

(2007) 04 MAD CK 0262

In the Madras High Court

Case No : C.M.A. (MD) No. 70 of 1999 and M.P. (MD) No. 1 of 2006

T. Ravanan

APPELLANT

Vs

P.R. Selvaraj and Another

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 168

Citation : (2009) ACJ 238

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : D. Saravanan, for the Appellant; R. Srinivasan, for the Respondent

Judgement

P.R. Shivakumar, J.—The claimant before the Motor Accidents Claims Tribunal (First Additional Subordinate Judge), Tiruchirappalli in M.C.O.P. No. 811 of 1996 is the appellant in this civil miscellaneous appeal.

2. Aggrieved by the insufficiency of the compensation awarded by the Claims Tribunal, he has brought forth the above said civil miscellaneous appeal, as against the disallowed portion of his claim. Originally the appellant had restricted his claim in the appeal to Rs. 1,00,000 alone. Now the appellant has filed M.P. No. 1 of 2006 in CM.A. No. 70 of 1999 seeking permission to amend the value of the appeal to Rs. 4,00,000 instead of Rs. 1,00,000 expressing his readiness to pay necessary court-fee for the same.

3. Both M.P. and C.M.A. were taken up together for disposal.

4. C.M.A. No. 70 of 1999 is directed against the award dated 15.6.1998 passed by the Motor Accidents Claims Tribunal (First Additional Subordinate Judge), Tiruchirappalli in M.C.O.P. No. 811 of 1996 directing the respondents to pay a sum of Rs. 1,25,000 as compensation together with interest at the rate of 12 per cent from the date of claim till realisation and costs for the injuries sustained by the claimant in an accident alleged to have taken place on 22.10.1995 at about

7.15 hours.

5. Appellant herein-claimant preferred a claim on the file of the Motor Accidents Claims Tribunal (First Additional Subordinate Judge), Tiruchirappalli by filing M.C.O.P. No. 811 of 1996 praying for an award against the respondents for the injuries sustained by the claimant who met with an accident on 22.10.1995 at about 7.15 hours. The facts can be briefly stated thus:

The appellant-claimant was the driver of a tanker lorry bearing registration No. TCY 4449. The same was plied with the name board "Elumalayan" for supplying water. On 22.10.95 the appellant-claimant was driving the said lorry with water load to be supplied at Circuit House Colony, Tiruchirappalli. One Chandru was on board the tanker lorry as its cleaner. When the said tanker lorry was passing through the Cauveri overbridge on the Tiruchirappalli-Madras Bypass Road in the direction of south to north, another lorry that came in opposite direction bearing registration No. TN 67-4109 was driven by its driver in a rash and negligent manner and hence the same dashed against the above said tanker lorry. In the said accident, the appellant's-claimant's right thigh got crushed and the femur was broken, for which, later on in the hospital using surgical intervention a steel plate was fixed. There was also a crush injury on the right leg which resulted in the amputation of the right leg above the ankle. He had also suffered multiple injuries all over the body including fracture on the left leg. Despite the treatment he received initially at Government Headquarters Hospital at Tiruchirappalli and then Speciality Hospital, Tiruchirappalli, the injuries resulted in permanent disability and consequential loss of earning capacity. Prior to the accident, appellant-claimant was earning a sum of Rs. 3,600 per month as salary and batta in his employment as driver of the tanker lorry. Due to the injuries sustained in the accident and the resultant permanent disability, he lost his earning capacity totally as a driver and as a necessary corollary also lost his job as the driver of the tanker lorry. Respondent Nos. 1 and 2 were the owner and insurer of the offending vehicle respectively as on the date of accident and hence they were jointly and severally liable to pay compensation to the appellant-claimant.

6. Based on the above said contentions, the appellant-claimant assessed the damages at Rs. 10,00,000 and prayed for an award against the respondents directing them to pay jointly and severally the above said sum with future interest and costs from the date of claim till realisation.

7. In order to prove his case, besides examining himself as PW 1, the claimant examined one more witness as PW 2 and relied on 13 documents marked as Exhs. A1 to A13.

8. The respondent No. 2 filed a counter statement and the same was adopted by the respondent No. 1. They had resisted the claim of the appellant-claimant contending that in case of an accident involving two lorries, one driven by appellant-claimant and the other belonging to the respondent No. 1, the

appellant-claimant himself could not suo motu decide the question of negligence and attribute negligence solely on the part of the driver of the respondent No. 1's lorry; that the petition was bad for nonjoinder of necessary parties, insofar as the owner and insurer of the lorry of which the claimant was the driver-in-charge at the time of accident; that on enquiry, it was ascertained by the respondents that the appellant-claimant could have averted the accident, had he been careful; that it was the claimant who drove his lorry at a high speed and with rashness and negligence, which alone led to the unfortunate accident; that in any event the amount claimed was highly excessive and exorbitant and that hence the claim petition should be dismissed with costs. In support of their claim no witness was examined and no document was marked.

9. After completion of recording evidence adduced on both sides, the Tribunal heard the arguments advanced on either side, framed the necessary issues regarding the negligence and quantum, scrutinised the records and appreciated the evidence, held that the rash and negligent driving of the lorry bearing registration No. TN 67-4109 belonging to the respondent No. 1 by its driver was the sole cause of the accident and that the respondent Nos. 1 and 2, as owner and insurer of the offending vehicle, were jointly and severally liable to pay compensation to the appellant-claimant, assessed the damages at Rs. 1,25,000 and passed an award directing the respondents to pay the said amount along with interest at the rate of 12 per cent from the date of claim till realisation and proportionate costs. Hence, attacking the judgment of the Tribunal, so far as the disallowed portion of the claim is concerned, this appeal has been brought forth at the instance of the appellant-claimant.

