
(2010) 01 MAD CK 0152
In the Madras High Court
Case No : C.M.A. No. 1989 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

K. Suresh and another

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2011) ACJ 2650

Hon'ble Judges : R. Banumathi, J; M.M. Sundresh, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

R. Banumathi, J.—Being aggrieved by the award of compensation of Rs. 25,00,000 for the injuries sustained by respondent No. 1-claimant, appellant insurance company has filed this appeal.

2. Brief facts are that on 11.3.2002 at about 4 p.m., respondent No. 1-claimant was riding the cycle from east to west in Choolaimedu subway on the southern side upgradient on the extreme southern side of the road. When the respondent No. 1 claimant was proceeding next to railway track, an autorickshaw bearing registration No. TN 09-C 7755 came from behind driven in rash and negligent manner, went to the extreme southern side of the road and hit and knocked down respondent No. 1-claimant. Due to the accident, claimant sustained triple fracture in spinal cord, fracture in left leg neck of femur, fracture in the right hand shoulder, deep cut and degloving injury over right leg thigh bone and multiple injuries all over the body. After the accident, claimant was admitted in M.R. Hospital, Chennai-29. Alleging that the accident was due to rash and negligent driving by the autorickshaw driver, claimant filed petition u/s 166 of Motor Vehicles Act claiming compensation of Rs. 89,00,000.

3. Claimant examined himself as PW 1 and Dr. Thiagarajan who issued Exh. P4,

disability certificate, was examined as PW 2. One Sivaraman was examined as PW 3. Exhs. P1 to P9 were marked. Before the Tribunal, claimant was referred to Medical Board. Dr. Govardhan who examined the claimant was examined as RW 1. On the side of respondents Exh. R1 was marked.

4. Upon consideration of oral and documentary evidence, the Tribunal held that accident was proved to be due to rash and negligent driving of autorickshaw driver. Based on discharge summary, Exh. P1, and disability certificate, Exh. P4, and oral evidence of PWs 1 and 2, Tribunal held that claimant suffered 75 per cent permanent disability and awarded compensation of Rs. 25,00,000 under various heads.

5. It is not necessary for us to narrate entire facts in detail such as, firstly, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of claimant and consequently, none of the findings are under challenge, only quantum is under dispute.

6. Insofar as compensation under various heads is concerned, the quantum of compensation awarded by the Tribunal is exorbitant. The claimant/PW 1 has been assisting in catering. In his evidence, PW 1 has stated that he would also undertake independent catering work and he was earning Rs. 30,000 per month. Absolutely no evidence was adduced by the claimant to prove that he was undertaking individual catering and that he was earning Rs. 30,000 per month. Tribunal proceeded under the premise that in cities like Chennai there are many functions and celebrations and, therefore, any caterer would have a good business and Tribunal proceeded under presumptive footing that claimant also would have had good business. It may be that in cities like Chennai several such functions are organized. But the point is whether claimant was having any business and was earning Rs. 30,000 per month. In the absence of any evidence, Tribunal was not right in fixing the huge amount of compensation. Tribunal has not even referred to the finding as to what was the income of the claimant. Date of birth of claimant is 29.5.1953 and he was aged 49 years at the time of accident. Tribunal did not choose to follow any rationale for awarding huge compensation.

7. In the accident, claimant sustained triple fracture in spinal cord and developed numbness in hip. Claimant also sustained fracture in left leg neck of femur, multiple fracture in right hand shoulder, deep cut and degloving injury over right leg thigh bone and multiple injuries all over the body. Fracture D11 with dislocation at D12. After the accident, claimant was admitted in M.R. Hospital where he was given treatment. After treatment dislocation was reduced; pedicle screws were passed into pedicles of D11 vertebra; pedicle screws were passed into pedicles of L1 vertebra. Two screws on left thigh were connected using a rod each and inter-connected using inter connection. Decompression of D12 vertebra was done. Bone chips were placed in the inter-transverse area on both sides. Claimant had taken treatment in M.R. Hospital for 28 days. In his evidence, PW 1

has stated that he continues to have numbness below knee joint. PW 1 has further stated that after the accident he is not in a position to walk, unable to stand or sit comfortably and that he is taking his physiotherapy. In the petition, claimant has not stated about the difficulties in walking and carrying on normal activities. Claimant has also not chosen to examine any of the doctors from M.R. Hospital who treated him. Nor has he produced any evidence to substantiate his plea that he is continuing the treatment.

