
(2010) 04 MAD CK 0055

In the Madras High Court

Case No : C.M.A. (MD) No. 238 of 2001 and M.P. (MD) No. 2 of 2010

P. Parthasarathi

APPELLANT

Vs

Subramanian, Govindarajan and The Oriental Insurance
Company Limited

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0055

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Hemakarthiskeyan, for the Appellant; K. Bhaskaran, for R.3, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—This Civil Miscellaneous Appeal has been filed by the appellant against the judgment and decree made in

M.C.O.P. No. 463 of 1998, dated 31.07.2000, on the file of the Motor Accident Claims Tribunal cum the Principal District Judge, Dindigul.

2. The appellant travelled in a bus owned by the first respondent. The bus was insured with the third respondent. While he was travelling in the bus,

the lorry owned by the second respondent hit the bus and he lost his right hand entirely and his right hand was amputated at the shoulder level. He

suffered 90% permanent partial disability. The lorry was also insured with the third respondent. He filed M.C.O.P. No. 463 of 1998 claiming Rs.

10,00,000/- as compensation before the Motor Accident Claims Tribunal, Principal District Judge, Dindigul. The Tribunal passed an award dated

31.07.09, holding that both the drivers of the lorry and the bus equally contributed to the accident and fastened the liability on each of them at the

ratio of 50% and 50%. However that makes no difference since the third respondent is the Insurance Company for both the vehicles. The Tribunal

awarded Rs. 2,84,200/- as compensation with 12% interest and costs. The claimant seeks enhancement of compensation from Rs. 2,84,200 to

Rs. 10,00,000/-.

3. Heard Mr. Hemakarhikeyan, learned Counsel for the appellant and Mr. K. Bhaskaran, learned Counsel for the third respondent.

4. The Tribunal granted compensation under the following heads:

(i) for loss of income Rs. 2,59,200

(ii) for medical expenses Rs. 15,000

(iii) for loss of amenities Rs. 10,000

Total Rs. 2,84,200

5. The learned Counsel for the appellant makes the following submissions:

(i) The Tribunal committed error in fixing Rs. 2,000/- as monthly earnings of the appellant and thereafter made 1/3rd deduction towards personal expenses.

(ii) The Tribunal failed to award any amount towards (a) pain and sufferings, (b) loss of expectation of life, hardship, mental stress etc., and (c) for loss of prospects of marriage.

(iii) The Tribunal awarded only Rs. 10,000/- towards loss of amenities, which is on lower side.

(iv) The Tribunal awarded only Rs. 15,000/-, when the appellant produced medical bills for Rs. 39,755/-.

(v) The Tribunal failed to award any amount towards fixation of artificial hand and for future medical expenses.

(vi) The Tribunal failed to award any amount towards transportation charges and for extra nourishment.

6. On the other hand, the learned Counsel for the third respondent submits that there is no infirmity in the award and the Tribunal correctly fixed

Rs. 2,000/- as monthly wages. In any event, the learned Counsel fairly submits that 1/3rd deduction could not be made in the case of injuries. The

learned Counsel relies on the following decisions and submits that there is no necessity to interfere in the award.

- (i) K. Narayanasamy v. Mukunda and Ors. reported in 1999 ACJ 1599 (Delhi)
- (ii) New India Assurance Co. Ltd. Vs. K. Tamil Selvi and Others,
- (iii) Nanda Ram Dakot Vs. Rustam and Others,
- (iv) Smt. Sanjeevini Ananda Awate and Others Vs. The Managing Director, Hiranyakeshi Sahakara Sakkare Karkhane, Nippani and Another,
- (v) Farook Vs. Anil and Others,
- (vi) The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another,
- (vii) Shankarappa Kubbanna Kattimani v. Karnataka State Road Transport Corporation reported in 2007 ACJ 2279 (SC).
- (viii) M. Bhagavathy Vs. Thiruvalluvar Transport Corporation Limited,
- (ix) Pramod Pachori v. Suresh Chandra reported in 2007 ACJ 564 (MP)

7. I have considered the submissions made on either side and perused the records.

Issue No. 1:

8. The first issue is whether the Tribunal was correct in fixing Rs. 2,000/- as monthly earnings and whether the Tribunal was correct in deducting 1/3rd amount towards personal expenses.

9. The learned Counsel for the appellant relies on the judgment of the Honourable Apex Court in National Insurance Company Limited v.

Khimlibai and Ors. reported in 2009(2) TNMAC 256 (SC) and the judgment of this Court in Tamil Nadu State Transport Corporation Limited v.

S. Srinivasan and Ors. reported in 2008 (1) TNMAC 151, and submits that atleast Rs. 3,000/- could be fixed as monthly salary. According to

him, in the judgment of the Honourable Supreme Court, the accident took place in the year 1997, wherein Rs. 3,000/- was taken as monthly

earnings of a Carpenter. In the another case, the accident took place in the year 1985 and the concerned person was a driver and in that case Rs.

3,500/- was taken as monthly earnings. However, the learned Counsel for the appellant submits that he will be satisfied if Rs. 2,000/- is taken as

monthly salary without any deduction towards personal expenses. In fact, the learned Counsel for the third respondent fairly submits that in the

case of injuries, there is no need to make any deduction towards personal

expenses for computing compensation. Hence, I fix the monthly salary at Rs. 2,000/- for the purpose of compensation without any deductions.

10. There is no dispute over the age. The appellant was aged about 27 years at the time of the accident. There is no dispute in choosing the multiplier "18". Hence, the compensation towards loss of income works out to Rs. $2,000 \times 12 \times 18 \times 90/100 = \text{Rs. } 3,88,800/-$.

