

(2013) 09 MAD CK 0246

In the Madras High Court

Case No : C.M.A. No. 638 of 2012 and M.P. No. 1 of 2012

M/s. National Insurance Company Divisional Office

APPELLANT

Vs

Harishnakar alias Saravanan and C. Perumal Gounder

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0246

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : N.B. Surekha, for the Appellant; R. Jayaprakash for R1, for the Respondent

Judgement

R. Subbiah, J.—Aggrieved over the quantum of compensation awarded in the claim petition filed by the claimant/the first respondent herein in M.C.O.P. No. 567 of 2006, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal, the present appeal has been filed by the insurance company stating that the amount awarded by the Tribunal is highly excessive and arbitrary. It is the case of the claimant/first respondent herein before the Tribunal that on 2.5.2006 at about 4.00 a.m., he had travelled in a Maruti Omni Van bearing registration No. TN 27 KO331 from Thiruppur to Salem along with his friends and relatives in Salem-Coimbatore NH 47 road. When the said Maruti Omni Van was coming near Punjab National Bank Ltd., a lorry bearing registration No. KA 01 AA 1219 came in a rash and negligent manner and dashed against the Maruti Omni Van. Due to the said accident, the claimant has sustained multiple grievous injuries on his legs, left and right thigh and dislocation of hip and injuries all over his body. Hence, he has made a claim as against the owner of the vehicle and its insurer, claiming a sum of Rs. 19,00,000/- as compensation.

2. Resisting the claim petition, the insurance company has filed a counter affidavit denying the nature of injuries, period of treatment and alleged disability sustained by the injured victim. Further, in the counter affidavit, it has been

stated that the insurance company is not liable to pay any compensation and sought for dismissal of the claim petition.

3. Before the Tribunal, in order to prove the claim, on the side of the claimant, the claimant examined himself as P.W. 1, besides examining Dr. Sivalingam as P.W. 2 and marked 21 documents as Exs. P.1 to P. 21. On the side of the respondents, no evidence was adduced.

4. The Tribunal, after analysing the entire evidence, both oral and documentary, has awarded a sum of Rs. 18,18,120/- as compensation. Aggrieved over the same, the present appeal has been filed by the insurance company.

5. Since this appeal has been filed only questioning the quantum of compensation awarded by the Tribunal, we are not dealing with the other aspects of the award.

6. In order to prove the disability suffered by the victim, one Dr. Sivalingam was examined as P.W. 2. P.W. 2, in his evidence, had stated that the claimant sustained fracture on both the legs and also on hip and he had undergone two operations and the disability suffered by the victim has been assessed as 60%. Further, he has stated in his evidence that the claimant cannot sit continuously for half-an-hour. Therefore, the Tribunal, by considering the evidence of P.W. 2, fixed the disability suffered by the victim as 60%. Based on the Income Tax returns filed by the victim, the Tribunal has fixed the annual income of the victim as Rs. 1,38,700/- and by applying the multiplier 16, under the head of loss of income, has awarded a sum of Rs. 13,31,520/- ($1,38,700/- \times 16 \times 60/100$) in proportion to 60% disability.

7. Learned counsel appearing for the appellant insurance company has submitted that the injured victim was running a textile business. Hence, he can take care of his business by engaging another person. Under such circumstances, a sum of Rs. 13,31,520/- awarded by the Tribunal as loss of income for 60% disability is highly excessive.

8. Per contra, learned counsel appearing for the injured victim has submitted that the evidence on record would clearly show that the victim cannot carry on any avocation in future. Moreover, the Tribunal has fixed a sum of Rs. 1,38,700/- as annual income of the victim based on his income tax returns and hence, there is no need to reduce the amount awarded under the head of loss of income.

9. Keeping the submissions made on either side, we have carefully gone through the materials available on record.

10. On a perusal of Ex. P.17, the income tax returns of the victim, we find that after deducting the income tax payable by him from Rs. 1,38,700/-, the annual income of the victim was Rs. 1,01,500/-. Therefore, we are of the opinion that a sum of Rs. 1,38,700/- fixed by the Tribunal under the head of loss of annul income is not proper. Considering the facts and circumstances of the case, we are of the opinion that if a sum of Rs. 1,10,000/- is fixed as annul income of the

victim and then calculation is made on that basis, a just and proper compensation could be arrived at. As held by a Division Bench of this Court in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, and Raj Kumar Vs. Ajay Kumar and Another, , in appropriate cases, where the disability resulted in functional disability, the Court can adopt multiplier method. Therefore, we are of the opinion that considering the nature of the injuries sustained by the victim and also the disability suffered by him, the multiplier adopted by the Tribunal cannot be found fault with. If 16 multiplier is adopted, the total loss of income works out to Rs. 10,56,000/- (Rs. 1,10,000 x 16 x 60/100), which amount can be awarded as loss of income.

11. The Tribunal has awarded a sum of Rs. 25,000/- under the head of pain and suffering, a sum of Rs. 15,000/- for extra nourishment, a sum of Rs. 15,000/- for transportation charges, a sum of Rs. 1,37,000/- for medical expenses, a sum of Rs. 2,00,000/- for future medical expenses and a sum of Rs. 25,000/- for loss of amenities and we are not inclined to interfere with the same. However, under the head of loss of income during treatment, the Tribunal has awarded a sum of Rs. 69,000/-. But, we find that the said amount is not supported by any documents. Therefore, considering the facts and circumstances of the case, the amount of Rs. 69,000/- awarded by the Tribunal under the head of loss of income during the treatment period is reduced to Rs. 25,000/-.

12. Except the above modification, the award is confirmed in all other aspects. Consequently, the total compensation awarded by the Tribunal in M.C.O.P. No. 567 of 2006 is reduced to Rs. 14,98,600/- from Rs. 18,18,120/- and the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed. Learned counsel appearing for the appellant insurance has submitted that the entire amount of compensation awarded by the Tribunal has already been deposited before the Tribunal. In view of the modification, the insurance company is permitted to withdraw the excess amount deposited by them and the injured victim is permitted to withdraw the entire reduced compensation along with proportionate interest.