

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.03.2012

CORAM

THE HONOURABLE MRS. JUSTICE. ARUNA JAGADEESAN

Cross Objection No.184 of 2011

in

C.M.A.No.2686 of 2009

N.Babu .. Cross Objector

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House,
Pallavan Salai, Chennai-2 .. Respondent

Cross Objection filed under Order XXXI Rule 22 of C.P.C. Against the order and decretal order of MACT O.P. No.1304 of 2001 dated 17.04.2007 and whereas notice of the day fixed for the hearing the appeal was served on the Cross Objector on 17.10.2009 and whereas the CMA No.2686 of 2009 being admitted by this Court on 12.10.2009, the cross objector filed this Appeal.
CMA.No.2686 of 2009

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House,
Pallavan Salai, Chennai-2 .. Appellant

vs.

Babu .. Respondent

This Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the award dated 17.04.2007 made in MCOP No.1304 of 2001 on the file of the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.

For appellant &
respondent in
Cr.Obj.No.184 of 2011) : Mr.Anand and Suryas

For respondent &
Cross Objector : Mr.D.Deivanandam

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the Metropolitan Transport Corporation, Chennai aggrieved against the award passed by the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai made in MCOP No.1304 of 2001 dated 17.04.2007, whereby the Tribunal has awarded a sum of Rs.3,69,000/- as compensation to the injured/claimant.

2.The brief facts of the case are as follows:

On 19.11.2000, while the petitioner was riding his two wheeler, he was hit by the Metropolitan Transport Corporation bus. As a result of the accident, he was thrown and sustained grievous injuries all over his body. He sustained fracture C Vertebrae, fracture C5 C6 traumatic quadriplegia with L5, L6 Disc prolapse) injury. The claimant was admitted in Government Stanley Hospital, Chennai on 19.11.2000 and took treatment as inpatient till 21.1.2001, thereafter, he was treated as outpatient. Again, he was hospitalised on 10.02.2005. Because of his total disablement, he was not in a position to pursue his avocation as driver. He made a claim at Rs.4,00,000/- as compensation. The Tribunal assessed the disability at 65% and awarded a sum of Rs.3,39,000/- as compensation.

3.The claim was contested by the Transport Corporation denying the allegations made in the application for compensation and according to them, there was a fault on the part of the claimant, who is the cause for the accident.

4.The Tribunal, after analysing the evidence gave a finding that the accident occurred only due to the rash and negligent driving of the bus driver. The Tribunal determined the disability at 65% and awarded a sum of Rs.3,20,000/- as loss of earnings, a sum of Rs.15,000/- for pain and sufferings, a sum of Rs.2,000/- for transport expenses, and Rs.2,000/- for extra nourishment and thus, awarded Rs.3,39,000/- as compensation. As against the said award, the Transport Corporation filed the Civil Miscellaneous Appeal. The claimant dissatisfied with the award filed the Cross Objection.

5.Mr.D.Deivanandam, learned counsel appearing for the Transport Corporation did not dispute the involvement of the bus in the accident, but his contention was that it was due to the negligence on the part of the victim that the accident occurred. He further contended that there is no material to come to the conclusion that the victim earned a sum of Rs.3,000/- as monthly income and therefore, the award passed by the Tribunal has to be modified.

6.On the other hand, M/s.Anand and Suryas, learned counsel appearing for the claimant/cross objector, however, opposed the aforesaid contention and submitted that the Transport Corporation having failed to produce its driver or conductor in the witness box, this Court should not entertain the plea of contributory negligence of the victim. He would further submit that in the absence of serious dispute as regards the monthly income of the injured, who was working as driver in a private Transport Corporation, the monthly income ought to have been fixed at Rs.4,000/- p.m. as he was also drawing batta of Rs.40 to 50/- per day apart from his salary. The learned counsel would further submit that the application of multiplier "13" was justified in the facts of the present case, however sought for enhancement of compensation on the ground that the monthly income should be taken as Rs.4,000/-

7.The first question that arises for determination in this appeal is whether the findings of the Tribunal fastening the negligence on the part of the bus driver, is proper. Once the involvement of the bus of the appellant in the accident is proved, it was the driver of the bus, who could enlighten the Court with the allegations of contributory negligence of the victim in the accident. The appellant, for the reasons best known to it, has withheld the said driver or even the conductor of the bus from the witness box, when a definite allegation of negligence was contributed to the driver of the bus by the claimants.

8.In the present case, neither the driver nor the conductor nor any person, who had seen the

accident has been examined on the side of the Transport Corporation before the Tribunal and no reason was given for non-examination of those witnesses. Therefore, the transport Corporation in this case, having failed to bring the driver or conductor of the bus, who were its employees under its control to give evidences, we should draw adverse inference against the appellant/transport corporation. No plea of contributory negligence could be entertained, more particularly, when there is no contra evidence adduced on the side of the appellant. The evidence adduced on the side of the claimant by way of oral and documentary evidence clearly proved that the negligence was on the part of the bus driver, who had driven the vehicle in a rash and negligent manner and dashed against the victim causing very serious injuries. Therefore, the said finding of the Tribunal is liable to be confirmed. Accordingly it is confirmed.

9.Learned counsel for the claimant/Cross Objector submitted that the trial Court has committed serious error in not considering the actual income of the claimant and his future prospects while determining the compensation under the head of loss of future earning capacity and that the compensation awarded under other heads like Pain and Sufferings, extra nourishment, transport expenses and medical expenses also required to be enhanced which was on the lower side. Therefore, he submitted to the Court to re-appreciate the evidence and award just and proper compensation.

