

Madras High Court

B. Vijayalakshmi vs Order on 1 April, 2009

?IN THE HIGH COURT OF JUDICATURE AT MADRAS

%DATED: 01/04/2009

*CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

+CMA.779 of 2009

#TNSTC

\$Ravi Kumar

!For Petitioner: B. Vijayalakshmi

^For Respondent:

:ORDER

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 01.04.2009 CORAM THE HONOURABLE MR.JUSTICE R.SUDHAKAR C.M.A.No. 779 of 2009 and M.P.No.1 of 2009 The Managing Director, Tamil Nadu State Transport Corporation Ltd., Division II, Chennimalai Road, Erode. ... Appellant vs.

1. Ravi @ Ravi Kumar

2. M. Selvaraj

... Respondents

. . .

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 2.4.2008 passed in M.C.O.P.No.320 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Judge) Dharapuram.

For appellant : Mrs. B. Vijayalakshmi

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JUDGMENT

The Transport Corporation has filed this appeal challenging the award dated 2.4.2008 passed in M.C.O.P.No.320 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Judge) Dharapuram.

2. It is a case of injury. The accident in this case happened on 10.11.2004. The injured claimant is a 33 years old mechanic. While he was riding a moped along with his wife, the moped was hit by the

appellant transport corporation bus driven in a rash and negligent manner by its driver and in that accident, he suffered grievous injuries to the face and other parts of the body. He was admitted in K.G.Hospital, Coimbatore, for treatment. He claimed a sum of Rs.1,00,000/- as compensation.

3. In support of the claim, the injured claimant was examined as P.W.1 and the wife/ claimant in another petition was examined as P.W.2. Dr. Periasamy, was examined as P.W.3. Documents Exs. A 1 to A22 were marked. On behalf of the appellant/respondent before the Tribunal, the driver of the bus was examined as R.W.1. No documentary evidence was let in on behalf of the appellant.

4. The finding of negligence on the part of the driver of the appellant transport corporation bus and the liability of the appellant transport corporation to compensation the claimant is not disputed and such finding of the Tribunal stands confirmed.

5. The only contention raised by the learned counsel for the appellant is with regard to the quantum of compensation. In this case, the disability has been assessed at 14% under Ex.A19 and the hospital records have also been marked as Exs.P7 to 18 and P20 to P22. Considering the age, occupation and the nature of injuries suffered by the injured claimant, who is a mechanic, the Tribunal granted the following amount as compensation with interest at 7.5% p.a. Sl.No.

Head Amount granted by the Tribunal Disability at 14% Rs.14,000/-

Pain and suffering Rs.10,000/-

Transport expenses Rs. 4,000/-

Damage to cloths
Rs. 500/-

Future loss of income
Rs.40,000/-

Medical bills (Rs.11,061/- + Rs.3258/-)
Rs.14,319/-

Total
Rs.82,819/- (But wrongly calculated as Rs.83,369/-

6. In appeal, it is contended by the learned counsel for the appellant that the sum of Rs.40,000/- granted for loss of future earning is unwarranted and not justified.

7. This Court is not inclined to interfere with the award for the following reasons.

(i) The accident in this case happened on 10.11.2004 and the injured claimant is a 33 years old mechanic by occupation. He suffered hip and face injuries and he would have lost income during the period of treatment and recovery. He would need assistance of other persons during treatment. He

would also need extra nourishment for recovery. No compensation has been awarded on all these heads by the Tribunal. Even assuming that the amount of Rs.40,000/- towards future loss of earning is not justified, the same can be adjusted on various other heads as stated above. The total compensation comes to Rs.82,819/-. But the Tribunal wrongly calculated as Rs.83,369/-. The Tribunal is directed to rectify the defects in accordance with the compensation granted under each and every head. Therefore, the total compensation granted at Rs.82,819/- does not require any further reduction as also the interest granted at 7.5% as the accident in this case happened in the year 2004 and the award is of the year 2008.

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 correct award amount and is granted and on such deposit, the claimant is permitted to withdraw the same. The Tribunal is directed to suitably amend and arrive at the total compensation in accordance with the compensation granted under each head. Consequently, connected miscellaneous petition is closed.

01.4.2009 ra Index: /No Internet: Yes/ To The Motor Accident Claims Tribunal, (Sub Judge) Dharapuram.

R. SUDHAKAR,J., CMA No. 779 of 2009 Date: 01.4.2009