

(2008) 12 MAD CK 0260

In the Madras High Court

Case No : C.M.A. No. 3892 of 2008 and M.P. No. 1 of 2008

National Insurance Company Ltd.

APPELLANT

Vs

Murugan and Muralikrishna

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Citation : (2008) 12 MAD CK 0260

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : C. Kulandaivelu, K. Padmanabhan, for the Appellant;

Judgement

R. Sudhakar, J.—The Insurance Company is on appeal challenging the award 23.4.2008 made in MCOP. No. 245 of 2007 on the file of Motor Accident Claims Tribunal (Sub Court) Sankari.

2. It is a case of injury. The accident in this case happened on 13.4.2007. The injured claimant Murugan aged 34 years, Porter by occupation travelling on a two wheeler was hit by a lorry and in that accident he suffered grievous injuries. He was initially treated at Salem Government Hospital and thereafter he was taken to Natham Hospital, Salem and was treated as inpatient for a period of one month. In that accident, according to the claim petition, he suffered following injuries.

(i) Grievous injury to the left leg, thigh, hip, spinal chord resulting in fracture in many places.

(ii) Lacerated wound in the left hip and thigh

(iii) Abrasion in left supra occipital area

According to the injured claimant, he was earning a sum of Rs. 6,000/- as Porter every month. He claimed a sum of Rs. 7 lakhs as compensation.

3. In support of the claim, the following persons are examined as witnesses. The

claimant was examined as PW1 Doctor was examined as PW2, Exs. A1 to A13 were marked. Ex.A-1 is the photocopy of F.I.R., Ex.A-2 is the Accident Register, Ex.A-3 is the copy of Wound Certificate, Ex.A.4 is the copy of Insurance for the vehicle bearing Registration No. TN-27-E-0779, Ex.A5 is the copy of Motor Vehicle Inspector's report, Ex.A6 is the copy of charge sheet, Ex.A7 is the copy of Rough Sketch, EX.A8 series are the medical bills for over one lakh, EX.A9 is the the discharge summary, EX.A10 is the Scan report, EX.A11 is the Disability Certificate, Ex.A12 is the X ray, EX.A13 is the receipt for X-ray taken.

4. The finding of the Tribunal with regard to negligence on the part of the driver of the lorry who is responsible for the accident and injury and consequential liability fixed on the appellant Insurance Corporation to compensate the claimants is not in dispute and the same is confirmed.

5. The only contention raised by the learned Counsel for the appellant is on the quantum of compensation.

6. The nature of injuries suffered by the injured claimant has been discussed by the Tribunal in paragraph 9 of the award in answer to point No. 2. As recorded by the Tribunal, the injured claimant has suffered fracture of several bones in the following areas, viz., left thigh, left hip region, spinal column. He was treated at Government Hospital, Salem and given first aid. Thereafter, he was taken to Natham Hospital. A 34 years old injured claimant was in the hospital for more than one month. Four surgical procedures were done to the thigh area and to the hip region. Plates and screws were fixed. Consequent to the injury, he also suffered urinary problem. He stated that in spite of medical treatment, he is unable to get back to his normal life. He cannot attend to the call of nature without the support of another person. Because of the injury to his spinal region, he cannot work and earn as before. The doctor P.W.2 stated that the injuries are serious in nature and the bones of the hip region is mal united after the fracture. There is also inflammation in the bone area. Consequent to the injury, the claimant finds difficult to flex the legs and therefore, disability is assessed at 40% by the doctor P.W.2 under Ex.A11. The Tribunal, however, reduced the disability to 34%. The Tribunal taking note of the aforesaid injuries, the period of treatment given, the disability assessed, the age and occupation of the injured claimant, adopted multiplier method. The Tribunal fixed the income of the injured claimant at Rs. 3,000/- per month and by taking multiplier of 17, for the disability assessed at 34% granted compensation in a sum of Rs. 2,08,080/- (Rs. 3,000 x 12 x 17 x 34% = Rs. 2,08,080) towards loss of earning capacity due to disability. In addition to that, the Tribunal granted compensation on various other heads including the compensation for medical expenses met. In all the Tribunal granted the following amounts as compensation:

The Tribunal granted compensation for pecuniary loss as follows:

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Amount	granted	by	the	Tribunal	No.