10.On the other hand, learned counsel for the appellant submitted that the compensation by the Tribunal is on the higher side.

11.Having heard the learned counsel for the parties, the point arises for consideration is as to whether the compensation awarded by the Tribunal is just and proper or they called for any interference. Pending the appeal, the claimant filed an application seeking for enhancement of the claim to Rs.6,89,000/- from Rs.4,00,000/- as claimed in C.M.P.No.1 of 2012 in Cr. Obj.No.184 of 2011 in C.M.A.No.2686 of 2009. The application was allowed and accordingly, the cross objector was allowed to enhance the value of the claim from Rs.4,00,000/- to Rs.6,89,000/- and he also paid an additional Court fee on the enhanced value of the claim.

12.Considering the documents produced before the Tribunal, it is seen that the claimant suffered 100% disability, on account of injuries sustained by him. The claimant has suffered the followings as per Exs.P1 and P2-discharge summery:

"cervical disc prolapse C-5 and C-6 with quadreperesis"

On account of such injury, he had benumbed sensation below the neck and dripping of urine. It appears that he became unconscious after the accident and regained conscious only after six days.

13.P.W.2-Dr.J.R.R.Thiagarajan, who examined the claimant and assessed the disability at 70% on the following findings:

"1)pain over cervical region C5-C6 region. Therefore, turning the neck and bending is difficult.

2)He has permanently used the cervical collar

3)Numbness below C7 level

4) Upper limb powers on the right 3/5 and on the left 4/5, cannot use his hands as before and he can walk with the help of crutches.

5) Incontinence urine persisting, uses urinal bag for collection of urine."

14.On the above findings, the doctor has assessed the disability at 70%. P.W.2-Doctor has deposed that the claimant will not be able to do any work and he was dependent for others even for moving about. Therefore, it is clearly proved that he has total disablement (i.e.100%)

15.Considering the evidences of P.W.1 and 2, I am of the opinion that on account of the injuries sustained by him, the claimant has suffered 100% disability. It has also come into the evidence that

he is unable to walk without any assistance and he cannot do any work much less a driving work. He is walking with the help of crutches and even for standing, he needs others help. Further, he is not able to carry out his normal duties and has to carry urinal bag with him. Though doctor had assessed his disability at 70%, the nature of injuries sustained by the claimant, has caused total disablement incapacitating him from doing any work and carry his normal activities.

16. According to the claimant, he was working in Sakthi Transport as lorry driver and was earning Rs.3,000/- as salary apart from Rs.40 to 50 as batta. Ex.P5 is the driving licence issued to him for driving heavy goods vehicle. The said fact has not been contraverted by the appellant/transport by producing any evidence. Admittedly, the claimant was 49 years at the time of accident.

17. Relying on the judgement in the case of New India Assurance Company Vs. Charlie reported in 2005 ACJ 1131 (Supreme Court) and keeping in mind the ratio that, wherein the injured has suffered 100% disability, the logic applicable to fatal accident can be made applicable, for appropriate cases of this nature. Taking into note all the relevant facts, we have to consider the quantum of compensation under the head "loss of future earning capacity". The claimant was earning Rs.3,000/- as salary plus Rs.40 to 50/- per day as batta. Therefore, he was earning Rs.4,000/- per month as salary and considering the age "49", the multiplier "13" is just and reasonable as per the decision of the Hon'ble Supreme Court reported in 2009 (6) SCC 121 [Sarala Verma and others Vs. Delhi Transport Corporation and another].

18. Considering the monthly income as Rs.4000/-, the annual loss of income would be Rs.48,000/- and applying the multiplier "13", the total future loss of earnings would come to Rs.6,24,000/-. Taking into consideration, the disability of the claimant is 100%, the Claims Tribunal has awarded only Rs.3,20,000/- which has to be enhanced to Rs.6,24,000/-. The Claims Tribunal awarded a sum of Rs.15,000/- for pain and suffering which is on the lower side. Considering the nature of injuries sustained by him, I am inclined to award a sum of Rs.25,000/- for pain and suffering as against Rs.15,000/- awarded by the Tribunal and for extra nourishment and transportation, a sum of Rs.25,000/- would be proper and for medical expenses, a sum of Rs.10,000/- is hereby awarded. Thus, the total sum of Rs.6,84,000/- is awarded as compensation as against Rs.3,39,000/- awarded by the Tribunal. The details of the modified compensation is as follows:

Sl.No

Description

Amount

1

Loss of future earnings

Rs.6,24,000/-

2

Pain and sufferings

Rs. 25,000/-

3

Extra nourishment and transportation

Rs. 25,000/-

4

Medical expenses

Rs. 10,000/-

Total

Rs.6,84,000/-

Enhanced amount (Rs.6,84,000 - 3,39,000)

Rs.3,45,000/-

19. In the result, the Civil Miscellaneous Appeal is dismissed and Cross Objection filed by the claimant is allowed. The Appellant/Transport Corporation is directed to deposit a sum of Rs.6,84,000/- as against Rs.3,39,000/- awarded by the Tribunal. It is submitted by the learned counsel for the appellant/Transport Corporation, the entire amount of Rs.3,39,000 has already been deposited together with interest at 7.5% from the date of petition till the date of deposit and 50% of the said amount was also already withdrawn by the claimant. Now the appellant/Transport Corporation is directed to deposit the enhanced amount of Rs.3,45,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire award amount on making proper application. No costs.

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To

The IV Judge,
Small Causes Court,
The Motor Accidents Claims Tribunal
Chennai