
(2006) 01 MAD CK 0202

In the Madras High Court

Case No : C.M.A. No's. 285, 286 and 287 of 1998

M. Saravanan, M. Sivakumar and S. Saroja

APPELLANT

Vs

K. Thandavamoorthy and New India Assurance Co Ltd.

RESPONDENT

Date of Decision : 01-01-2006

Acts Referred:

Citation : (2006) 01 MAD CK 0202

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : M. Swamikannu, for the Appellant; S. Jayasshankar, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Aggrieved by the Common Order passed by the learned VI Judge, Court of Small Causes (Motor Accidents Claims Tribunal), Chennai (hereinafter referred to as "the Tribunal") in MACTOP Nos. 2400, 2402 and 2525 of 1995 dated 22.9.1997, the appellants/claimants have filed the above appeals for enhancement of compensation amount.

2. In respect of injuries sustained by the appellants/claimants, they have filed claim petitions, in MACTOP No. 2400/1995 by M. Saravanan, who is the appellant in CMA No. 285/1998, in MACTOP No. 2402/1995 by M. Sivakumar, who is the appellant in C.M.A. No. 286/1998 and in MACTOP No. 2525/1995 by S. Saroja, their mother, who is the appellant in C.M.A. No. 287/1998, claiming compensation of Rs. 1,00,000/-, Rs. 2,25,000/- and Rs. 4,00,000/- respectively for the loss sustained by them in a motor accident, that took place on 24.5.1995. In support of their claim, all the appellants/claimants were examined as witnesses before the Tribunal as P.Ws 1 to 3 and One Meiporul, Head Constable was examined as P.W.6 and doctors were examined as P.Ws.4 and 5 and Exs.P.1 to P.15 were marked.

3. On the side of the respondent, no oral as well as documentary evidence was

marked. The Tribunal, after analysing oral and documentary evidence and after giving credence to all the material facts and circumstances, has passed an award, fixing compensation of Rs. 61,000/-, Rs. 72,000/- and Rs. 1,12,000/- with 12% interest. There was no appeal on the side of the respondents. The claimants, before the Tribunal, have filed these appeals, claiming enhancement of compensation.

4. It is the case of the claimants/appellants that on 24.5.1995 at 9.15 p.m., when the petitioner in O.P. No. 2402/95 was driving the van bearing Registration No. TSF 1701 and the petitioners in O.P.Nos. 2400/1995 and 2525/1995 were travelling as passengers in GST Road in South-North direction, the lorry, bearing Registration No. TN09 E 3555, driven by its driver with high speed in a rash and negligent manner, coming in the opposite direction, dashed against the van, in which the petitioners were traveling, thereby causing injuries to them and for the loss sustained by them, the first respondent, as the owner of the lorry and the second respondent, as the insurer of the lorry are vicariously and statutorily liable to pay compensation of Rs. 1,00,000/- to the petitioner in O.P. No. 2400 of 1995; Rs. 2,25,000/- the petitioner in O.P. No. 2402 of 1995 and Rs. 4,00,000/- to the petitioner in O.P. NO. 2525/1995.

5. On the other side, the first respondent was called absent and set ex-parte. The second respondent/Insurance Company, before the Tribunal, has filed counter, wherein, the respondent has denied the allegation that the petitioner in O.P. No. 2400 of 1995 had traveled in the van TSF 1701 at the time of accident and the accident was only due to rash and negligent driving of the driver of the van bearing Registration No:TSF 1701 and it is not due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 09 E 3555. It is also submitted by the respondent in the counter that the claims made by claimants are highly excessive and unsustainable in law and the claim petition is misconceived and devoid of merits and therefore, the respondent prays that the claim petitions have to be rejected.

6. The Tribunal, after conducting proper enquiry and analysing the oral and documentary evidence, has passed awards of Rs. 61,000/-, Rs. 72,000/- and Rs. 1,12,000/- respectively with 12% interest. Aggrieved by the quantum of compensation amount, the claimants/appellants have filed the above appeals.

7. Heard Mr.M. Swamikannu, learned Counsel for the appellants and Mr.S. Jayashankar, learned Counsel for the second respondent/Insurance Company. The appearance of the first respondent is dispensed with.

