

**Chandran Vs. the Managing Director**

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**Court :** Chennai

**Decided On :** Mar-03-2011

**Judge :** C.S.Karnan, J.

**Appeal No. :** C.M.A.Nos.1623 and 4029 of 2005 & C.M.P.No.3409 of 2005

**Appellant :** Chandran

**Respondent :** The Managing Director

**Judgement :**

**C O M M O N J U D G M E N T**

1. The appellant/claimant has filed the above appeal in C.M.A.No.1623 of 2005, against the award and decree passed in O.P.No.3509 of 2000, dated, 01.11.2004 on awarding a compensation a sum of Rs.3,40,000/- with interest at the rate of 9% per annum. Not being satisfied with the said award the claimant has filed the above appeal for additional compensation a sum of 11,60,000/- with interest.

2.The appellant/State Express Transport Corporation has filed the above appeal in C.M.A.No.4029 of 2005, against the award and decree passed in O.P.No.3509 of 2000, dated, 01.11.2004 on awarding a compensation a sum of Rs.3,40,000/- with interest at the rate of 9% per annum. Aggrieved by the said award the appeal has been filed to scale down the said compensation.

3.The short facts of the case are as follows:

On 31.07.1999, at around 11.20 p.m., while the petitioner was travelling on a bicycle on the New Mahabalipuram Road, Thiruvannamiyur from South to North direction and at that point of time, the State Express Transport Corporation Bus bearing Registration No.TN 01 N 6298 had been driven by its driver in a rash and negligent manner from the opposite direction and dashed against the cyclist, as a result, he had sustained grievous injuries. Hence, he has filed the claim petition against the respondent for a sum of Rs.15,00,000/-.

4.The respondent Corporation had filed a counter statement and resisted the claim petition. The respondent stated that the accident had not occurred due to the negligence of the respondent's driver. On 31.07.1999, the respondent Corporation bus, while nearing Santhi Kalyana Mandapam and at that point of time, the claimant was riding a bicycle to the left side of the bus and suddenly came to the right hand side, without seeing the bus and fell down in front of the bus and invited the accident. The respondent denied the age, income and occupation of the petitioner. The respondent further stated that the claim amount is excessive.

5.On the pleadings of the both parties, the Tribunal had framed two issues for consideration, namely;

(i)Who was responsible for the accident?

(ii)Whether the claimant is entitled to receive compensation?

6.On the side of the claimant two witnesses had been examined and 22 documents had been marked, which are as follows:- Exs.P1 to P11-Discharge Summary of Ramachandra Hospital, Porur and Government General Hospital, Chennai, besides First Information Report, Transport charges particulars, Salary Certificate and Disability Certificate etc., On the side of the respondent, the driver of the bus was examined as RW1 and no documents were marked.

7.PW1 had adduced evidence stating that on 31.07.1999 at about 11.20 p.m., he was proceeding on his bicycle on the New Mahabalipuram Road and at that point of time, the respondent bus bearing Registration No.TN 01 N 6298 came from Pondicherry to Chennai in the opposite direction and dashed against him,

resulting, he sustained injuries on his abdomen, thigh, annus and on his left leg and face. He had undergone treatment at Royapettah Government General Hospital and Ramachandra Hospital, Porur. He had undergone surgical operation on his urinal system, annus and on his abdomen. He further stated that before the accident, he was a driver and was earning a sum of Rs.3,500/- per month besides Rs.30/- as batta per day. In order to prove the accident, he had marked First information Report, Photos with negatives, Salary Certificate, Driving Licence and connected medical records.

8.PW2-Dr.Thiagarajan had stated, in his evidence that he had examined the claimant and assessed the disability as 70%. His annus was replaced. His urinal passage tube had cut off. Therefore, he is unable to enjoy sexual relationship, besides the urinal tube had become thin. RW1-driver had adduced evidence stating that he had driven the bus from Chennai to Pondicherry on the East cost Road and when the bus was passing the Thiruvanniyur bus stop and at that point of time, the petitioner suddenly crossed the road from left side of a wine shop and dashed against the bus, as such the accident had occurred.

