(2010) 09 MAD CK 0250

In the Madras High Court

Case No : C.M.A. (MD) No. 30 of 2006

Subbiah APPELLANT

Vs

Abdul Kathar and National Insurance Company Limited RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2010) 09 MAD CK 0250

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : T. Selvakumaran, for the Appellant; S. Srinivasa Raghavan, for RR-2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the appellant/claimant against the award dated 25.11.2004 made in M.C.O.P. No. 831 of 2003 passed by the Motor Accidents Claim Tribunal (2nd Additional Sub-Court), Tirunelveli.

2. Background facts in a nutshell are as follows:

The injured Subbiah met with motor vehicle accident on 17.04.2003 at about 04.00 p.m. The said injured was travelling in an Auto bearing registration No. TN-76-2115 belonging to the first respondent. When the Auto was reaching near Adavi Nayanar Dam road, the auto driver drove auto in a rash and negligent manner and also at high speed and when tried to negotiate a turning, the vehicle lost its control and as a result, the vehicle was capsized on the road side. Due to the impact, the claimant was thrown out of the vehicle and sustained multiple injuries all over the body and sustained fracture over the right leg below the knee. The claimant, claimed a sum of Rs. 5,00,000/- as compensation. The said auto was insured with the second respondent-Insurance Company, who resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the auto?

2. Whether the claimant is entitled to claim any compensation? If so, how much?

After considering the oral and documentary evidence, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the auto, belonging to the first respondent and awarded a compensation of Rs. 1,38,300/- with interest at 9% per annum from the date of petition. The details of the compensation are as under:

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Loss due to 40% disability Rs. 1,29,600/- Pain and suffering Rs. 3,600/- Extra nourishment Rs. 3,600/- Transport charges Rs. 500/- Attendant charges Rs. 1,000/- ____
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Total Rs. 1,38,300/- ____
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Aggrieved by that award, the appellant/claimant has filed the present appeal for enhancement.

3. Learned Counsel appearing for the claimant-appellant submitted that the Tribunal has awarded only a low and meagre sum of compensation. The Tribunal ought to have awarded the compensation as claimed by the claimant. It is also submitted that the Tribunal has not considered the relevant materials and also not followed the principles of assessment, before passing the award. Therefore, according to the learned Counsel, the award passed by the Tribunal is not in accordance with law and this is a fit case for enhancement.

4. Learned Counsel appearing for the second respondent/Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel and perused the materials available on record. On the side of the claimant, P. Ws.1 to 3 were examined and documents Exs.P1 to P8 were marked. On the side of the second respondent/Insurance Company, R. Ws. 1 to 3 were examined and documents Exs.R1 to R5 were marked. P.W.1 is the claimant. P.W.2 is Dr. Ramaguru. P.W.3 is Mohamed Azar. Ex.P1 is the certified copy of the First Information Report. Ex.P2 is the certified copy of charge sheet. Ex.P3 is the certified copy of Motor Vehicles Inspector''s Report. Ex.P4 is the certified copy of observation mahazar. Ex.P5 is the certified copy of the rough sketch. Ex.P6 is certified copy of the wound certificate of the claimant. Ex.P7 is the medical certificate given to the claimant from the earlier hospital, where he has taken treatment initially. Ex.P8 is the disability certificate of the claimant. R.W.1 is Abdul Kathar, who is the driver of the vehicle. R.W.2 is RajMohan Kumar. R.W.3 is Mathiyas were examined. Ex.R1 is the xerox copy of the R.C.book. Ex.R2 is the

xerox copy of the driving licence Abdul Kathar. Ex.R3 is the Insurance policy issued in favour of Abdul Kathar. Ex.R4 is the acknowledgement card of the Abdul Kathar. Ex.R5 is the notice sent to the Abdul Kathar from the National Insurance Company. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the auto. The finding is based on valid materials and evidence and hence the same is confirmed.

6. At the time of the accident, the claimant was aged about 45 years. He is a loadman and earning a sum of Rs. 3,000/- per month. PW.1, the claimant, in his evidence, has stated that the accident had occurred only due to the rash and negligent driving of the driver of the auto and the driver was also charge sheeted by Achanpudur Police Station in Crime No. 130/2003 under Sections 279, 337 and 338 I.P.C. Due to the accident, he sustained fracture over the right leg below knee and multiple injuries all over the body. Later, his right leg was amputated. Immediately, after the accident, the claimant was admitted in the Government Hospital at Tenkasi and after giving first aid, he was referred to Tirunelveli Medical College Hospital. Even though PW.1 stated that he was earning Rs. 3,000/- per month, there is no concrete evidence available on record to prove the same. Therefore, the Tribunal fixed the monthly income at Rs. 1,800/- and determined the annual income at Rs. 21,600/- (Rs. 1,800X12). PW.2, the doctor, examined the claimant and determined the disability at 60% and issued Ex.P8 disability certificate. In the evidence of the Doctor, it is stated that as a result of the fracture on his right leg knee was later amputated. Due to the same, the claimant was unable to do any work as before and also it is a total permanent disability. The Tribunal reduced the disability at 40%. After taking into consideration of the age of the injured, the Tribunal adopted the multiplier of ''15'' and arrived at the loss of income at Rs. 1,29,600/- (Rs. 1,800X12X15X40/100). The counsel appearing for the appellant-claimant vehemently contended the Tribunal is wrong in fixing the monthly income at Rs. 1,800/- and also ought not to have reduced the disability to 40% from 60% determined by the doctor. The claimant is a loadman. He would definitely earn a sum of Rs. 100/- per day. As per the Minimum Wages Act, the monthly income is fixed at Rs. 3,000/-, in respect of un-employed person. Therefore, it is reasonable to fix the monthly income at Rs. 3,000/- and accordingly the annual income works out to Rs. 36,000/-(Rs. 3,000/-X12). Out of the said sum, it is reasonable to deduct 1/3 towards miscellaneous expenses i.e., Rs. 12,000/-. If 1/3rd of the amount is deducted the annual contribution of the deceased to the family works out to Rs. 24,000/-.

