

B.Kothandapani vs Tamil Nadu State Transport Corp.Ltd on 12 May, 2011

Equivalent citations: AIRONLINE 2011 SC 604

Author: P. Sathasivam

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4330-4331 OF 2011

(Arising out of S.L.P. (C) Nos.15569-15570 of 2007)

B. Kothandapani

.... Appellant (s)

Versus

Tamil Nadu State Transport Corporation Ltd. Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) These appeals are directed against the judgment and

final order dated 13.12.2006 passed by the High Court of Judicature at Madras in C.M.A. Nos. 103 and 122 of 2001 in and by which the High Court modified the award of the Tribunal, i.e., from Rs. 5,05,053.45/- to Rs.4,05,053.45/-

as compensation payable to the appellant-claimant.

3) Brief facts:

(a) The appellant-claimant sustained grievous injuries in

a motor vehicle accident, which occurred on 21.05.1998 for which he made a claim before the Motor Accident Claims Tribunal, Chennai (hereinafter referred to as "the Tribunal") in O.P. No. 3868 of 1998 for a sum of Rs. 12 lakhs as compensation. The Tribunal, after finding that the accident was caused due to the negligence of the driver of the Tamil Nadu State Transport Corporation (Villupuram Division-III), Kancheepuram (hereinafter referred to as "the Corporation"), by order dated 20.12.2000, quantified the compensation and passed an award for Rs.5,05,053.45.

(b) Aggrieved by the award of the Tribunal, the Corporation filed C.M.A. No. 103 of 2001 before the High Court of Madras challenging the quantum of compensation. The appellant-claimant also filed C.M.A. No. 122 of 2001 before the High Court for the enhancement of the compensation amount. Inasmuch as both the appeals arose from the same award of the Tribunal, the High Court heard and decided the appeals together and passed a common order on 13.12.2006 reducing the compensation to the extent of Rs.1,00,000/-.

In other words, by the said order, the High Court allowed the appeal of the Corporation to the extent of Rs.1,00,000/- and dismissed the appeal of the claimant for enhancement of the compensation.

(c) Questioning the judgment and final order of the High Court, the claimant has filed the above appeals by way of special leave petitions before this Court praying for enhancement of compensation to the extent awarded by the Tribunal.

4) Heard Mr. Vipin Nair, learned counsel for the appellant-claimant and Mr. T. Harish Kumar, learned counsel for the respondent-Corporation.

5) The only point for consideration in these appeals is whether the appellant is entitled to a sum of Rs. 1,00,000/- towards "permanent disability" in addition to the amount awarded under the head "loss of earning capacity"? Inasmuch as the issue is confined only to the quantum of compensation, it is not necessary to traverse the factual details relating to the accident. Even otherwise, the

claimant alone has filed the present appeals and the Corporation has not challenged the findings relating to negligence, it is not necessary to go into the conclusion arrived at on the negligence aspect holding that the driver alone was responsible for the accident.

Even, with regard to the quantum of compensation, except reduction of Rs. 1,00,000/- which was awarded by the Tribunal for permanent disability, it is not necessary to go into the quantum of compensation under various heads and the ultimate order of the Tribunal and the High Court.

6) The appellant-claimant, in his evidence as PW-1, deposed that he had sustained injury on the center finger of the right hand, his knee joint on the right leg had been dislocated, injury on the right cheek and eyes, that he cannot see with his left eye, his right foot had been injured and his right ankle joint dislocated. He further explained that after the accident, he was immediately taken to the Government Hospital at Chengalpet and received the First Aid and later he had been admitted in the Govt. Stanley Hospital and was under treatment for 25 days as inpatient. The Discharge Summary issued therein has been marked as Ex. P-1. He further narrated that he had undergone Physiotherapy after 25 days which is evident from Ex. P-2. He had also undergone skin surgery at the Stanley Hospital and the certificate relating to the same has been marked as Ex.P-3. Even after discharge from the Stanley Hospital, he was not fully recovered and he had been admitted in Malar Hospital at Adayar and received treatment for two days. The Discharge Summary has been marked as Ex.P-4. According to the appellant-

claimant, the middle finger of his right hand had been amputated at the Malar Hospital, Adayar. The prescription issued at the Malar Hospital has been marked as Ex. P-5. From his evidence, it is seen that during the time of the accident, he was working as a Foreman in M/s Armstrong Hydraulics Limited and after the accident he is unable to do any work as he cannot bend the fingers of his right hand and using his left hand for eating and there is pain in his right leg and he cannot travel in a two wheeler or in a transport bus.

