

(2010) 08 MAD CK 0344
In the Madras High Court
Case No : C.M.A. No. 1303 of 2007

S. Kamalakannan

APPELLANT

Vs

M. Mani and The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0344

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

Bench : Division Bench

Advocate : N.M. Muthurajan, for the Appellant; N. Vijayaraghavan, for R2, for the Respondent

Judgement

R. Banumathi, J.—Being dissatisfied with the quantum of compensation of Rs. 10,11,470/- awarded in M.A.C.T.O.P. No. 1437 of 2002 for the injuries sustained by the claimant, the claimant has come forward with this appeal seeking for enhancement.

2. The brief facts are that on 12.01.2002 at about 21.30 hours, when the claimant was travelling as a pillion rider in the motorcycle bearing Registration No. TN 21 D 3043 from Kancheepuram to Sunkuvarchatram along Grand West Trunk Road (NH4), near the junction of Keranallur Village Road, the lorry bearing Registration No. MDG 3381 driven by its driver in a rash and negligent manner came from the opposite direction and dashed against the motorcycle in which the claimant was travelling and then against another car. In the accident, the claimant sustained grievous injuries. The claimant was immediately taken to Government Hospital, Sriperumpudur and given first aid. Thereafter, he has taken treatment in Sri Ramachandra Medical College Hospital as inpatient. A criminal case was registered in Crime No. 17 of 2002 on the file of Sunkuvarchatram Police Station. The claimant was aged 30 years at the time of accident. The claimant has been doing Photo framing and Book binding work. Alleging that the accident was due to the rash and negligent driving of the lorry driver, the claimant had filed claim petition, claiming compensation of Rs. 34

lakhs.

3. In the Tribunal, the claimant examined himself as P.W.1. Mother of the claimant-Meenakshi was examined as P.W.2. Dr. N. Saichandran was examined as P.W.3. Exs.P1 to P16 were marked on the side of the claimant. No oral or documentary evidence was adduced on the side of the respondents.

4. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent driving of the lorry driver and the respondents are jointly and severally liable to pay compensation. Based upon the evidence of P.W.3 Dr. N. Saichandran and Ex.P12-disability certificate, the Tribunal has fixed the permanent disability at 70%. The Tribunal has awarded compensation of Rs. 10,11,470/- as under:

Continuing permanent disability ..	Rs. 70,000.00	Pain and suffering ..	Rs. 50,000.00
Extranourishment ..	Rs. 5,000.00	Medical expenses ..	Rs. 5,09,025.00
Medical expenses for the period from 22.05.2002 to 31.05.2002 ..	Rs. 8,860.00	Expenses for purchase of medicines ..	Rs. 3,520.00
Rs. 20,765.00	Expenses for X ray and other tests ..	Rs. 9,300.00	Future medical expenses ..
Rs. 50,000.00	Attendant charges ..	Rs. 50,000.00	Transport expenses ..
Rs. 10,000.00	Loss of income during the period of treatment ..	Rs. 25,000.00	Loss of earning power and mental agony etc., ..
Rs. 2,00,000.00	-----	Total	Rs. 10,11,470.00

5. Challenging the quantum of compensation, learned Counsel for the appellant submitted that even after treatment, the right knee of the claimant is totally stiffened and that he cannot bend his knee and right leg is shortened by 8 c.m. and while so, the Tribunal erred in awarding only Rs. 70,000/- for continuing permanent disability and Rs. 2,00,000/- as compensation for the loss of earning power. It was further submitted that from the photo framing and book binding work, the claimant was earning Rs. 6,000/- per month and the compensation of Rs. 2 lakhs awarded for loss of earning power and Rs. 70,000/- for permanent disability is very much less. It was further submitted that the claimant has to take future medical treatment and while so, the Tribunal has awarded very less amount of Rs. 50,000/-. Learned Counsel has also submitted that the Tribunal has not awarded any compensation for future transport expenses, mental agony due to the mal-functioning of the right leg and expenses for the attendants in future.

6. We have also heard Mr. N. Vijayaraghavan, learned Counsel for the second respondent-insurance company. Learned Counsel has submitted that the quantum of compensation awarded by the Tribunal is fair and reasonable and the same has to be maintained. Insofar as the future medical expenses, learned Counsel for the second respondent submitted that there is no evidence forthcoming that the claimant has to incur expenses to the tune of Rs. 2 lakhs for future medical expenses.

7. In the accident, the claimant suffered closed communitated supracondylar

fracture. After the accident, the claimant was admitted as inpatient in Sri Ramachandra Medical College Hospital where he has taken treatment from 13.01.2002 to 09.03.2002. The claimant had incurred total medical expenses of Rs. 5,09,025/- and other medical expenses of Rs. 8,860/-, Rs. 3,520/-, Rs. 20,765/- and Rs. 9,300/- totalling to Rs. 5,51,470/-, which the Tribunal has awarded and the same is maintained.

