

(2010) 08 MAD CK 0265
In the Madras High Court
Case No : C.M.A. No. 773 of 2007

R. Kesavan

APPELLANT

Vs

C. Wilson and National Insurance Company Limited

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 163(A)(V)

Citation : (2010) 08 MAD CK 0265

Hon'ble Judges : R. Banumathi, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : Saleem Fathima, for M. Swamikkannu, for the Appellant; S. Arunkumar, for R.2, for the Respondent

Judgement

R. Banumathi, J.—Being dissatisfied with the quantum of compensation of Rs. 10,49,700/- awarded by the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai in M.C.O.P. No. 3635 of 2002 for the injuries sustained by the Claimant in a road traffic accident on 21.3.2002, the Appellant/Claimant has come forward with this appeal.

2. The brief facts of the case are as follows:

On 21.3.2002, at about 6.15 hours, when the Appellant was walking on the northern side of Periya Salai, after getting down from the bus - TN 021 N 0059 at Vanagaram, Kumar Theatre bus stop, a water tanker lorry bearing Regn. No. TN 01 1 0927 came from west to east at a high speed in a rash and negligent manner and dashed against the bus, due to which the bus got damaged and ran over the legs of the Appellant leading to the amputation of both the legs above knee and the death of other person. Appellant sustained grievous injury of amputation of both the legs above knee and sustained multiple internal and external injuries all over the body. A case was registered in Crime No. 223 of 2002 on the file of Maduravoyal Police. The Appellant was aged 46 years and was employed as a Clerk under M/s. Ramakrishna Brick Works, Aminjikarai, Chennai 29 and was earning a sum of RS.4,500/- per month with other allowances. The

1st Respondent is the owner of the lorry and 2nd Respondent is the Insurance Company. Alleging that the accident was due to rash and negligent driving of the lorry driver, claimant filed M.C.O.P. No. 3652 of 2002 claiming compensation of Rs. 67 lakhs.

3. Denying the manner of accident and negligence of the lorry driver, Insurance Company filed counter contending that the compensation amount claimed by the Claimant is excessive and on the higher side. In the additional counter filed by the Insurance Company, the Insurance Company has also averred that the first respondent has violated the policy conditions by permitting the person without valid driving licence to drive the vehicle.

4. Before the Tribunal, Claimant examined himself as P.W.1. Dr. Veerakumar was examined as P.W.2 and P.W.3 Sub-Inspector of Police and P.W.4 Venkatesan, a representative of Radhakrishnan Bricks were examined. Exs.P.1 to P7 were marked on the side of Claimant. No oral or documentary evidence was adduced on the side of the Respondents. Based upon the evidence of P.Ws.1 and 2 and Ex.P.3 - Disability certificate, the Tribunal has taken the permanent disability of the Claimant at 90 percent. Based upon the evidence of P.W.4 and Ex.P.7 - salary certificate the Tribunal has taken the monthly income of the Claimant at Rs. 5,500/- and calculated the compensation of Rs. 7,72,200/- for permanent disability and loss of earning power. The Tribunal has awarded total compensation of Rs. 10,49,700/-.

5. The learned Counsel for the Appellant/Claimant contended that the Tribunal erred in awarding lesser sum than claimed for transport to Hospital and extra-nourishment. It was further submitted that due to amputation of both legs near hip the claimant is totally incapacitated and has to depend on others for his day to day routine and while so the Tribunal has erred in not awarding any compensation for future attender charges and the quantum of compensation awarded for pain and suffering is very much meagre. Main contention of the Appellant is that as against the claim of Rs. 67 lakhs, the compensation of Rs. 10,49,700/- awarded by the Tribunal is very much less and has to be enhanced.

6. We have heard Mr. Arunkumar, the learned Counsel for Insurance Company. The learned Counsel submitted that quantum of compensation awarded is very much reasonable and warrants no interference.

7. In the accident, the Claimant had sustained crush injuries on both the legs. On the date of accident itself, his right leg was amputated. After two days the Appellant's left leg was also amputated. The amputation was upto 1/3rd of thigh. Ex.P.2 is the photograph showing the amputated legs of the Claimant. After the accident, the Claimant was taken to Kilpauk Medical College Hospital, where he had first aid treatment and thereafter he was referred to General Hospital, Chennai, where he had remained as in-patient for three months. Ex.P.1 is the discharge summary.

8. Even after discharge, the Claimant continued his treatment as out-patient for

six months. In his evidence, the Claimant has stated that every time when he visited the Hospital he has to attend only with the help of others and it was not possible for him to travel by the City Corporation buses and every time he has to make his own arrangement for transport and has to be manually lifted from place to place. To prove Claimant's permanent disability, P.W.2 - Dr. Veerakumar was examined. In his evidence, P.W.2 has stated that amputation upto upper one third of thigh was done in both legs. Since both the legs were amputated the Claimant cannot walk even with the help of support and he has to be manually lifted from place to place by his attenders. After examining the Claimant, P.W.2 has fixed the permanent disability at 170 percent (85×2) and issued Ex.P.3 - Disability Certificate.

