

(2008) 04 MAD CK 0162

In the Madras High Court

Case No : C.M.A (MD) No's. 207 to 216 and 1664 to 1670 of 2007 and C.R.P. (NPD) (MD) No's. 1294 and 1295 of 2007 and M.P. (MD) No. 2 of 2007 in C.M.A (MD) No's. 1664 to 1670 of 2007 and M.P. (MD) No. 1 of 2007 in C.R.P. (NPD) (MD) No's. 1294 and 1295 of 2007

N. Ramu and Others

APPELLANT

Vs

S. Prabhakaran and United India Insurance Co. Ltd.

United India Insurance Co. Ltd. Vs M. Raj and Others

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Citation : (2008) 04 MAD CK 0162

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Murugesan, for the Appellant; M. Alaguthevan, in C.M.A (MD) Nos. 207 to 216 of 2007 and M. Alaguthevan, in C.M.A (MD) Nos. 1664 to 1670 of 2007 and C.R.P. (NPD) (MD) Nos. 1294 and 1295 of 2007, for the Respondent

Judgement

G. Rajasuria, J.—C.M.A (MD) Nos. 207 to 216 of 2007 have been filed by the claimants against judgment and decree dated 17.03.2006

passed in M.C.O.P. Nos. 2000 to 2005, 2052 to 2055, 2057 and 2058 of 2001 for enhancement of compensation and C.M.A (MD) Nos. 1664

to 1670 of 2007 and C.R.P. (NPD) (MD) Nos. 1294 and 1295 of 2007 have been filed by the insurance company to get set aside the common

judgment and decree dated 18.10.2006 made in M.C.O.P. Nos. 3531/2002, 295, 1335 to 1338, 1511, 1527 and 1614 of 2003 by the

Additional District and Sessions Judge, Fast Track Court No. 3, Madurai.

2. Heard both sides.

3. During trial, on the side of the claimants P.W.1 to P.W.14 were examined and Exs.P.1 to 53 were marked and on the side of the respondents

R.W.1 and R.W.2 were examined and Exs.R.1 to R.5 were marked.

4. The Point for consideration in C.M.A. Nos. 207 of 216 of 2007 is as to whether the Compensation awarded by the Tribunal is just and proper?

5. Point: C.M.A. No. 207 of 2007: Animadverting upon the meagre quantum of compensation of Rs. 18,000/- awarded in favour of the claimant

Ramu S/o. Nallu Thevar for the fracture sustained by him, this appeal has been filed on various grounds, the pith and marrow of them would run

thus:

The medical records unambiguously would prove that the injured sustained fracture of both bones of his right leg and also sustained fracture of his

right ribs 1 to 8, nonetheless the Tribunal simply awarded a meagre sum of Rs. 18,000/- without adhering to any norms.

6. The learned Counsel for the appellant/injured drawing the attention of this Court to the medical records would develop his argument to the effect

that even though the medical records unambiguously demonstrated that the claimant sustained fractures, the Tribunal simply remarked as though

there was no proof of the same. The learned Counsel for the insurance company would support the stand of the Tribunal.

7. Ex.P.2, the I.P. slip relating to Ramu would highlight that he sustained fracture of both bones of his right leg in the motor accident. Ex.P.46, the

relevant medical records of Vellore Government Hospital would clearly prove that the X-ray was taken at Vellore itself, which details the following

fractures:

shaft of fibula and tibia

Right ribs 1 - 18

Ex.P.39, which was issued by the Doctor P.W.13, Dr. P. Shanmugam would indicate that the petitioner sustained 20% permanent disability. I am

at a loss to understand as to why the Tribunal in its judgment observed as though there was no evidence about the fractures of both bones. Hence,

interference with the judgment of the tribunal on this account is warranted.