9.On considering the evidences of the parties, the Tribunal had awarded the compensation a sum of Rs.3,40,000/- with interest at the rate of 9% per annum. The break-up compensation is as follows:-

Rs.1,00,000/- towards loss of earning capacity;

Rs.1,00,000/- for partial permanent disability;

Rs.15,000/- towards pain and suffering;

Rs.15,000/- towards mental agony;

Rs.10,000/- towards loss of amenities;

Rs.5,000/- for attender charges;

Rs.65,000/- against medical expenses;

Rs.18,000/- for loss of income ;

Rs.2,000/- for loss of income during treatment period;

Rs.5,000/- towards transport expenses;

Rs.5,000/- against nutrition;

10. Not being satisfied with the said award, the claimant has filed the above appeal in C.M.A.No.1623 of 2005 for additional compensation a sum of Rs.11,60,000/-. Aggrieved by the said award, the State Express Transport Corporation has filed the above appeal in C.M.A.No.4029 of 2005 to scale down the compensation.

11. The learned counsel for the claimant argued that the claimant had undergone medical treatment as inpatient as well as outpatient from 01.08.1999 to 10.02.2004, in between 9 times he had been admitted and discharged consequently, even though the claimant is unable to perform his normal duty as a driver. The claimant's age was 26 years and his income was Rs.4,500/- per month, the same being paid by his employer one Vijayaraghavan, who is a General Manager in a National Bank. Learned counsel further argued that the claimant lost his manly potential, as per the Doctor's evidence. The claimant had undergone three surgical operations on his abdomen, in his urinal system and annus, which got relocated. These are injuries of a permanent nature. Therefore, the claimant is entitled to receive adequate compensation, since the claimant has been reduced to a vegetative condition and his avocation has been totally affected. Therefore, multiplier method is imperative, besides the claimant had sustained 70% disability.

12. Learned counsel for the Transport Corporation argued that the Tribunal had awarded a sum of Rs.1,00,000/- under the head of 'loss of earning capacity', further the Tribunal awarded a sum of Rs.1,00,000/- under the head of 'loss of partial disability', which are on the higher side. The claimant had undergone treatment at Government Hospitals, therefore, the medical expenditure is Rs.65,000/- granted by the Tribunal is on the higher side. The learned counsel further pointed out that as per the photograph of the claimant, he has returned to normal condition, almost.

13. In view of the facts and circumstances of the case, arguments submitted by the learned counsels for their respective parties and on going through the impugned award of the Tribunal, this Court's considered opinion that as per the medical records, the claimant had undergone continuous treatment, as inpatient and as well as outpatient from 01.08.1999 to 10.02.2004, which proves that he was suffering from his injuries for approximately four years, besides his urinal system and anus portion have met with permanent damage, besides three operations, he had gone through and as per the Doctor's evidence, he has lost his manly potential. Therefore, this Court awards the compensation as follows:-

Rs.65,000/- towards medical expenses;

Rs.25,000/- against pain and suffering;

Rs.1,50,000/- towards loss of income during medical treatment period and convalescing period;

Rs.1,40,000/- towards disability;

Rs.15,000/- for attender charges;

Rs.10,000/- against transport;

Rs.10,000/- towards nutrition;

Rs.1,00,000/- towards loss of earning capacity;

Rs.50,000/- towards loss of manly potential;

In total, this Court awards a sum of Rs.5,65,000/-, which is fair and equitable.

14. Therefore, this Court enhances the compensation from Rs.3,40,000/- to Rs.5,65,000/-. After deducting the original compensation, a sum of Rs.3,40,000/-, this Court awards a sum of Rs.2,25,000/- as additional compensation, this amount will carry interest at the rate of 7.5% per annum, from the date of filing the claim petition till the date of payment of compensation. Hence, this Court directs the State Express Transport Corporation to deposit the additional compensation

amount as mentioned above, to the credit of M.C.O.P.No.3509 of 2000, on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai, within a period of six weeks from the date of receipt of copy of this order. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount lying in the credit of M.C.O.P.No.3509 of 2000, on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai, after filing necessary payment out of application in accordance with law, subject to withdrawals if any made already.

15.Resultantly, the above Civil Miscellaneous Appeal in C.M.A.No.1623 of 2005 is partly allowed and the appeal filed by the State Express Transport Corporation Limited in C.M.A.No.4029 of 2005 is dismissed. Consequently, the award and decree passed in M.C.O.P.No.3509 of 2000, dated 01.11.2004, on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai, is modified. Consequently, connected miscellaneous petition is closed. Accordingly, ordered. There is no order as to costs.

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