8. The learned Counsel for the appellants has submitted that the claimants/appellants have suffered injuries to the extent of 50%, 55% and 50%, but the Tribunal has considered only a meagre amount of Rs. 61,000/-, 72,000/- and Rs. 1,12,000/- in all heads. The learned Counsel for the appellants further submits that the continuing or the permanent disability and loss of earning have to be taken under two different heads, for which, he has relied on a decision reported

in 1995 2 L.W.685 (The Managing Director, Thiruvalluvar Transport, Madras v. Thangavelu and Anr.) , wherein, in paragraph-6, it is held as follows:

6. There is no merit in the contention of the appellant that compensation cannot be awarded for permanent disability if compensation is awarded under the heading "loss of earning power". They are two distinctive and separate claims. The latter is based on the loss of earning power caused by the disability. Loss of earning power is only one of the consequences of permanent disability. But, the former relates to the other consequences of permanent disability excluding loss of earning power. It is well known that permanent disability will have several consequences apart from inability to work or earn as before. To be specific, the victim of the accident who suffers from permanent disability will not be in a position to carry on his normal household activities in his house. More than anything else, he will be brooding over the disability day by day till the end of the life and suffer untold mental agony. The compensation for pain and suffering undergone at the time of injury and the treatment which followed. Thus, compensation for permanent disability will cover the mental agony to be suffered by the injured in his future life and his inability to attend to his normal household activities. This reasoning of ours is fortified by the Form prescribed under the Motor Accident Claims Tribunal Rules:

Part II of Form II :(Form of application for compensation)

(g) compensation for pain and suffering

(h) compensation for continuing or permanent disability, if any.

(i) Compensation for the loss of earning power.

(j) Total

9. Further, it was contended that the percentage of the disability was marked as Ex.P.15 and the same was supported by the evidence of P.Ws.4 and 5.

10. The learned Counsel for the appellants submits that the appellant/claimant in C.M.A. No. 285/1998 was studying in X Standard and therefore, he had a future loss of earning and the claim of Rs. 1,00,000/- ought to have been considered, instead , the Tribunal has considered only Rs. 61,000/-.

11. In respect of the appellant/claimant in C.M.A. No. 286/1998, Rs. 60,000/- was claimed for continuing or permanent disability and Rs. 90,000/- was claimed for loss of earning power, but the Tribunal, altogether considered only Rs. 50,000/- as the disability was assessed as 55%, which was supported by the evidence of P.Ws.4 and 5 and Ex.P.13.

12. In respect of the the claimant/appellant in C.M.A. No. 287/1998, the evidence of doctors, P.Ws.4 and 5 and Ex.P.11 show that the percentage of disability sustained by the claimant is 50% and therefore, the claim made by her for a sum of Rs. 4,00,000/- has to be taken into account in total. On the other hand, the Tribunal, has taken only Rs. 1,12,000/- with 12% interest.

13. The learned Counsel has also relied on Ex.P.1 discharge summary, Ex.P.2 medical bills, Ex.P.3 driving licence, Ex.P.4 bill, Ex.P.5 discharge summary, Ex.P.6, x-ray, Ex.P.7 medical bill which show that the appellants have sustained injuries, for which, they have undergone treatment. The learned Counsel for the appellants has made a specific point that the appellant in C.M.A.No. 287/1998 had been in the hospital for 5 days, for which, no compensation was awarded by the Tribunal.

14. Per contra, the learned Counsel appearing for the respondent/Insurance Company in all these appeals has contended that as far as the appellant in C.M.A. No. 285/1998, there was no injury sustained by him at all and the doctor, who has deposed, is always in the habit of giving excessive percentage of disability. He has contended that loss of injury in respect of the appellant in C.M.A. No. 286/1998 is also not confirmed with any standard of assessment and therefore, in the absence of any contra evidence, the Tribunal has confirmed all the depositions of the doctors and awarded compensation, which is not correct and proper assessment. The learned Counsel has strenuously resisted upon the argument that the continuing or permanent disability and loss of earning power are not under two different heads and they are one and the same and therefore, the award of compensation fixed by the Tribunal is just and proper and this Court need not interfere with the quantum awarded by the Tribunal.