8. Even though the doctor P.W.13 in Ex.P.39 observed that the injured sustained 28% permanent disability, considering the nature of the injuries

and the fact that the fractures are simple fractures and that too even for

amputation below knee with stump exceeding 8.89 cms. the permanent disability is assessed at 50% under Schedule I, Part II, Serial No. 20 of the Workmen Compensation Act. I am of the considered opinion the permanent disability can be assessed at 20%. Taking into consideration the fact that the claimant sustained injury at the age of 35, awarding compensation at the rate of Rs. 2,000/- for each percent of permanent disability would meet the ends of justice. If accordingly worked out for 20% permanent disability the compensation comes to Rs. 40,000/- (Rupees Forty Thousand only). The Tribunal awarded a sum of Rs. 7,000/- towards pain and sufferings, which could be confirmed. For taking nutritious food and transport expenses awarding a sum of Rs. 2,000/- (Rupees Two Thousand only) is appropriate. Towards medical expenditure Rs. 1,000/- (Rupees One Thousand only) could be awarded, even though he took treatment in the Government Hospital, yet he might have obviously incurred expenditure to that much extent. As such the following formula emerges:

(i) For permanent disability - Rs. 40,000.00

(ii) For Medical Expenses - Rs. 1,000.00

(iii) For pain and sufferings - Rs. 7,000.00

(iv) For taking nutritious food

and transport expenses - Rs. 2,000.00

Total - Rs. 50,000.00

9. Point: C.M.A. No. 208 of 2007: Animadverting upon the meagre quantum of compensation of Rs. 9,000/- awarded in favour of the claimant

Minor Abirami D/o. Ayyar for the fracture sustained by her, this appeal has been filed on various grounds, the pith and marrow of them would run

thus:

The medical records unambiguously would prove that the injured sustained fracture of humerus bone of her left hand, nonetheless the Tribunal

simply awarded a meagre sum of Rs. 9,000/- without adhering to any norms.

10. The learned Counsel for the appellant/injured drawing the attention of this

Court to the medical records would develop his argument to the effect that even though the medical records unambiguously demonstrated that the claimant sustained fracture, the Tribunal simply remarked as though there was no proof of the same. The learned Counsel for the insurance company would support the stand of the Tribunal.

11. Ex.P.5, the O.P. slip relating to Minor Abirami would highlight that she sustained fracture of the left humerus bone of her left hand in the motor accident. Ex.P.43, the relevant medical records of Vellore Government Hospital would clearly prove that the X-ray was taken at Vellore

itself, which details the following fractures:

humerus (L)

Clavicle (R)

Ex.P.33, disability certificate which was issued by the Doctor P.W.13, Dr. P. Shanmugam, would indicate that the petitioner sustained 20%

permanent disability. I am at a loss to understand as to why the Tribunal in its judgment observed as though there was no evidence about the

fracture of humerus bone of the left hand. Hence, interference with the judgment of the tribunal on this account is warranted.

12. Even though the doctor P.W.13 in Ex.P.34 observed that the injured sustained 20% permanent disability, considering the nature of the injuries

and the fact that the fracture is simple fracture and that too even for loss of the thumb and its metacarpal bone the permanent disability is assessed

at 40% under Schedule I, Part II, Serial No. 6 of the Workmen Compensation Act. I am of the considered opinion the permanent disability can be

assessed as 15%. Taking into consideration the fact that the claimant sustained injury at the age of 6, awarding compensation at the rate of Rs.

2,000/- for each percent of permanent disability would meet the ends of justice. If accordingly worked out for 15% permanent disability the

compensation comes to Rs. 30,000/- (Rupees Thirty Thousand only). The Tribunal awarded a sum of Rs. 7,000/- towards pain and sufferings,

which could be confirmed. For taking nutritious food and transport expenses awarding a sum of Rs. 2,000/- (Rupees Two Thousand only) is

appropriate. Towards medical expenditure Rs. 1,000/- (Rupees One Thousand only) could be awarded, even though he took treatment in the

Government Hospital, yet he might have obviously incurred expenditure to that

much extent. As such the following formula emerges:

(i) For permanent disability - Rs. 30,000.00

(ii) For Medical Expenses - Rs. 1,000.00

(iii) For pain and sufferings - Rs. 7,000.00

(iv) For taking nutritious food

transport expenses - Rs. 2,000.00

Total - Rs. 40,000.00

13. C.M.A. No. 209 of 2007: Animadverting upon the meagre quantum of compensation of Rs. 15,000/- awarded in favour of the claimant Illasu

Thevar S/o. Ramathevar for the fracture sustained by him, this appeal has been filed on various grounds, the pith and marrow of them would run

thus:

The medical records unambiguously would prove that the injured sustained fracture of femur bone of his left leg and right clavicle bone, nonetheless

the Tribunal simply awarded a meagre sum of Rs. 15,000/- without adhering to any norms.

14. The learned Counsel for the appellant/injured drawing the attention of this Court to the medical records would develop his argument to the

effect that even though the medical records unambiguously demonstrated that the claimant sustained fracture, the Tribunal simply remarked as

though there was no proof of the same. The learned Counsel for the insurance company would support the stand of the Tribunal.

15. Ex.P.10, the O.P. slip relating to Illasu Thevar would highlight that he sustained fracture of his left femur in the motor accident. Ex.P.41, the

relevant medical records of Vellore Government Hospital would clearly prove that the X-ray was taken at Vellore itself, which details the following

fracture:

(L) femur

Ex.P.30, which was issued by the Doctor P.W.13, Dr. P. Shanmugam would indicate that the petitioner sustained 38% permanent disability. I am

at a loss understand as to why the Tribunal in its judgment observed as though

there was no evidence about the fracture of both bones. Hence,
interference with the judgment of the tribunal on this account is warranted.

16. Even though the doctor P.W.13 in Ex.P.30 observed that the injured sustained 38% permanent disability, considering the nature of the injuries

and the fact that the fractures are simple fractures and that too even for amputation below knee with stump exceeding 8.89 cms. the permanent

disability is assessed at 50% under Schedule I, Part II, Serial No. 20 of the Workmen Compensation Act. I am of the considered opinion the

permanent disability can be assessed at 20%. Taking into consideration the fact that the claimant sustained injury at the age of 55, awarding

compensation at the rate of Rs. 2,000/- for each percent of permanent disability would meet the ends of justice. If accordingly worked out for

20% permanent disability the compensation comes to Rs. 40,000/- (Rupees Forty Thousand only). The Tribunal awarded a sum of Rs. 7,000/-

towards pain and sufferings, which could be confirmed. For taking nutritious food and transport expenses awarding a sum of Rs. 2,000/- (Rupees

Two Thousand only) is appropriate. Towards medical expenditure Rs. 1,000/- (Rupees One Thousand only) could be awarded, even though he

took treatment in the Government Hospital, yet he might have obviously incurred expenditure to that much extent. As such the following formula

emerges:

(i) For permanent disability - Rs. 40,000.00

(ii) For Medical Expenses - Rs. 1,000.00

(iii) For pain and sufferings - Rs. 7,000.00

(iv) For taking nutritious food

and transport expenses - Rs. 2,000.00

Total - Rs. 50,000.00

17. C.M.A. No. 210 of 2007: Animadverting upon the meagre quantum of compensation of Rs. 7,000/- awarded in favour of the claimant

I.Vanaraj S/o. Illayath Thevar for the fracture sustained by him, this appeal has been filed on various grounds, the pith and marrow of them would

run thus:

The medical records unambiguously would prove that the injured sustained fractures in his legs, nonetheless the Tribunal simply awarded a meagre sum of Rs. 7,000/- without adhering to any norms.

18. The learned Counsel for the appellant/injured drawing the attention of this Court to the medical records would develop his argument to the

effect that even though the medical records unambiguously demonstrated that the claimant sustained fracture, the Tribunal simply remarked as

though there was no proof of the same. The learned Counsel for the insurance company would support the stand of the Tribunal.

19. Ex.P.48, the relevant medical records of Vellore Government Hospital would clearly highlight that the X-ray was taken at Vellore itself, which

reveals the following fracture:

Commuted # BB Rt. Leg.