Issue No. 2:

11. Whether the Tribunal failed to award any amount towards (a) pain and sufferings, (b) loss of expectation of life, hardship, mental stress etc., and (c) for loss of prospects of marriage.

12. The appellant lost his right hand entirely and there was amputation at the shoulder level. In fact, the Tribunal noted in paragraph 13 of the award that right hand assumes greater importance in the human body. Further, the appellant was aged about 27 years at the time of the accident.

He was at the prime stage of youth and his dreams were shattered due to the losing of right hand. In this connection, paragraph 19 of the Full

Bench judgment of this Court in Cholan Roadways Corporation Limited v. Ahmed thambi and 6 Ors. reported in 2006 (3) L.W. 1025 is extracted herein:

9. In Halsbury's Laws of England, Fourth Edition, Para 879 states that a person injured by another's wrong is entitled to general damages for

non-pecuniary loss, such as his pain and suffering and loss of amenity, and to damages for pecuniary loss, both past and future, including loss of

earnings, medical expenses, cost of nursing care and for loss of earning capacity where he is handicapped in the labour market. Broadly the heads

of damages can be divided as follows:

A. Pecuniary loss:

(1) expenses caused by the injuries;

(2) loss of earning or profits:

(a) from the date of accident till the date of trial

(b) prospective loss

(c) incidental expenses.

B. Non-pecuniary loss:

- (1) pain and sufferings
- (2) loss of amenities of life
- (3) loss of expectation of life

The normal practice is to itemise the award broadly while keeping an eye on the whole, to be just and fair. Further the amount awarded must be

liberal and not meager since the law values life and limb in a free society on generous scales. However, all these elements have to be viewed with objective standards.

13. In the light of the dictum laid down by the Full Bench of this Court, the appellant is entitled to compensation towards (a) pain and sufferings, (b) loss of expectation of life, hardship, mental stress etc., and (c) for loss of prospect of marriage.

14. The learned Counsel for the appellant submits that the appellant has to be awarded Rs. 1,00,000/- under each head.

15. The learned Counsel for the third respondent relies on the above said judgments in paragraph 6 and opposes against granting compensation under the heads as sought for by the appellant.

16. In my view, in the judgments relied on by the learned Counsel for the third respondent, there is no law laid down relating to the compensation

for (a) pain and sufferings, (b) loss of expectation of life, hardship, mental stress etc., and (c) loss of prospects of marriage. In fact, in the judgment

of the Apex Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , relied on by the learned Counsel for the third

respondent supports the case of the appellant. The appellant is entitled to compensation towards (a) pain and sufferings, (b) loss of expectation of

life, hardship, mental stress etc., and (c) loss of prospects of marriage, in the light of the decision of Full Bench of this Court read with the

Honourable Apex Court relied on by the learned Counsel for the third respondent. However, I am not inclined to grant Rs. 1,00,000/- under each

head as sought for by the appellant. I am inclined to grant Rs. 75,000/- under each head.

Issue No. 3:

17. Whether the Tribunal was correct in awarding only Rs. 10,000/- towards loss of amenities, which is on lower side.

18. Taking into account that the appellant lost his right hand and that he was aged 27 years at the time of the accident, the Tribunal awarded Rs.

10,000/- towards loss of amenities, which is on the lower side. It is stated that he is practising as an Advocate before this Court. I am inclined to

grant Rs. 75,000/-, while the appellant sought Rs. 1,00,000/- under this head.

Issue No. 4:

19. Whether the Tribunal was correct in awarding only Rs. 15,000/-, when the appellant produced medical bills for Rs. 39,755/-.

20. The claim of the appellant is to reimburse him the entire medical expenses. In fact, the learned Counsel for the third respondent fairly submits

that the third respondent has no objection to grant Rs. 39,755/- as claimed by the appellant based on the medical bills. Hence, the same is

awarded.

Issue No. 5:

21. Whether the Tribunal failed to award any amount towards fixation of artificial hand and for future medical expenses.

22. The learned Counsel for the appellant states that he produced Ex.A.1 relating to the estimation of fixation of artificial limb. According to

Ex.A.1, the estimation is Rs. 3,80,000/-. However, the learned Counsel for the third respondent submits that the third respondent has no objection

to award Rs. 50,000/- towards fixation of artificial limb. The learned Counsel for the appellant has no objection to restrict his claim to Rs.

50,000/- under this head. Hence, Rs. 50,000/- is awarded towards fixation of artificial hand.

Issue No. 6:

23. Whether the Tribunal failed to award any amount towards transportation charges and for extra nourishment.

24. As there is no amount awarded by the Tribunal towards transportation charges and for extra nourishment, I am inclined to grant Rs. 25,000/-

for both heads.

25. Therefore, the following compensation is fixed by this Court.

(i) for loss of income Rs. 3,88,800

(ii) pain and sufferings Rs. 1,00,000

(iii) loss of expectation

of life, hardship,
mental stress etc., Rs. 1,00,000
(iv) for loss of prospects Rs. 1,00,000
of marriage
(v) for loss of amenities
and enjoyment in life Rs. 75,000
(vi) for medical expenses Rs. 39,755
(vii)for fixation of
artificial limb Rs. 50,000
(viii)for transportation
charges and for
extra nourishment Rs. 25,000

Total Rs. 8,78,555

26. The third respondent Insurance Company is directed to deposit Rs. 5,94,355/- with interest at 7.5% from the date of application, within a period of six weeks from the date of receipt of a copy of this order. This Civil Miscellaneous Petition is allowed in the above terms. consequently, the connected miscellaneous petition is also closed. No costs.