15. Regarding the negligence, as fixed by the Tribunal, the evidence deposed by P.Ws.1 to 3 and 6, supported by Exs.P.9 and P.10, First Information Report and sketch and in the absence of any appeal on the side of the respondent/insurance company, this Court is not inclined to interfere with the finding, as held by the Tribunal in respect of negligence and there was no oral and documentary evidence on the side of the respondent and in such circumstances, there is no need to go into the negligence aspect at this stage.

16. Now the only point that arises for consideration is whether the appellants are entitled for any enhancement of compensation.

17. In respect of the appellant in C.M.A. No. 285/1998, the Tribunal has considered Rs. 250/- for transport charges, as the appellant was aged 16 years at the time of accident and he was a school going student; Rs. 750/- for extra nourishment and Rs. 10,000/- for pain and suffering, as there were injuries in the head and in the right eye, as a result of which, he was not able to read clear and the Tribunal, after considering that there may be a continuous or permanent disability in respect of eyesight and taking into the future life of the person, aged about 16 years and also the permanent disability sustained, considered Rs. 50,000/- and totally awarded Rs. 61,000/- with 12% interest. Even assuming the claim on two different heads, for continuing or permanent disability as well as loss of earning power, the Tribunal has awarded Rs. 50,000/- and therefore, the Tribunal is not at all at fault in arriving the compensation and the award of compensation made by the Tribunal in all the heads is proper except the pain and suffering as the claim was made for Rs. 50,000/- against which the Tribunal has

awarded Rs. 10,000/-.

18. Considering the injuries sustained by the claimants, this Court is inclined to consider an enhancement of Rs. 5,000/- towards pain and suffering from Rs. 10,000/- to Rs. 15,000/- and award of the Tribunal is enhanced from Rs. 61,000/- to Rs. 66,000/- and the rate of interest is the prevailing rate at the relevant point of time and for the enhancement of Rs. 5,000/-, the rate of interest will be 7.5%. The appeal is allowed in part.

C.M.A. No. 286/1998

19. There was a claim of Rs. 2,25,000/- by the claimant/appellant, but the Tribunal has considered the salary certificate and the claimant, as the driver, was earning Rs. 2,500/- at the time of the accident. It is seen from the documentary evidence that the claimant sustained injuries and the left leg bones were fractured and there was an injury in the head and broken glasses had gone inside and there were injuries in the little finger and right knee and the doctor had assessed the disability as 20% and 15% for the right hand fracture and the continuing pain and suffering and for the broken glasses which have gone into the injured places, the doctor has assessed 20%, altogether 55% disability and the same were supported by Exs.P.13 and 14 Disability Certificate and x-ray. It is seen that the injured was 23 years and was earning Rs. 2,500/- per month. It was claimed that there was continuous treatment for six months. The Tribunal has taken into account as Rs. 1,500/- and for 6 months, the Tribunal awarded Rs. 9,000/-; Rs. 500/- for hospital expenses; Rs. 500/- for extra nourishment and Rs. 870/- was awarded medical expenses, as per Ex.P.4 medical bill, though the claim was for Rs. 5,000/-. The Tribunal, as per Exs.P.4 and P.5, awarded a sum of Rs. 2,000/- and Rs. 10,000/-for pain and suffering. The Tribunal, after assessing the oral and documentary evidence and the percentage of disability, awarded compensation of Rs. 50,000/- and taking into overall compensation, fixed a sum of Rs. 72,000/- as compensation with 12% interest.

20. The Tribunal assessed compensation, taking into the evidence as well as the documentary proof. I propose to enhance a sum of Rs. 5,000/- and therefore, the amount of compensation is enhanced from Rs. 72,000/- to Rs. 77,000/-. In all other aspects, the award of the Tribunal is confirmed. The amount of compensation is enhanced from Rs. 72,000/- to Rs. 77,000/- and the rate of interest prevailing at the relevant time is to continue.

C.M.A.No. 287/1998

21. It is seen that the Tribunal has awarded a sum of Rs. 1,12,000/- with 12% interest as against the claim of Rs. 4,00,000/-. Exs.P.1, P.2, P.11 and P.12 are the documentary proof, filed in support of the percentage of disability, as deposed by the doctor and the doctor was examined as witness. P.W.5, doctor has deposed that the percentage of disability is 50%, as it is seen from Exs.A.11 and A.12. The injured/claimant was doing Chital work and she was earning Rs. 2,000/- per month and she was taking treatment for 10 months and a family member has

attended to her continuously and on account of expenditure being incurred by the appellant for assisting her, she claimed Rs. 20,000/- as compensation.