8. PW 4, Dr. Thiagarajan, examined the claimant and PW 4 opined that claimant had painful swelling over D11, D12 regions; power of muscles-right knee and left knee is 3/5 only; numbness over left lower abdomen; marital contacts difficult; right shoulder plate in situ. In Exh. P4, disability certificate, PW 4 has stated that claimant has difficulty to work with right hand with gripping power and fixed the disability at 75 per cent.

9. Since serious objections were raised as to the percentage of disability, claimant was referred to Medical Board where he was examined by a team of doctors. In his evidence, RW 1, Dr. Govardhan, Ortho Surgeon in Government General Hospital, Chennai has stated that on examination of claimant, it was found that he had compression fracture which has healed with persistence of pain in the back with root involvement causing grade IV power in left lower limb and the Medical Board has fixed the permanent disability at 40 per cent.

10. Even though the claimant has not specifically stated about his continuing treatment and taking physiotherapy exercise, Claims Tribunal has taken permanent disability at 75 per cent as fixed by PW 4, Dr. Thiagarajan. Taking permanent disability at 75 per cent, Tribunal has awarded exorbitant compensation of Rs. 25,00,000 under various heads as follows:

Sl. No

Heads

Amount

1.

Transport charges

Rs. 5,000

2.

Extra nourishment

Rs. 5,000

3.

Damages to clothes

4.

Medical expenses

Rs. 2,00,000

5.

Additional medical expenses

Rs. 2,00,000

6.

Pain and suffering suffered by family members of claimant

Rs. 3,70,000

7.

Mental agony

Rs. 3,00,000

8.

Addl. transport charges

Rs. 20,000

9.

Inability of the petitioner to participate in public functions

Rs. 2,00,000

10.

Loss of marital life

Rs. 2,00,000

11.

Pain and suffering

Rs. 2,00,000

12.

Permanent disability

Rs. 3,00,000

13.

Loss of earning power

r Rs. 5,00,000

Total

Rs. 25,00,000

11. What is payable is just compensation. Tribunal has to determine the claim bearing in mind the statutory mandate that what is payable is just compensation and it cannot be a bonanza. In *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, the Supreme Court observed that the Tribunal constituted under the Act as provided in section 168 is required to make an award determining the amount of compensation which according to it appears to be "just". It has to be borne in mind that the compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages towards mental and physical impairment, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just", a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness.

12. Expressing concern over the lack of uniformity and consistency in awarding compensation in personal injury cases and referring to various decisions, in *Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others*, Full Bench of this court in para 19 has laid down the following guidelines as to how awards of compensation are to be itemised:

(19) In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while awarding damages, should itemise the award under each of the heads, namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary losses the Tribunal shall consider (a) pain and suffering, (b) loss of amenity, (c) loss of

expectation of life, hardship, mental stress, etc., (d) loss of prospect of marriage and under the head pecuniary losses, the Tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earnings, if any, from the date of accident till the date of trial. When the loss of earning capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised.

13. In his evidence, PW 1 has stated that after the accident, he was admitted in M.R. Hospital, Chennai where he had taken treatment as inpatient for 28 days. Insofar as serial No. 4 - medical expenses, claimant has filed Exh. P2 (series) medical bills. We confirm the amount of Rs. 2,00,000 awarded by the Tribunal towards medical expenses incurred by the claimant. Insofar as serial Nos. 1 and 2, Tribunal awarded Rs. 5,000 towards transport charges and Rs. 5,000 towards extra nourishment being reasonable, we also confirm the amounts awarded towards transport charges and extra nourishment [serial Nos. 1 and 2].

14. Insofar as serial No. 5 - additional medical expenses, Tribunal has awarded compensation of Rs. 2,00,000. Absolutely, there is no evidence to show that claimant is continuing his treatment and also taking physiotherapy. Award of compensation of Rs. 2,00,000 towards additional medical expenses is also without any basis. Having regard to the nature of injuries for future medical expenses and other treatment, Rs. 50,000 is awarded as compensation.

15. Insofar as serial Nos. 7 and 11 -mental agony and pain and suffering, the Tribunal has awarded Rs. 3,00,000 plus Rs. 2,00,000 respectively to the claimant. Having regard to the nature of injuries and duration of treatment taken by claimant, compensation of Rs. 2,50,000 is awarded for pain and suffering.

16. Under the head pain and suffering to the family members [serial No. 6], the Tribunal has awarded exorbitant compensation of Rs. 3,70,000. In personal injury cases, awarding compensation towards pain and suffering suffered by the family members cannot be allowed and the same is disallowed.

