

T. Ramamurthy Vs. Chennai Metropolitan Trans. Corpn. Ltd. and ors.

T. Ramamurthy Vs. Chennai Metropolitan Trans. Corpn. Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/832901

Court : Chennai

Decided On : Dec-02-2008

Reported in : 2009ACJ2172

Judge : Prabha Sridevan and ;K.K. Sasidharan, JJ.

Appeal No. : C.M.A. No. 2529 of 2002

Appellant : T. Ramamurthy

Respondent : Chennai Metropolitan Trans. Corpn. Ltd. and ors.

Advocate for Def. : A. Babu, Adv.

Advocate for Pet/Ap. : K. Venkatasubbaraj, Adv. for M. Swamikannu, Adv.

Disposition : Appeal allowed

Judgement :

Prabha Sridevan, J.

1. Appellant whose right leg was amputated up to knee and whose right hand was paralysed consequent to the accident which took place on 27.4.1997 and who was awarded compensation of Rs. 3,06,000 has filed this appeal for enhancement.

2. We have heard the counsel for both sides. Though the respondent No. 3 was served, he has not entered appearance.

3. The learned Counsel for the appellant also pointed out to the exhibit, which is the photograph of the claimant and from the photograph the disability suffered by the claimant on account of accident is clear.

4. In *K. Janardhan v. United India Insurance Co. Ltd.* : 2008 ACJ 2039 (SC), the Supreme Court while dealing with a workman of a tanker lorry who suffered mutation of his right leg up to knee held that fixing the disability at 100 per cent and also loss of earning capacity at that rate was correct. Following the same, in this case also, we fix the loss of earning capacity and percentage of disability at 100 per cent.

5. The Tribunal had fixed the monthly income at Rs. 5,000 on the basis of Exh. C2 which is the alleged salary certificate which is given in a letterhead. It is difficult to accept this as evidence of his income. It is seen from para 21 of the Tribunal's order that though the claimant was doing electric wiring, he is not a literate person. The Claims Tribunal while holding that an uneducated person who has no licence to carry on electricity wiring job could not have earned more than Rs. 3,000, proceeded to fix his monthly income at Rs. 5,000. It is difficult for us to accept this award of Rs. 5,000, which is without any evidence.

6. However, even for a non-earning member, now we can fix the monthly income at Rs. 3,000 and in *Laxmi Devi v. Mohammad Tabbar* : 2008 ACJ 1488 (SC), the Supreme Court in a case of unskilled labourer held that he could easily earn Rs. 100 per day and assessed income at Rs. 36,000 per annum. We propose to do the same in the instant case and the annual income is fixed at Rs. 36,000. In the same decision, for a deceased who was aged 35, the Apex Court adopted the multiplier of 14. In the present case, the claimant is aged 28 years. So we think just and reasonable multiplier would be 16. If so, the loss of earning capacity would be Rs. 5,76,000. In a Full Bench judgment reported in *Cholan Roadways Corporation Ltd. v. Ahmed Thambi* : 2006 ACJ 2703 (Madras), this Court has held that as far as non-pecuniary losses are concerned, the Claims Tribunal shall consider:

(1) Pain and suffering;

(2) Loss of amenities of life;

(3) Loss of expectation of life.

7. Under the head pecuniary losses, the Full Bench directed the Claims Tribunal to consider the loss of earning capacity and loss of future earnings as one competent. This was apart from medical and other expenses and loss of earnings, if any, from the date of accident till the date of trial and this Court also held that when the loss of earning capacity is compensated and also pecuniary losses as mentioned above, permanent disability need not be separately itemized. Following the same, we propose to fix the following compensation:

Amount awarded by		Head	Amount awarded by	High Court
1,00,000	Rs. 1,00,000	Pain and suffering	Rs. 15,000	Rs. 1,00,000
15,000	Rs. 1,00,000	Loss of amenities and loss of marriage prospects	Rs. 10,000	Rs. 10,000
Rs. 5,000	Rs. 5,000	Medical expenses	Rs. 5,000	Rs. 5,000
1,000	Rs. 1,000	Transport	Rs. 5,000	Rs. 5,000
18,000	Rs. 1,000	Towards material disability	Rs. 30,000	Rs. 30,000
(Rs. 6,000 x 3)	Rs. 18,000	Disability	Rs. 50,000	Rs. 50,000
5,76,000	Rs. 5,76,000	-Earning power of amenities	Rs. 25,000	Rs. 25,000
8,15,000			Rs. 3,06,000	Rs. 3,06,000

8. With regard to the finding regarding negligence, we find that the Tribunal had fixed the negligence on the motor cycle and the motor cycle was not insured. The Tribunal fixed the entire liability on the driver of the motor cycle. Learned Counsel appearing for the appellant submitted that the rough sketch would clearly show that the driver of the respondent No. 1 bus was alone responsible and not the motorcyclist. The learned Counsel appearing for the respondent No. 1 would submit that it is not possible to interfere with the factual finding and fix the liability on the Corporation.

9. The claim petition shows that the bus came from north to south in G.S.T. Road on the extreme eastern side and dashed against one motor cycle. The petitioner

was only a pedestrian. The counter affidavit also shows that when the bus was travelling along G.S.T. Road, next to the centre median, a two-wheeler was going much ahead of the bus on the next lane left side to the bus. It appears that the petitioner had suddenly crossed the road and was knocked down by the two-wheeler and he fell down and the driver of the bus did not anticipate it. The first information report is given by a friend of the claimant and it speaks of the speed at which the bus was travelling.

10. We have seen the rough sketch. It is true that the motor cycle had knocked down the pedestrian and it was only thereafter that the bus had run over the pedestrian. But we have no doubt in our mind that if the bus had been driven at an average speed and not rashly and negligently, then the bus driver could have seen the fallen pedestrian and averted the accident. At any rate, the impact of the accident would have been much less. On the other hand, we find that the bus had run over the appellant resulting in his amputation. The rough sketch also shows that the accident had taken place where the east west road meets the north south road. Therefore, the bus driver should have slowed down because it is a junction of the two roads. Therefore, it is clear that the bus driver was also negligent. Both the bus and motor cycle drivers are responsible for the accident and the negligence is fixed at 75 per cent and 25 per cent respectively.

11. In the result, the appeal is allowed and the award is enhanced to Rs. 8,15,000 (rupees eight lakh fifteen thousand). Respondent No. 1, Corporation would be liable to pay Rs. 6,11,250 being 75 per cent of the award amount. Driver and owner of the motor cycle are liable to pay the balance 25 per cent of the award amount, viz., Rs. 2,03,750. The enhanced amount shall carry an interest of 7 1/2 per cent.

12. In this case the Tribunal had fixed the entire liability on the motor cycle driver but we have found that the respondent Corporation is also liable to contribute towards compensation and we have fixed its liability at 75 per cent. The compensation payable by the transport Corporation will carry interest only from the date of the award. Two months time is given for deposit of the amount awarded and on such deposit, the claimant shall be entitled to withdraw the entire amount.

No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com