Here Doctor was not examined to prove about the percentage of permanent disability. Even then it is clear that he sustained fracture of both legs.

Hence, I am of the considered opinion the permanent disability can be assessed at 15%. Taking into consideration the fact that the claimant

sustained injury at the age of 28, awarding compensation at the rate of Rs. 2,000/- for each percent of permanent disability would meet the ends of

justice. If accordingly worked out for 15% permanent disability the compensation comes to Rs. 30,000/- (Rupees Thirty Thousand only). The

Tribunal awarded a sum of Rs. 6,500/- towards pain and sufferings, which could be confirmed. For taking nutritious food and transport expenses

awarding a sum of Rs. 2,000/- (Rupees Two Thousand only) is appropriate. Towards medical expenditure Rs. 1,000/- (Rupees One Thousand

only) could be awarded, even though he took treatment in the Government Hospital, yet he might have obviously incurred expenditure to that much

extent. As such the following formula emerges:

(i) For permanent disability - Rs. 30,000.00

(ii) For Medical Expenses - Rs. 1,000.00

(iii) For pain and sufferings - Rs. 6,500.00

(iv) For taking nutritious food

and transport expenses - Rs. 2,000.00

Total - Rs. 39,500.00

20. C.M.A. No. 211 of 2007 : The Medical records Ex.P.11 O.P. Slip of Government Hospital, Usilampatti would only show that Minor P.

Veerammal sustained injury on her left ankle. Ex.P.42 the medical record of Vellore Government Hospital would indicate that she sustained

contusion and the X-Ray Report does not show that she sustained fracture. Even in Ex.32, the Disability Certificate issued by P.W.13 doctor

would reveal that the petitioner sustained only simple injury. As such the Tribunal awarded a sum of Rs. 7,500/-, which warrants no interference as

the injury sustained by the petitioner should be taken only as simple in nature.

21. C.M.A. No. 212 of 2007 : There is contradiction between the medical evidence so to say in Ex.P.22, case sheet of Royavellore hospital it is

found stated that he sustained only multiple injures. Whereas in Ex.P.12, O.P. Chit of Usilampatti Hospital it is found recorded that he sustained rib

fracture. Hence, the Court cannot hold that he sustained any fracture. The Tribunal took it only as simple in nature and awarded a sum of Rs.

8,500/- which warrants no interference.

22. C.M.A. (MD) No. 213 of 2007 : Medical records Ex.P.9 the O.P. Slip of Government Hospital, Usilampatti would only show that Minor A.

Venkatraman sustained injury on his heal. Ex.P.44, the medical record of Vellore Government Hospital would indicate that he sustained injury on

the right foot. Ex.P.20, the case sheet also does not show that she sustained fracture. Even in Ex.36, the Disability Certificate issued by P.W.13

the doctor would reveal the petitioner sustained only simple injury. As such the Tribunal awarded a sum of Rs. 9,000/-, which warrants no

interference as the injury sustained by the petitioner should be taken only as simple in nature.

23. C.M.A. (MD) No. 214 of 2007: The Tribunal awarded a sum of Rs. 23,000/- based on Ex.P.49, the medical record of Vellore, which

reveals that the minor girl A.Priyanka aged 9 years sustained fracture of temporal parietal bone. However, Ex.P.8, the Scan Report would not

refer to any abnormality. As such I am of the considered opinion that she sustained simple fracture of the skull. Even then the Tribunal awarded a

sum of Rs. 23,000/-. The doctor in Ex.P.52, Disability Certificate assessed her Permanent Disability at 24%. But in my opinion it does not appear

to be objective as the Doctor assessed the permanent disability under the following sub-heads without any supportive evidence:

Head ache : 6% Lacumation : 6% Defective Vision in Right eye :12% Total :24%

Hence, in this view of the matter the sum of Rs. 23,000/- awarded by the Tribunal warrants no interference.