9. Even though P.W.2 has assessed the disability at 170 percent, the Tribunal has pointed out that as per Section 163(A)(V), II Schedule, in cases of disability in non-fatal accident injuries resulting in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I of Workmen's Compensation Act. As per Schedule I of the Workmen's Compensation Act, 1923, the amputation of both feet resulting in end bearing stumps" percentage of disability is 90%. With regard to the amputation of both legs, the Tribunal has taken the permanent disability at 90 percent to the whole body. Since the amputation of both legs was upto 1/3rd both thighs, referring to the notification of Social Justice Empowerment Notification dated 1.6.2001, P.W.2 - Dr. Veerakumar has fixed the permanent disability at $85\% \times 2 = 170\%$ and restricted to 100 percent. In our considered view, based on the evidence of P.W.2, the Tribunal ought to have fixed the permanent disability at 100 percent.

10. At the time of accident, the deceased was working as Accountant in Radhakrishnan Brick Works and was getting salary of Rs. 1,000/- per week apart from daily batta of Rs. 50/-. P.W.4 - Venkatesan, who was working as Clerk in Radhakrishna Brick works, has stated that the claimant has been working as a Clerk in their factory for about 18 years and that he was paid Rs. 1,000/- per week and Rs. 50/- as batta every day. P.W.4 has further stated that after the accident, the Claimant is not attending to the work and in his evidence the Claimant has also stated that after the accident, because of amputation of both the legs he is not in a position to continue his employment. The Tribunal has observed that P.W.4 has not produced any record to prove that the Claimant was paid a sum of Rs. 4,500/- towards salary. However, having regard to the calculation of the Claimant and other facts and circumstances of the case, the Tribunal has taken the monthly income at Rs. 5,500/- per month and the same is maintained.

11. As pointed out earlier, after the accident, the Claimant was admitted in Kilpauk medical College Hospital, where he had taken first aid treatment and thereafter he was referred to Government General Hospital, where he had taken treatment as in-patient for three months. The Claimant has stated that he was

continuing his treatment as out-patient for about six months. During the period of treatment and taking treatment as out-patient, the Claimant would not have been in a position to attend his work, the Tribunal has awarded only Rs. 27,000/- for loss of earnings and the same is enhanced to Rs. 50,000/-. The Tribunal has awarded Rs. 40,000/- for transport to hospital. After amputation of both the legs, as stated by P.Ws.1 and 2, the Claimant has to be manually lifted and transported to the places of treatment and in such view of the matter, the compensation of Rs. 40,000/- awarded to the Claimant for transport to Hospital is enhanced to Rs. 50,000/-. Insofar as the compensation awarded under the heads - "extra nourishment" (Rs.35,000/-), "damages" (Rs.500/-) and "medical expenses" (Rs.15,000/-) are maintained.

12. The Tribunal has awarded Rs. 30,000/- for attender charges. The Claimant had taken treatment for more than six months as in-patient and thereafter continued the treatment as out-patient. Having regard to the duration of treatment and the nature of injuries the attender charges are enhanced to Rs. 50,000/-.

13. The Tribunal has awarded compensation of Rs. 45,000/- for mental agony due to amputation in the upper one third of both legs near hip. The Tribunal has also awarded compensation of Rs. 25,000/- for loss of amenities and the same is enhanced to Rs. 50,000/-. In our considered view, there cannot be award of compensation under the separate heads for loss of mental agony and loss of earning power. Hence, the compensation of Rs. 45,000/- awarded for mental agony due to amputation of both legs near hip is ordered to be deleted. Insofar as the compensation for pain and suffering, the Tribunal has awarded Rs. 60,000/-. The Claimant had sustained crush injuries and during the course of treatment, his both legs were amputated near the hip (upper one third) and due to the amputation of both legs, the pain and suffering of the Claimant continues. Having regard to the injuries and the amputation of upper one third of both legs the compensation of Rs. 60,000/- awarded for pain and suffering is enhanced to Rs. 1,00,000/-.

14. Insofar as the compensation for loss of earning power, the Tribunal has taken the percentage of disability at 90 percent. As discussed earlier, P.W.2 has assessed the permanent disability at 170 percent, which was restricted to 100 percent. The Tribunal ought to have calculated the loss of compensation for loss of earning power by taking percentage of disability at 100 percent instead of 90 percent. By taking the permanent disability at 100 percent, the compensation for loss of earning power is awarded at Rs. 8,58,000/- ($\text{Rs.}5,500 \times 12 \times 13 \times 100 / 100$) by adopting the multiplier 13 considering the age of claimant i.e., 46 at the time of accident. Accordingly, the compensation awarded by the Tribunal is enhanced to Rs. 12,08,500/- and the break up details are as follows:

Loss of earning : Rs. 50,000.00 Transport to Hospital : Rs. 50,000.00 Extra-nourishment : Rs. 35,000.00 Damages : Rs. 500.00 Medical Expenses : Rs. 15,000.00 Attender charges : Rs. 50,000.00 Loss of amenities : Rs. 50,000.00

Pain and suffering : Rs. 1,00,000.00 Loss of earning power : Rs. 8,58,000.00
----- Total Compensation : Rs. 12,08,500.00 -----

The rate of interest at 7.5 percent per annum awarded by the Tribunal is maintained.

15. In the result, the compensation awarded to the Claimant in M.C.O.P. No. 3635 of 2002 on the file of Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai is enhanced to Rs. 12,08,500/- and the Civil Miscellaneous Appeal is partly allowed. The 2nd Respondent - Insurance Company has already deposited the entire compensation amount awarded by the Tribunal along with interest. The 2nd Respondent - Insurance Company is directed to deposit the balance of enhanced compensation amount along with accrued interest at the rate of 7.5 percent per annum within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the Claimant is permitted to withdraw the entire compensation amount payable to him along with accrued interest. Consequently, the connected M.P. No. 1 of 2010 is closed.