22. In this regard, the learned Counsel has relied on a decision reported in *Tejinder Singh Gujral Vs. Inderjit Singh and Another*, wherein, in paragraph-24, it is held as follows:

24. Learned counsel for the appellant contended before me that the learned Tribunal has not awarded any damages on account of expenditure being incurred by the appellant continuously on the attendance on him by the members of his family and the servant whom he has engaged for the purpose. Learned counsel for the respondent No. 2 on the other hand submitted that there is no credible evidence on the record that the appellant is incurring any expenditure on such an attendance on him. In my view the appellant was entitled to damages on this account. It is in evidence that his wife remained on long leave to attend on him after the accident during the course of his hospitalisation and convalescence at home. Later on, according to him, his mother has been attending on him. He has also engaged a servant at Rs. 400/- per month to attend on him. In *Cunningham v. Harrison* 1974 ACJ 218, Lord Denning M.R. Inter alia, observed thus:

It seems to me that when a husband is grievously injured and is entitled to damages then it is only right and just that, if his wife renders service to him, instead of a nurse, he should recover compensation for the value of the services that his wife has rendered. It should not be necessary to draw up a legal agreement for them. On recovering such an amount, the husband should hold it on trust for her and pay it over to her. She cannot herself sue the wrongdoer... but she has rendered services necessitated by the wrong doing, and should be compensated for it. If she had given up paid work to look after him, he would clearly have been entitled to recover on her behalf, because the family income would have dropped by so much.... Even though she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly calls for compensation.

23. It was contended that there was no cross examination. Rs. 6,000/- was awarded for loss of earning as against Rs. 13,500/- and Rs. 500/- for transport and Rs. 500/- for extra nourishment and no award for damage to articles and for Rs. 5,000/- for medical expenses and the Tribunal has considered a sum of Rs. 10,000/- towards pain and suffering, though the claim was made for Rs. 75,000/-. For continuing or permanent disability a sum of Rs. 1,00,000/- and for loss of earning, a sum of Rs. 1,75,000/- was claimed. The Tribunal has awarded Rs. 90,000/- towards both the heads.

24. The learned Counsel for the respondent/Insurance Company has submitted that normally the Tribunal has to consider some amount for the family members. In this case, the injured was in the hospital for 5 days and the same was not disputed and therefore, for this period, some amount has to be considered. The learned Counsel for the respondent has contended that continuing or permanent

disability and loss of earning power should be considered together. He has relied on a decision reported in National Insurance Co. Limited Vs. A. Kala Mohan and another, , wherein in paragraph-7, it is held as follows:

7. Coming to the award of compensation under the head, permanent disability, the Court is of the view that the Tribunal has rightly granted a sum of Rs. 2,00,000/- for disability. However, we are unable to confirm the finding of the Tribunal in awarding a sum of Rs. 2,00,000/- for loss of earning power, which amounts to double compensation. However, in our opinion the claimant is also entitled to a sum of Rs. 1,00,000/- for loss of marital life.

25. Therefore, the award of compensation under the heads continuing or permanent disability and loss of earning power has to be taken under one head and therefore, the compensation awarded by the Tribunal need not be interfered with by this Court.

26. On going through the various documentary evidence as well as exhibits, filed by the claimant, the claim of the injured claimants in all the heads has been reasonably considered except the compensation for the damages on account of expenditure being incurred by the appellant for the servant, who is engaged to attend her, for which, a sum of Rs. 20,000/- was claimed by her and taking into overall consideration, the treatment was continued for 10 months as contended by the learned Counsel for the appellant and there should be compensation on account of expenditure incurred by the appellant on attending her by the members of the family and the servant, who is engaged for this purpose and for that period, a sum of Rs. 5,000/- is to be added to that and Rs. 5,000/- is added towards pain and suffering and altogether, there is a total enhancement of Rs. 1,22,000/- from Rs. 1,12,000/-.

27. All these appeals are allowed in part and the award amount is enhanced as indicated above. No costs.