17. The Claims Tribunal has awarded compensation of Rs. 2,00,000 to the claimant towards his inability to participate in any public function and another sum of Rs. 2,00,000 was awarded to compensate the deprivation in matrimonial life [serial Nos. 9 and 10]. Absolutely, there is no evidence, much less medical evidence, to substantiate claimant's plea that he is unable to lead normal marital life. Compensation of Rs. 2,00,000 awarded towards inability to participate in the public functions and Rs. 2,00,000 awarded for loss in marital life are disallowed.

18. Insofar as permanent disability is concerned [serial No. 12], Tribunal has awarded Rs. 3,00,000 and again for loss of earning power [serial No. 13], Tribunal has awarded Rs. 5,00,000. As held by the Full Bench of this court, there cannot be two items awarding compensation, one for permanent disability and another for loss of earning power.

19. In personal injury cases, court must first form an opinion from the evidence, nature and extent of the loss. In estimating the financial or pecuniary loss, court must first form an opinion from the evidence and probabilities in the case, of the nature and extent of the loss. While estimating the loss of earnings, the court must first decide what the claimant would have earned if the accident had not happened, allowing for any future increase or decrease in the rate of earnings. It is also necessary for the court to decide how long the loss will continue, whether there is incapacity for life or for a shorter period. The court should also make an estimate of the amount, if any, which the claimant could still earn in future, notwithstanding disabilities sustained by him in the accident.

20. In *United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another*, the Division Bench of this court, in para 11, has laid down the principles governing assessment of damages in personal injury cases:

(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 the 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 till the rest of his life, in that event loss of income or earning may be ascertained by applying the "multiplier method" as provided in Second Schedule to the Motor Vehicles Act, 1988.

(2) Even if 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 personal injury cases for ascertaining compensation for permanent disability and loss of earning power, court could adopt multiplier method.

21. In *I (2006) ACC 123 (SC)* the Supreme Court has held that in the case of fracture of right zygoma with injuries at spine and right knee, after noting the same as permanent disability and after allowing loss of earning capacity at Rs. 1,500 per month, adopted multiplier of 10.

22. In *P. Kalavathi Vs. G. Murali and Another*, , the Division Bench of this court held that for permanent disability to the extent of 45 per cent to the injured-claimant who being a tailor, adopted multiplier of 10 and awarded compensation accordingly.

23. As pointed out earlier, there is absolutely no evidence to show income of the claimant. Even to show that his monthly income would be Rs. 9,000 to Rs. 12,000, claimant has not produced any documents. Claimant has also not examined any of the caterers under whom he has been working. Nor has he adduced any evidence to show how he has been prevented from earning and is unable to carry on his normal avocation. Considering the evidence of PW 1, his monthly income is fixed at Rs. 7,500. Based on the evidence of RW 1, permanent disability is fixed at 40 per cent. Insofar as choice of multiplier, at the time of accident, claimant was aged 49 years and, therefore, multiplier 13 is adopted. Compensation for permanent disability and loss of earning power is fixed at Rs. 5,61,600 [Rs. 7,500 x 40/100 x 12 x 13 = Rs. 4,68,000].

24. In modification, the compensation awarded by the Claims Tribunal is reduced to Rs. 9,78,000 as under:

Transport charges

Rs. 5,000

Extra nourishment

Rs. 5,000

Medical expenses Additional medical expenses

Rs. 2,00,000 Rs. 50,000

Pain and suffering

Rs. 2,50,000

Permanent disability and loss of earning power

Rs. 4,68,000

Total

Rs. 9,78,000

25. Insofar as interest, Tribunal awarded interest at 9 per cent per annum from the date of filing of claim petition and the rate of interest awarded by Tribunal is on higher side. As held by the Supreme Court in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, interest is reduced to 7.5 per cent from the date of filing of petition.

26. In the result, order of Motor Accidents Claims Tribunal [II Small Causes Court], Chennai in M.C.O.P. No. 4198 of 2002 dated 16.2.2005 is modified and the civil miscellaneous petition is partly allowed. No costs in this C.M.A.

Compensation awarded by the Tribunal is reduced to Rs. 9,78,000 which is payable with interest at the rate of 7.5 per cent per annum from the date of filing of claim petition. It is stated that appellant insurance company has deposited Rs.

10,00,000, out of which the claimant had already been permitted to withdraw Rs. 7,50,000. The claimant is permitted to withdraw the balance amount of Rs. 2,50,000 along with accrued interest immediately on receipt of copy of this judgment.

Appellant insurance company is directed to deposit the balance if any within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the said balance amount.