-----	1	Loss of earning power (Rs. 3000 x 12 x 17 x 34/100	Rs. 2,08,080/-	2	Transport Charges	Rs. 3,000/-	3	Extra Nourishment	Rs. 6,000/-	4	Medical Expenses	Rs. 1,26,153/-	5	Pain and Suffering	Rs. 15,000/-	6	Attender charges	Rs. 10,000/-	7	Loss of income during treatment	Rs. 18,000/-	-----	Total	Rs. 3,86,233/-	-----
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The Tribunal awarded the above compensation with 7.5% interest.

7. The only contention on the part of the learned Counsel for the appellant is that the Tribunal is not justified in adopting the multiplier of 17 in this case. If this Court feels that the Tribunal was justified in adopting the multiplier method, he states that higher multiplier as in the case of death should not have been applied. He referred to the Division Bench Judgment of this Court in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, .

8. The Division Bench of this Court in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, has laid the parameters as to when multiplier method can be followed. Paragraph 11 of the decision reads thus:

11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the "multiplier method" as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

In this case, the injured claimant is a porter by occupation. He was 34 years old at the time of accident. It is stated that the injured claimant has a large family to take care of and the nature of injuries has been extracted above has crippled his life, inasmuch as he cannot work and earn as before as a porter. If at all, he can make a living for his own sustenance only. The income as before is lost and the

family is in penury. The claimant has also pleaded that he is unable to meet the expenditure for medical treatment. Sensing this difficulty, this Court has, at the request of the counsel for either side, taken up the matter for final disposal so as to alleviate the grievance of the injured claimant at the earliest. Keeping the principles laid down by the Division Bench of this Court in Veluchamy's case and taking note of the fact that there will be a lumpsum payment consequent to the award and also keeping in mind that the injured claimant can take up other forums of livelihood for sustaining himself, the multiplier as in the case of death need not be adopted in the present case. However, considering the grievous nature of injury suffered, the age and occupation of the injured claimant, the multiplier in the present case will be 14 as against 17 adopted by the Tribunal.

9. Based on the above parameters the pecuniary loss for the disability assessed at 34% to the claimant will be Rs. 1,71,360/- (Rs. 3,000 x 12 x 14 x 34% = Rs. 1,71,360). The amount granted for medical bills is not disputed. So far as pain and suffering, extra nourishment, attender charges, loss of income during the period of treatment and transport expenses, suitable compensation has to be granted. Hence, the total award of the Tribunal stands modified as follows:

Amount granted	Amount granted	No. by the Tribunal	by this Court	SI. Head

				1 Loss of earning power Rs. 2,08,080/-
				- 1(a) Pecuniary loss for the disability at 34% - Rs. 1,71,360/-
				2 Mental agony and pain and suffering Rs. 15,000/-
				Rs. 20,000/-
				3 Extra Nourishment Rs. 6,000/-
				Rs. 6,000/-
				4 Transport expenses Rs. 3,000/-
				Rs. 5,000/-
				5 Attender charges Rs. 10,000/-
				Rs. 5,000/-
				6 Medical bills as per EXs.A8 and A13 Rs. 1,26,153/-
				Rs. 1,26,153/-
				7 Loss of income during the period of treatment Rs. 18,000/-
				Rs. 18,000/-

				Total
Rs.	3,86,233/-	Rs.	3,51,513/-	

10. The award stands reduced to Rs. 3,51,513/- from Rs. 3,86,233/-. The Interest at 7.5% stands confirmed as the accident happened in 2007 and award passed in the year 2008.

11. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:

(i) The compensation awarded by the Tribunal is reduced to Rs. 3,51,513/- from Rs. 3,86,233/-.

(ii) The interest awarded at 7.5% is confirmed.

(iii) The appellant seeks for four weeks' time to deposit the award amount and the same is allowed. On such deposit, the claimant is permitted to withdraw the amount, as ordered by this Court the Tribunal. If the appellant already deposited the amount in excess, the same shall be refunded to the appellant.

(iv) There will be no order as to cost.

Consequently, connected miscellaneous petition is closed.