7. The Apex Court in the case of Sunil Kumar v. Ram Singh Gaud and Ors. reported in 2008 (1) TN MAC 43 (SC), held that it would be reasonable to deduct 1/3 towards miscellaneous expenses in the case of injury. As per the Workmen''s Compensation Act, 1923, for the amputation of leg below the knee, the loss of earning capacity is fixed at 50%. In the present case, the Tribunal adopted the multiplier of ''15''. The correct multiplier that should be adopted in the present

case is ''14'' as per the Supreme Court judgment reported in Sarla Verma And Ors. v. Delhi Transport Corporation and Anr. reported in (2009) 4 MLJ 997. Therefore, the loss of income works out to Rs. 1,68,000/-(24,000x14X50/100). Hence the claimant is entitled to Rs. 1,68,000/- due to loss of disability as against Rs. 1,29,600/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 3,600/- towards pain and suffering, which is very low and meagre. In the present case, the claimant lost his right leg below the knee. Therefore, it is reasonable to award a sum of Rs. 25,000/- towards pain and suffering as against Rs. 3,600/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 3,600/- towards extra nourishment. There is no dispute that the claimant has been treated in various hospitals as inpatient. After considering the same, it is reasonable to award a sum of Rs. 10,000/-towards extra nourishment as against Rs. 3,600/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 500/-towards transport charges. It is also very low and meagre. It is reasonable to award a sum of Rs. 5,000/-towards transport charges. The Tribunal has awarded a sum of Rs. 1,000/- towards attendant charges, which is very low and meagre. Due to the amputation of the right leg below the knee, he cannot attended his work as before, and hence he requires assistance. Therefore, it is reasonable to award a sum of Rs. 10,000/- towards attendant charges. The Tribunal has not awarded any sum towards loss of amenities. After taking into consideration of the same, it is reasonable to award a sum of Rs. 10,000/- towards loss of amenities. The Apex Court in the case of Sri B.T. Krishnappa Vs. The Divisional Manager, United Insurance Company Ltd. and Another, , it was held that when ever the earning capacity is reduced, the same will have an impact over the loss of expectancy as well. In paragraphs 16 to 19 reads as follows:

16. In the case of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, , where the claimant was also a mason, this Court held that:

...It has to be borne in mind that 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 to 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 for mental and physical loss, 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....(at page 1780, Para 15).

17. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation, that impacts life expectancy as well.

18. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:

...No amount of compensation can restore the physical frame of the appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury"so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame". (See R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,)

19. Further, the Court in the same case also held that

In its very nature whenever a tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.(at Page 557, para 12)

After take into consideration of the principles enunciated of the above judgment, it is reasonable to award a sum of Rs. 12,000/- towards loss of expectation of life. The Tribunal has awarded interest at 9% per annum. The date of accident is 17.04.2003. Considering the prevailing rate of interest during that time, the interest awarded by the Tribunal is confirmed. The details of the modified compensation as per the above discussion are as under:

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Loss due to 50% disability Rs. 1,68,000/- Pain and suffering Rs. 25,000/- Extra nourishment Rs. 10,000/- Transport charges Rs. 5,000/- Attendant charges Rs. 10,000/- Loss of amenities Rs. 10,000/- Loss of expectation of life Rs. 12,000/- _

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Total Rs. 2,40,000/- Less: Already awarded amount Rs. 1,38,300/- ____________ ____

Enhanced amount Rs. 1,01,700/- ____ ______________________________

Therefore, the claimant is entitled to the enhanced compensation of Rs. 1,01,700/-. With regard to the enhanced compensation of Rs. 1,01,700/- the interest shall be at 7.5% p.a. from the date of petition.

8. Learned Counsel appearing for the second respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 1,01,700/- with interest at 7.5% p.a. from the date of petition within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant-claimant is permitted to withdraw the same on making proper application.

9. With the above modifications, the Civil Miscellaneous Appeal is disposed of. No costs.