8. Insofar as future medical expenses, the Tribunal has awarded Rs. 50,000/- as against the claim of Rs. 2 lakhs. In his evidence, P.W.1 has stated that after his treatment in Adithya Hospital, he was advised that he has to undergo another operation, for which, he might have to spend about Rs. 2 lakhs. In Ex.P6-estimate, the doctor has opined that the claimant has to undergo surgery for the rectification of deformity and the claimant has to undergo total replacement and the procedure might cost more than Rs. 2 lakhs. As against the future medical expenses, the Tribunal has awarded only Rs. 50,000/-. Having regard to the evidence of P.W.1 and the nature of disability and Ex.P6 estimation of medical expenses, the future medical expenses awarded by the Tribunal at Rs. 50,000/- is enhanced to Rs. 1,00,000/-.

9. In his evidence, P.W.1/claimant has stated that even after treatment, he is not in a position to fold his right leg and that he is unable to carry on his normal avocation of Photo framing and Book binding. The claimant has also stated that he is also not able to sit cross-legged and he is unable to walk. The claimant has stated that he can walk only with the support of stick and with the help of others. The claimant has also stated that his wife is dumb and because of the disability, he is not in a position to effectively share the responsibilities of his wife in taking care of the family.

10. In his evidence, P.W.3-Dr. Saichandran had stated that he has examined the claimant and also the medical records. In his evidence, P.W.3 has stated that the right femur bone is malunited in a bent position and right patella has been removed. P.W.3 has stated that the claimant could walk only with the support of others. P.W.3 has also deposed that the right leg of the claimant is shortened by 3 c.m. and the right knee is totally stiffened. Upon examination of the claimant and the medical records, P.W.3 has assessed the permanent disability at 75% and the Tribunal has taken the permanent disability at 70% and we confirm the same.

11. As we pointed out earlier, the claimant has been doing photo framing and book binding work. In his evidence, P.W.1 has stated that he has been earning Rs. 6,000/- per month. We do not find any documentary evidence to support that the claimant was earning Rs. 6,000/- per month. Having regard to the avocation of the claimant, the income is taken at Rs. 3,000/- per month. As held by the Division Bench in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , even in personal injury cases, in appropriate cases, the Court can adopt multiplier method. The claimant has sustained 70% disability due to communitated supracondylar fracture right femur with inter condylar

extension and closed communitated fracture right patella. Having regard to the nature of injuries, in our considered view, this is an appropriate case where we could adopt multiplier method.

12. Based upon the evidence of P.W.3, the Tribunal has fixed the permanent disability at 70% and we also adopt the same. The claimant was aged 30 years at the time of accident. As per the Second Schedule, it would be appropriate to adopt multiplier 17. The compensation for continuing permanent disability and loss of earning power is calculated at Rs. 4,28,400/- (Rs. 3,000/- x 12 x 17 x 70/100 : Rs. 4,28,400/-). The Tribunal has awarded Rs. 70,000/- as compensation for permanent disability and Rs. 2 lakhs for loss of earning power, put together Rs. 2,70,000/-. Compensation for loss of earning power and continuing permanent disability is enhanced from Rs. 2,70,000/- to Rs. 4,28,400/-.

13. Insofar as the loss of earning, as pointed out earlier, the claimant had taken treatment as inpatient in Sri Ramachandra Medical College Hospital from 13.01.2002 to 09.03.2002 and thereafter as inpatient in Adithya Hospital, Kilpauk, Chennai from 22.05.2002 to 31.05.2002. The period of treatment as inpatient is about 2-3 months. The Tribunal has awarded Rs. 25,000/- for actual loss of earning during the period of treatment, taking the monthly income of Rs. 6,000/-. In our considered view, the amount of Rs. 25,000/- awarded for loss of earning is quite reasonable and the same is maintained.

14. The Tribunal has awarded Rs. 50,000/- towards compensation for pain and suffering and the same is maintained. Insofar as the transport to hospital and extranourishment, the Tribunal has awarded Rs. 10,000/- and Rs. 5,000/- respectively and we find no ground for enhancement.

15. The compensation amount awarded to the claimant in M.A.C.T.O.P. No. 1437 of 2002 is enhanced to Rs. 12,19,870/-. The enhanced compensation amount of Rs. 2,08,400/- is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It was stated before us that the second respondent-insurance company has already deposited entire compensation amount of Rs. 10,11,470/- and the claimant had also withdrawn the compensation amount along with accrued interest. The second respondent-insurance company is directed to deposit the enhanced compensation of Rs. 2,08,400/- with interest at 7.5% per annum within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.