24. C.M.A. No. 215 of 2007 : The Medical records Ex.P.13 O.P. Slip of Government Hospital, Usilampatti would not indicate any specific

injury. Ex.P.37, the Medical record of Government Hospital, Vellore also does not mention any particulars about the injuries. As such the Tribunal

awarded a sum of Rs. 7,500/-, which warrants no interference as the injury sustained by the petitioner should be taken only as simple in nature.

25. C.M.A. No. 216 of 2007 : The Medical records Ex.P.3, the O.P. Slip of Government Hospital, Usilampatti would only indicates that A.

Pandiammal sustained multiple injuries and contusion on the right cheek. Ex.P.17, the case sheet of Government Hospital, Usilampatti would

indicate that she sustained injury on her right cheek and abrasion in right leg. Even Ex.51, the Disability Certificate issued by P.W.13 doctor, would

reveal the petitioner sustained only simple injury. As such the Tribunal awarded a sum of Rs. 7,000/-, which warrants no interference as the injury

sustained by the petitioner should be taken only as simple in nature.

26. C.M.A (MD) Nos. 1664 to 1670 of 2007 and C.R.P. (NPD) (MD) Nos. 1294 and 1295 of 2007 have been filed as against the common

judgment dated 18.10.2006 passed in M.C.O.P. Nos. 3531/2002, 295, 1335 to 1338, 1511, 1527 and 1614 of 2003 on the file of the

Additional District and Sessions Judge, Fast Track Court No. 3, Madurai. A re"sume" of facts absolutely necessary and germane for the disposal

of these civil miscellaneous appeals and civil revision petitions would run thus:

It so happened that on 03.06.2001 as many as 36 persons travelled in a maxicab having the capacity of 12 + 1 driven by its driver and it met with

an accident in Vellore area. Consequently, the injured were taken to Vellore Hospital, where they were given treatment and subsequently they

were referred to the Hospitals in their native place namely Usilampatti, where in that hospital, they took further treatment. Before the Tribunal 21

persons filed claim petitions which were numbered as M.C.O.P. Nos. 2000 to 2005, 2052 to 2055, 2057 and 2058 of 2001, 1/2002, 295, 1335

to 1338, 1511, 1527 and 1614 of 2003. In M.C.O.P. Nos. 2000 to 2005, 2052 to 2055, 2057 and 2058 of 2001, the Tribunal awarded

compensation payable by the insurance company and the owner jointly and severally. In respect of M.C.O.P. Nos. 1/2002, 295, 1335 to 1338,

1511, 1527 and 1614 of 2003 the Tribunal passed orders to the effect that the insurance company should pay the award amount and recover it

from the owner of the vehicle concerned. Presently in respect of M.C.O.P. Nos. 1/2002, 295, 1335 to 1338, 1511, 1527 and 1614 of 2003

appeals and revision have been filed.

27. The common question which arises for consideration in all these appeals and revisions is as to whether the insurance company is liable to pay

the compensation in some cases and in some other cases pay the compensation and recover the same from the owner?

28. Point: In this factual matrix, my mind is redolent with the decision of the Honourable Apex Court in National Insurance Co. Ltd. Vs. Anjana

Shyam and Others, . An except from it would run thus:

16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of

ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the

permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident.

It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the Insurance Company, in

such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation

awarded to the extent of the number of passengers covered by the Insurance Policy. Illustratively, we may put it like this. In the case on hand, 42

passengers were the permitted passengers and they are the ones who have been insured by the Insurance Company. 90 persons have either died

or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards

made, add them up and direct the Insurance Company to deposit that lump sum.

Thus, the liability of the Insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the Insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the Insurance Company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the total of those higher 42 awards that would be the amount that the insurance Company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the Insurance Company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.