7) Dr. R. Rajappa was examined as PW-2. In his evidence, he deposed that the appellant-claimant was injured in the accident said to have been occurred on 21.05.1998 and he had received treatment as an inpatient at the hospital at Chengalpet, later he had been admitted as an inpatient at the Govt. Stanley Hospital. He had seen a lengthy scar on his right eye and his right eyebrow had been found to be fallen and the retina of the eye was found to be large and that it had lost the shrinking capacity and the nerves of the eye had been affected and there was no circulation of blood and he lost his eye sight by about 3 meters. On examination and perusing the medical documents about his treatment, he concluded 30% of the disability had been caused due to the injury on the right eye and issued a Disability Certificate which has been marked as Ex. P-9.

8) Dr. J.R.R. Thiagarajan was also examined as PW-3.

In his evidence, he deposed that the right hand of the appellant had been injured due to the said accident and his middle finger on the right hand had been amputated and a plate had been placed on the fore finger towards the dislocation of the bone. He also explained that he had undergone treatment towards the injury on the right forehead and on the right cheek and that the plate is still

there on the right fore finger due to which he cannot bend the fore finger and other fingers properly and it is difficult for him to eat and there was swelling on the palm of his right hand and issued a Disability Certificate which has been marked as Ex. P-10. The Certificate issued by the employer Ex. P-8 shows that at the time of the accident, the appellant was working as a Grade-III worker in the firm M/s Armstrong Hydraulics Ltd. and he was getting a salary of Rs.3,295.28/- after deductions.

9) The Disability Certificates, Exs.P-9 & P-10, issued by the two doctors, show that the appellant had disability to the extent of 90%. The Tribunal, after considering the fact that the assessment of disability may vary to the extent of 5%, concluded that the appellant had sustained permanent disability to the extent of 85% and taking note of his age and avocation, awarded compensation of Rs.

1,50,000/- for the same.

10) The High Court, relying on its own Full Bench decision in Cholan Roadways Corporation Ltd. vs. Ahmed Thambi and Others, 2006 (4) CTC 433, after finding that since the claimant had been awarded a sum of Rs. 3 lakhs towards the loss of earning capacity set aside the award of Rs. 1,50,000/- granted under the head "permanent disability" and awarded a further sum of Rs.50,000/- in addition to the amount awarded by the Tribunal.

11) In Ramesh Chandra vs. Randhir Singh & Ors.

(1990) 3 SCC 723 while considering award of compensation for permanent disability (right foot amputated) caused by the accident under Section 110B of the Motor Vehicles Act, 1939 which is similar to Section 168(1) of the Motor Vehicles Act, 1988, this Court upheld the award of compensation under separate head of pain, suffering and loss of enjoyment of life, apart from the head of loss of earnings. The discussion and ultimate conclusion are relevant which reads as under:-

"7. With regard to ground XIX covering the question that the sum awarded for pain, suffering and loss of enjoyment of life etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. If money be any solace, the grant of Rs 20,000 to the claimant represents that solace. Money solace is the answer discovered by the Law of Torts. No substitute has yet been found to replace the element of money. This, on the face of it appeals to us as a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprivation of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of

enjoyment of life by the person himself. For these reasons, we are of the considered view that the contentions raised by the truck owner appellant in that behalf must be negatived and we hereby negative them."

12) It is true that the compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature.

For example, take the case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others. In the case on hand, two doctors had explained the nature of injuries, treatment received and the disability suffered due to partial loss of eye-sight and amputation of middle finger in the right hand and we have already adverted to the avocation, namely, at the time of accident, he was working as Foreman in M/s Armstrong Hydraulics Ltd. Taking note of his nature of work, partial loss in the eye sight, loss of middle finger of the right hand, it not only affects his earning capacity but also affects normal avocation and day-to-day work. In such circumstance, we are of the view that the Tribunal was fully justified in granting a sum of Rs.1,50,000/- towards permanent disability.

13) Considering the evidence of injured-claimant as PW-1 and two doctors as PWs. 2 & 3 coupled with the Disability Certificates and medical documents, we conclude that the High Court was not justified in disallowing a sum of Rs.1,00,000/- from the total compensation of Rs.5,05,053.45 awarded by the Tribunal. We agree with the contention raised by the learned counsel for the appellant-claimant and restore the award of the Tribunal.

In other words, the Corporation is liable to pay Rs.

5,05,053.45 with interest as awarded by the Tribunal. If the said amount has not been deposited so far, the Corporation is directed to deposit the same in the Tribunal within two months from the date of the receipt of this order and if any amount had already been deposited/paid to the claimant, the same shall be adjusted. On such a deposit being made, the appellant-claimant is permitted to withdraw the same. The appeals are allowed to the extent mentioned above. There shall be no order as to costs.

.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN)
NEW DELHI;

MAY 12, 2011.