SUPREME COURT OF INDIA

G. Gnanam @ Gnanamoorthy

Vs.

Metropolitan Transport Corporation

C.A.Nos.7320-7321 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

16.12.2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellant was traveling as a passenger in a bus belonging to the respondent herein on 14.6.1995. It met with an accident. Injuries suffered by him as noted by Dr. J.R.R. Thiagarajan, Retired Prof. of Ortheo in Stanley Medical College Hospital, Chennai, are as under:

> "...His right upper arm was broken into two pieces by way of crush injury and plate was inserted. As the nerves got affected, his right hand wrist and finger movements are completely arrested for which, he was given treatment. He has sustained contusion and pain in right hand. There was infection in the plate inserted part and muscle contraction as well. He has to be operated again for removal of the plate. He could raise his right hand upto shoulder only, upto 80 o. He cannot fold his right hand elbow beyond 50 o. Eating is also difficult. His right hand wrist and fingers power has lost and it is only 3/5. He cannot do work by holding the objects with grip and eating is also difficult. His right hand bone was fractured. The Right hand disability was at 15%; right shoulder at 15%, right hand elbow at 15% and right hand wrist and fingers disability at 20%. In all 65%..."

3. Appellant prior to the accident was said to have been working as a fitter. In view of the disability suffered by him, he started working as a helper. On the date of the accident, he was aged about 29 years. He filed an application before the Motor Accidents Claims Tribunal, Chennai claiming a sum of Rs. 6, 00,000/- by way of damages.

> The contention in the said proceeding raised by the respondent was that the appellant himself, being responsible for the accident, was not entitled to payment of any damages towards loss of earning capacity.

The tribunal in view of the rival contentions of the parties framed the following two issues:-

"1. Whether the accident took place on 14.6.1995 was caused due to the rash and negligence on the part of the driver of the Respondent?

2. Whether the Petitioner is entitled to compensation? If so, how much?"

4. Before the learned tribunal, the appellant as also the driver of the bus examined themselves. Disbelieving the statement of the driver and having regard to the fact that the bus dashed with a `Central Median Lamp Post', it was opined:

"...RW.1 has stated that at the time of accident, the Petitioner was keeping his hand out side in the back seat. It was the duty of the driver to caution the passengers to keep the hands inside and took them safely to the destination. From the evidence of RW.1 the negligence is clearly proved on his part. Further, the Respondent has also not proved that the bus has dashed against the Lamp post by marking the M.V. Inspector's report. Under the circumstances, P.W.1's evidence has to be accepted, and R.W.1's has to be rejected. Hence from the above analysis and Exhibits and the evidence, it is clear that the accident took place on 14.6.1995 is solely due to the rash and negligence on the part of the Respondent's bus driver..."

5. As regards the quantum of compensation, the evidence adduced on behalf of the appellant was that he used to earn Rs. 200/- per day as a fitter and as a helper, he has been earning only a sum of Rs. 30/- per day.

Keeping in view the fact that no documentary evidence was adduced by him, the learned Tribunal held:

"...Having sustained grievous injury of bone fracture, he would have lost his earnings at least for 6 months and his earnings may be around Rs.2,000/- per month. Accordingly, a sum of Rs.12, 000/- is awarded for the loss of earning for 6 months. At the time of accident, the Petitioner is aged 29 years. On verifying the disability, for the fracture sustained in the right hand even though he would not have lost his complete earning power, definitely, there would be reduction in his earning capacity. Assessing the loss of earning capacity at Rs.500/- per month, for 25 years, it comes to Rs.1,50,000/- (500 x 12 x 25) and the same is awarded, under loss of earning power..."

6. He was granted another sum of Re. 1 lakh in the following terms: Rs. 12,000/- towards loss of earning, Rs. 8,000/- towards transport and extra nourishment, Rs. 15,000/- towards pain and suffering, Rs. 50,000/- towards permanent disability and Rs. 15,000/- towards loss of amenities of life.

7. Respondent preferred an appeal there against. The High Court by reason of the impugned judgment without there being any materials on record, held:

> "...In the Chief-Examination, the claimant admitted that he is working as a Helper in the same place and so, it cannot be said that the claimant cannot do any work at all due to the injury. Taking into consideration of the above reasons, certificate issued by the doctor P.W. 2 cannot be relied on. We came across in a number of cases that the said doctor is issuing certificates fixing the permanent disability which is not proportionate to the injury. The Division Bench of this Hon'ble Court has already found that it is not safe for the Tribunal to rely on solely his certificate, Even in this case as stated already though the claimant has not sustained any injury in the shoulder, he clearly establishes that the certificates are being given by P.W. 2, Dr. Thyagarajan, not on the basis of injury..."

8. On the aforementioned basis, the High Court held that the appellant was guilty of contributory negligence to the extent of 50%. As regards the quantum of compensation towards the loss of earning power, the High Court purported to be relying on or on the basis of a decision of this Court in *Divisional Controller, KSRTC vs. Mahadeva Shetty & Anr.*[1] without assigning any reason held that the appellant was entitled to Rs.50,000/- towards permanent disability.

9. In terms of Section 166 of the *Motor Vehicles Act, 1988*, a person who has suffered injury in an accident is entitled to just compensation. What would be a just compensation, however, would depend upon the facts and circumstances of each case. [See Divisional Controller, KSRTC (supra)].

10. Did the case involve a contributory negligence on the part of the appellant? Our answer thereto is rendered in the negative. The High Court, with utmost respect, should not have disbelieved the evidence of a Doctor of a government hospital on the supposition that he had been issuing certificates fixing `permanent disability which was not proportionate to the injury'. Even no such suggestion had been given to him. That was never the case of the respondent. In his cross-examination, he categorically stated that he is a specialist surgeon and not Orthopaedician and he had assessed the disability correctly. Except putting a suggestion to him that there was a possibility of 5% error in assessing the disability between doctors to doctor; no other question was put to him.

11. The High Court, furthermore, without considering the relevant facts, could not have arrived at a conclusion that the appellant in any way was responsible for the injury. The fact that the bus had hit with a lamp post stands admitted. The nature of the injury, as noticed hereinbefore, suggests that the upper arm of his body had hit the body of the bus. If he had put his hand out, his upper arm would not have broken into two pieces by way of crush injury. The injury would have been confined to the wrist or the arm upto the elbow. We are, therefore, of the opinion that the appellant was not guilty of any contributory negligence.

12. The learned Tribunal did not accept the quantum of compensation by loss of earning power as claimed by the appellant. It has not been denied or disputed that in view of his aforementioned injury, he is not in a position to work as a fitter. He has merely been working as a helper. The fact that the appellant has suffered a functional disability is not in dispute. In a situation of this nature and keeping in view the age of the appellant, which on the date of accident was 29 years, if only a sum of Rs. 500/- per month was considered just for the purpose of awarding compensation totaling a sum of Rs. 1,50,000/- only we do not see any reason as to why the High Court should have differed therewith. We have noticed the reasoning's of the High Court. There is no basis for arriving at the said findings. No reason was assigned in support of the inferences drawn. The materials on record had not been considered by it at all.

13. For the aforementioned reasons, we are of the opinion that the impugned judgment of the High Court cannot be sustained. It is set aside accordingly and that of the tribunal is restored. The appeals are allowed with costs. Counsel fee assessed at Rs.25, 000/-.

[1]*(2003) 7 SCC 197*