by the Tribunal is excessive for the fracture of two bones in right hand, sustained by the claimant and therefore, prays for allowing the appeal.

6.In order to prove negligence, the claimant has examined himself as P.W.1 before the Tribunal. The claimant viz., P.W.1 in his evidence has deposed that on 23.08.1997 at about 8.30 a.m. he was proceeding in his cycle from east to west on southern side at Kondur and at that time, the CRC bus TN.49.N.0527 came in the opposite direction at high speed in a negligent and rash manner and dashed against him and consequently he sustained fractures (i)on his skull; (ii) near left hand wrist; and (iii)left leg and immediately he was

admitted in Cuddalore Government Hospital and he received the first aid treatment and thereafter, he took treatment at Cuddalore Krishna Hospital and at Vijaya Hospital, Chennai and that the steel plate, which was fixed on his left hand, was later removed by means of surgery and that his cycle got damaged and at that time of accident he was a student of AVC College of Engineering and that because of the negligence and rash driving of the bus by its driver the accident took place.

7.Ex.P.1 is the xerox copy of FIR dated 23.08.1997. In this, the complainant is Rajasekar. A perusal of Ex.P.1-FIR discloses that in Cr.No.877 of 1997 a case under Section 279 and 337 IPC has been registered by the Nellikuppam Police. The accused name is mentioned as CRC bus driver TN.49.N.0527. In Ex.P.1-FIR, the complainant has stated that on 23.08.1997 at about 8.30 a.m. he along with Pitchandi, Mohan Das and Premkumar were standing in front of Jayanthi Workshop outside and were talking and at that time Balaji, a resident of their Nagar, was coming in cycle on Nellikuppam Road, on the southern side towards west and at that time the bus belonging to the Cholan Transport Corporation came towards east in high speed and while overtaking and proceeding, hit against the cyclist Balaji and as a result thereof Balaji was thrown out along with the cycle and that he along with Pitchandi, Mohan Das and Premkumar, who witness the accident lifted the Balaji and he sustained injuries on his left side of the head, left front hand, left knee, etc. Ex.P.2 is the report of the M.V. Inspector's Report dated 24.08.1997 wherein it is clearly stated that 'accident took place not due to any mechanical defect of the vehicle'. Ex.P.3 is the xerox copy of accident register in respect of the claimant.

8.P.W.2 is the Doctor who has given disability certificate-Ex.P.19 to the claimant. He has assessed the disability at 40%. Admittedly, P.W.2-Doctor has not given the first aid medical treatment to the claimant. No doubt, in this case, the complainant-Rajasekar has not been examined before the Tribunal. However, the claimant has examined himself as P.W.1 and he has narrated the manner and happening of occurrence.

9.R.W.1-Baskaran, the driver of the bus involved in the accident in his evidence has deposed that on 23.08.1997 he was driving the bus, starting the same at 7.30 trip and while he was coming at Kondoor at 8.30 a.m. before his bus, a lorry was proceeding slowly and he overtook the same and while so proceeding, the cyclist who came on the left side thought that lorry alone was coming and he crossed and he stopped his bus and slow down his vehicle and the cyclist along with his cycle came and dashed against the bus and the accident took place only because the cyclist boy who came in the cycle suddenly crossing and that a case is pending against him. Even though, the complainant-Rajasekar has not been examined before the Tribunal, yet the claimant has examined himself as P.W.1 and has



adverted to the manner and happening of occurrence in a reliable, cogent and convincing fashion and therefore, his evidence in the regard is accepted by this Court as trustworthy and accordingly, this Court holds that the accident took place because of the negligent driving of the bus bearing Registration No.TN.49.N.0527 by the appellant driver and the driver of the said bus is responsible for causing the accident and the finding is rendered accordingly.

10.It is an axiomatic fact that a reasonable compensation quite naturally varies from claimant to claimant and from Advocate to Advocate. However, the just compensation is determined in regard to the nature of injuries sustained by an individual. As a matter of fact, if the ultimate award is proper and a reasonable one, normally there is no interference by the Appellate Court in disturbing the award.

11.It is relevant to point out that in an action for personal injuries, the theoretical basis is to compensate the affected by such an amount which will make the injured in the same position as he would have been, if he had not sustained the injuries for which he is receiving the compensation. In reality, it is difficult to assess the pecuniary loss because of the involvement of many factors, some of which will naturally and necessarily be in the realm of conjecture and speculation matters. Therefore, it logically follows that the Court must take a reasonable view of the case and award what it considers taking all the facts and circumstances of the case into consideration a just compensation. Bearing in mind the benefit reaches the helpless individual, to alleviate his sufferings, suddenly struck by the bolt of misfortune-accident.

12.Coming to the issue of quantum of compensation to be awarded to the claimant, it is to be pointed out that the Tribunal has granted Rs.10,000/- for pain and suffering, Rs.5,000/- towards nourishment expenses, Rs.5,000/- towards medical aid, Rs.2,00,000/- towards loss of comfort, past and future loss of income and permanent disability, Rs.69,700/- towards medical expenses, Rs.3,427/- towards transport expenses and in all, it has awarded a sum of Rs.2,93,127/- as total compensation in favour of the claimant.

