

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.3.2009

Coram

The Hon'ble Mr. Justice R.SUDHAKAR

Civil Miscellaneous Appeal No.791 of 2009
and
M.P.No.1 of 2009

The Managing Director,
Tamil Nadu State Transport
Corporation
(Division-II) Ltd.,
Erode.

.... Appellant/2nd Respondent

vs.

1.K.Selvarasu,
2.D.Venkatesh,
(2nd respondent is the driver,
hence given up).

.... Respondent/Petitioner
1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 26.4.2007 passed in M.C.O.P.No.14 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.I), Erode.

For appellant : Mrs.B.Vijayalakshmi

JUDGMENT

The Tamil Nadu State Transport Corporation is on appeal challenging the award dated 26.4.2007 passed in M.C.O.P.No.14 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.I), Erode.

2. It is a case of injury. The brief facts of the case are as follows:- The accident in this case happened on 28.5.2005. The injured claimant Selvarasu, said to be aged 28 years, a salesman in Sri Meenal Pipes, Erode, was travelling on a two

wheeler Bajaj M-80 on the Bharathi Street, Erode Town. The bus belonging to the appellant transport corporation coming from behind driven by the driver in a rash and negligent manner hit the two wheeler. In that accident, the said Selvarasu suffered grievous injuries. He was treated at National Hospital as inpatient. In the accident, it is stated that his right foot was totally crushed and fractured. The right leg ankle was also fracture and dislocated. He sustained injuries to the left foot, left leg knee and other injuries all over the body. Due to loss of blood, he was infused with fresh blood. It is stated that he was in hospital from 28.5.2005 to 30.6.2005. He filed a claim for compensation in a sum of Rs.3,00,000/- for the injuries suffered in the accident.

3. In support of the claim, the injured claimant was examined as P.W.1 and the Dr.V.P.Sundaravadivel as P.W.2. In the list of Exhibits, Exs.A-1 to A-18, A-20 and A-21 were typed. Ex.A-19 is omitted. In para 5 of the award it is stated that Exs.A-1 to A-20 were marked. The details of Exs.A-1 to A-20 are as follows:-

Ex.A-1 is the copy of FIR dated 28.5.2005,

Ex.A-2 is the observation mahazar dated 28.5.2005,

Exs.A-3 and A-4 are the Motor Vehicle Inspector's Inspection Reports,

Exs.A-5 and A-6 are the wound certificates,

Ex.A-7 is the copy of charge sheet,

Ex.A-8 is the copy of rough sketch,

Exs.A-9 to A-11 are the hospital bills,

Ex.A-12 is the discharge summary,

Exs.A-13 and A-17 are the Doctor's prescriptions,

Ex.A-14 is the hospital payment receipts,

Exs.A-15 and A-16 are the medical bills,

Ex.A-18 is the disability certificate,

Ex.A-19 is the X-Ray and

Ex.A-20 is the X-Ray bill.

No oral or documentary evidence was let in on behalf of the appellant transport corporation, the second respondent before the Tribunal.

4. In so far as the negligence on the part of the driver of the appellant transport corporation bus and the liability of the appellant to compensate the claimant, the learned counsel for the appellant does not dispute the same. The only contention raised by the appellant's counsel is with regard to quantum of compensation.

5. The documents which are relevant for deciding the issue of compensation are Exs.A-9 to A-20. The disability has been assessed at 20% under disability certificate Ex.A-18. The income as claimed by the claimant is Rs.4,000/- per month, but the Tribunal determined the income at Rs.2,400/- per month. The doctor was examined as P.W.2, to speak about the injury and the disability assessed. Based on these parameters, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Disability assessed at 20%	Rs. 24,000/-
2	Pain and suffering	Rs. 7,000/-
3	Transport expenses	Rs. 1,000/-
4	Extra nourishment expenses	Rs. 2,000/-
5	Loss of income during the period of treatment for 33 days	Rs. 2,640/-
6	Medical expenses as per Exs.9 to A-11, A-14 to A-16 and A-20	Rs. 55,100/-
7	Future loss of comfort	Rs. 20,000/-
	Total	Rs.1,11,740/-

6. The only contention raised by the learned counsel for the appellant in the appeal is that the sum of Rs.20,000/- granted as compensation for future loss of comfort is not justified. Therefore, the quantum of compensation has to be reduced.

7. The above contention of the counsel for the appellant is not appealing to this court and is rejected for the following reasons:-

- (i) The accident in this case happened on 28.5.2005. The injured claimant is 28 years at the time of accident. He is a salesman. He was in hospital for more than one month.

- (ii) The Tribunal granted a very meagre sum of Rs.7,000/- towards pain and suffering and Rs.1,000/- for transport expenses.
- (iii) Even the loss of income determined by the Tribunal is very meagre and it is not commensurate with the living daily wages. Therefore, the injured claimant is entitled to more compensation for loss of income during the period of treatment. In any event, the treatment will not be over within one month. He would require more time to heal consequent to the grievous injuries.
- (iv) No amount was granted for attender charges. A paltry sum of Rs.2,000/- was granted towards nutritious food expenses.
- (v) Considering all the above aspects, the sum of Rs.20,000/- granted towards loss of future comfort can be adjusted on the various heads as stated above.
- (vi) Appellant has not made out a case for reduction of quantum of compensation as also the interest granted at 7.5% as the accident in this case happened in the year 2005 and the award is of the year 2007.

8. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks for eight weeks' time to deposit the award amount and is granted and on such deposit, the claimant is permitted to withdraw the same. Consequently, connected miscellaneous petition is closed.

/true copy/

Sd/-
Asst. Registrar.

Sub Asst. Registrar.

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To

The Additional District Judge,
Fast Track Court No.I,
(The Motor Accidents Claims Tribunal)
Erode.

1 cc to Mrs. B. Vijayalakshmi, Advocate, SR. 10988

C.M.A.No.791 of 2009

SSR (CO)
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