As such the above decision is squarely applicable to the case on hand. The Maxicab could carry only 12+1. Whereas in this case 36 persons travelled in it and out of them 21 persons sustained injuries. So far as the driver is concerned the liability is absolute as he is covered by the insurance policy. But the driver is not one among the claimants in these batch of matters. As such the, insurance company as per policy is bound to pay total of those higher of the 12 awards irrespective of the fact whether all the awards passed by all tribunals are the subject matter of these appeals or not as per the Honourable Apex Courts decision cited supra. Then, it is for the Tribunal to divide proportionately among the claimants in all those M.C.O.P.s where awards were passed. So far the remaining dues in respect of the awards the owner has to pay the compensation.

Accordingly, the awards should be honoured by the Insurance Company. The insurance company shall deposit the enhanced compensation within two months from the date of receipt of a copy of this order. On such deposit the Tribunal shall see to it that it apportions and disburses as expeditiously as possible the amounts, as the injured claimants are stated to be in dire need of money.

29. Accordingly, these civil Miscellaneous appeals and Civil Revision petitions are disposed of. Consequently, connected M.P.s are closed. No costs.

C.M.A. No. 207 of 2007:

30. In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs. 18,000/-(Rupees Eighteen Thousand Only) to Rs. 50,000/- (Rupees Fifty Thousand only). No costs.

C.M.A. No. 208 of 2007:

31. In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs. 9,000/-(Rupees Nine Thousand Only) to Rs. 40,000/- (Rupees Forty Thousand only). No costs.

C.M.A. No. 209 of 2007:

32. In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs. 15,000/-(Rupees fifteen Thousand Only) to Rs. 50,000/- (Rupees Fifty Thousand only). No costs.

C.M.A. No. 210 of 2007:

32. In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs. 7,000/-(Rupees Seven Thousand Only) to Rs. 39,500/- (Rupees Thirtynine Thousand and Five Hundred only). No costs.

C.M.A. No. 211 of 2007:

33. In the result, this appeal is dismissed. No costs.

C.M.A. No. 212 of 2007:

34. In the result, this appeal is dismissed. No costs.

C.M.A. No. 213 of 2007:

35. In the result, this appeal is dismissed. No costs.

C.M.A. No. 214 of 2007:

36. In the result, this appeal is dismissed. No costs.

C.M.A. No. 215 of 2007:

37. In the result, this appeal is dismissed. No costs.

C.M.A. No. 216 of 2007:

38. In the result, this appeal is dismissed. No costs.

1. Today, i.e, on 30.04.2008, Mr. N. Murugesan, learned Counsel for the Insurance Company and Mr. M. Alaguthevan and Mr.

Muruganantham, learned Counsel for the respondents / claimants, appeared before me and the latter made a mention by submitting that already

one other claim case was disposed of by the Motor Accidents Claims Tribunal at Poonamalli, but he could not furnish the particulars of it and

according to him, it was relating to the death of a person in the same accident and the compensation was awarded by the Tribunal concerned and

the Insurance Company also honoured the same.

2. The learned Counsel for the respondents/claimants expressed a doubt as to what would happen to the respondents/claimants' entitlement in

these appeals as already the amount deposited by the Insurance Company was taken away by the claimants in the award passed by the Tribunal at

Poonamalli.

3. The learned Counsel for the Insurance Company would submit that he is not aware of those details.

4. Be that as it may, by applying the decision of the Honourable Apex Court, the judgment of this Court was passed on these appeals on

29.04.2008 as set out supra. It is for the awardees here, to file E.P before the Motor Accidents Claims Tribunal - cum - Fast Track Court No.

III, Madurai, setting out the calculation details relating to the awards passed relating to the one and the same said accident enclosing copies

whichever might be the Tribunal which passed those awards. Thereupon, applying the decision of the Honourable Apex Court as incorporated in

the aforesaid judgment of this Court, the Motor Accidents Claims Tribunal - cum - Fast Track Court No. III, Madurai, has to work out and the

Insurance Company shall be directed to pay the compensation in respect of the respondents/claimants herein proportionately as per the aforesaid

verdict of the Honourable Apex Court and if there is any difficulty, then it is open for either side to approach this Court by initiating appropriate

proceedings.