13.On perusal of records by this Court, it is evident that the Tribunal has not taken into consideration a sum of Rs.38,300/- while fixing the quantum of compensation payable to the claimant. Therefore, this Court grants a sum of Rs.38,300/- (Rupees thirty eight thousand and three hundred only) as per Ex.P.17 towards hospital expenditure incurred by the claimant. Likewise, the Tribunal has not taken into consideration Ex.P.9 to Ex.P.14, the medicine bills amounting to Rs.30,292.97 and this Court in this regard grants a sum of Rs.30,293/- (being the rounded off figure under the above head). It is relevant to point out that there is no qualitative and quantitative detail as to the determination of Rs.2,00,000/- towards

loss of comfort, past and future loss of income, and permanent disability, etc., by the Tribunal in its award, in the present case on hand. Obviously, it has granted a sum of Rs.2,00,000/- in a consolidated fashion under the aforesaid heads.

14.P.W.2-Doctor Raju, who gave a disability certificate in his evidence has deposed that he has not given first aid medical treatment to the claimant at that time of accident and that the claimant came to him on 02.01.2001 for obtaining the disability certificate from him and that the disability certificate given by him is Ex.P.19 and that the disability of the claimant is 40% and the x-ray is Ex.P.20 and that on examination, he found that the claimant is not able to lift the hard objects. In Ex.P.19, P.W.2-Doctor on examination has found that the claimant has complained of pain and tenderness in left forearm and that the left forearm is slightly bent and both the wrist and elbow joints are painful and restricted and carrying weights on the left hand and working with his left hand are difficult and due to the injury in the head, he developed headache very often and for which is still taking treatment and since he is a Computer Engineer, reading continuously, watching computers causes severe pain in the head and as per x-ray of the left forearm, it shows the old fractures of the both bones of the left forearm with a bent mal-union and that he is of the opinion that as a Computer Engineer student with all his disabilities his education is at risk and hence, the disability caused by the road traffic accident is about 40% and that it is permanent.

15.P.W.3-Kumara Guru, the taxi driver in his evidence has stated that he took the claimant in his taxi from Cuddalore to Chennai nearly for 20 times and that the 20 trip sheets is Ex.P.21 (series) and he received Rs.34,373/- in all for the Chennai trips. The expenditure towards hiring taxi is Rs.34,373/- (Rupees thirty four thousand three hundred and seventy three only) as per Ex.P.21 and this sum the claimant is entitled to receive and accordingly, this Court grants the same. As such, the award of Rs.34,271/- towards transport expenses by the Tribunal is not correct and proper when the claimant has actually incurred expenses of Rs.34,373/- in this regard.

16.For pain and suffering on account of accident, this Court grants a sum of Rs.10,000/- to the claimant. Under the caption of nourishment expenses, this Court awards a sum of Rs.5,000/-. This Court awards a sum of Rs.10,000/- towards loss of comfort in life and this Court grants a sum of Rs.60,000/- under the head of permanent disability. Towards medical expenditure, this Court grants a sum of Rs.69,700/- as per Ex.P.16. Thus, the claimant is entitled to get a sum of Rs.2,57,666/- as total compensation. Accordingly, this Court awards a sum of Rs.2,57,666/- (Rupees two lakhs fifty seven thousand six hundred and sixty six only) as total compensation along with interest at 9% per annum from the date of petition till date of

payment for the disability suffered by the claimant and this Court consequently comes to the inevitable conclusion that a sum of Rs.2,93,127/- awarded by the Tribunal is excessive/exorbitant on the facts and circumstances of the case. The lawyer's fee determined by the Tribunal at Rs.8,864/- is not altered with.

17.Earlier in C.M.P.No.4105 of 2003 this court has made the order of interim stay as absolute and permitted the claimant to withdraw one-half of the amount deposited without his being required to furnish any security or guarantee and directed the balance 50% to be deposited by the Tribunal in fixed deposit in any nationalised bank for a period of four years in a reinvestment plan.

18.It is open to the claimant to receive the balance amount from the Claims Tribunal by filing appropriate application as per Civil Rules of Practice. Likewise, liberty is given to the appellant Corporation to receive the excess amount lying to the credit of M.A.C.T.O.P.No.452 of 1998 on the file of the Motor Accidents Claims Tribunal viz., Additional Subordinate Judge, Cuddalore, by filing a payment out application as per Civil Rules of Practice in the manner known to law.

In fine, the Civil Miscellaneous Appeal is allowed in above terms. Bearing in mind, the facts and circumstances of the case, the respective parties are directed to bear their own costs in this appeal.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sgl

To

1. The Additional Subordinate Judge,  
Motor Accidents Claims Tribunal,  
Cuddalore.
  2. The Record Keeper, V.R.Section, High Court, Madras.
- + 1 CC To Mr.M.Krishnamoorthy, Advocate SR NO.26715

judgment in  
C.M.A.NO.486 of 2003

SP(CO)  
SRA(17/06/2008)