10. This Court heard the arguments advanced in this appeal on either side and paid anxious consideration to the same.

11. It is a fact not in controversy that there occurred an accident on 22.10.1995 over the Cauvery Bridge on the Trichy-Chennai Bypass Road; that the tanker lorry bearing registration No. TCY 4449 of which the appellant-claimant was the driver and the lorry belonging to the respondent No. 1 bearing registration No. TN 67-4109 were proceeding in the opposite direction and collided with each other when they reached the accident spot and that appellant-claimant sustained grievous injuries in the above said accident. In order to prove the petition allegations on the negligence aspect, the appellant-claimant examined himself as PW 1 and produced Exh. A1, copy of the first information report; Exh. A3, copy of the report of Motor Vehicle Inspector; Exh. A4, copy of the rough sketch; Exh. A5, copy of the admission petition in the criminal case and Exh. A6, copy of the judgment in C.C. No. 185 of 1996, a criminal case registered against the driver of the lorry belonging to the respondent No. 1 in connection with the above said accident in question. Considering the above said oral and documentary evidence, the Tribunal arrived at the conclusion that though there was a collision of two vehicles, it was due to the fault of the driver of the lorry bearing registration No. TN 67-4109 belonging to the respondent No. 1, the accident took place. From

Exh. A4, it is obvious that the respondent No. 1's lorry had gone to the wrong side and hit the tanker lorry that came in the opposite direction well within the track meant for the vehicles proceeding in the direction. That apart, there was an admission before the criminal court on the part of the driver of the lorry belonging to the respondent No. 1 in the criminal case registered against him and based on the plea of guilty, he was convicted. The same is evidenced by Exhs. A5 and A6. There was no evidence adduced on the side of the respondents to prove that the fact admitted before the criminal court was not true. The Tribunal has properly appreciated the evidence in this respect and has come to a correct conclusion that the rash and negligent driving of the lorry belonging to the respondent No. 1 was the cause of accident and that hence the respondent Nos. 1 and 2, in their capacity as owner and insurer of the said vehicle, were liable to pay compensation to the appellant-claimant. In fact, the owner and insurer of the above said offending vehicle have not chosen to file either an appeal or a cross-objection challenging the award of the Tribunal either on the question of negligence or on the question of quantum of compensation. Under these circumstances, the finding of the Tribunal regarding negligence and liability of the respondents to pay compensation remains unchallenged and thus, the said finding has got to be confirmed without any impediment whatsoever.

12. The challenge to the judgment and award of the Tribunal is made only by the appellant-claimant, that too, regarding the disallowed portion of the claim. There is no controversy regarding the liability of the respondents to pay compensation to the appellant-claimant. According to the appellant-claimant, the amount awarded by the Tribunal is shockingly low and the same has got to be substantially enhanced. The Claims Tribunal has awarded a sum of Rs. 1,25,000 alone as against the claim of Rs. 10,00,000. While filing the appeal in respect of the disallowed portion of the claim, the appellant-claimant restricted the value of the appeal (his claim in the appeal) to Rs. 1,00,000 alone. This, according to the learned Counsel for the appellant, was done partially due to paucity of funds to pay the necessary court-fee and partially due to lack of proper legal advice and 2009 hence, the appellant was constrained to file M.P. No. 1 of 2006 for amendment of the appeal memorandum enhancing the value of the appeal (over and above the amount awarded by the Tribunal) to Rs. 4,00,000 from Rs. 1,00,000.

13. Learned Counsel for the appellant-claimant contended that the petition should be allowed, as the poor victim having lost one of his lower limbs in the accident, should not be penalised for his poverty and that the prayer for amendment of the appeal memorandum for enhancement of the claim should be liberally allowed, as the Tribunal and the appellate forum are mandated by law to award reasonable compensation without being restricted by the amount claimed. Learned Counsel for the appellant-claimant further contended that in a given case, the court could award even a larger amount as compensation than what was claimed and that hence there could be no impediment for allowing the petition for amendment of the value of the appeal, when the claimant himself

came forward with such a petition with an offer to pay the court-fee for such an enhanced claim. In support of his contention, the learned Counsel placed reliance on the judgment of the Apex Court pronounced in Nagappa Vs. Gurudayal Singh and Others, and a judgment of a Division Bench of Madras High Court pronounced in Pallavan Transport Corporation Ltd. Vs. M. Anbumani and Others, . In Nagappa Vs. Gurudayal Singh and Others, , cited above, the Hon''ble Supreme Court observed that Section 168 of the Motor Vehicles Act empowers the Claims Tribunal to make an award, determining the amount of compensation which appeared to it to be just and that there was no other limitation or restriction on its power for awarding just compensation. The further observation made by the Hon''ble Supreme Court in the above said case also observed that in cases where there was no evidence on record, the court might permit such amendment and allow the claimant to raise additional issue and give an opportunity to the parties to produce relevant evidence and that under Motor Vehicles Act, there was no restriction that the Tribunal/court could not award compensation amount exceeding the claimed amount.

(Emphasis added)

A Division Bench of the High Court of Madras in Pallavan Transport Corporation Ltd. Vs. M. Anbumani and Others, , has observed as follows:

(6) It is unfortunate that the claimants have not filed cross-objections. But at the same time, it is not as if this Court is helpless and this Court can certainly invoke its powers conferred under Order 41, Rule 33 of the Code of Civil Procedure, since the court in deciding these matters should remember that the compensation awarded should not be inadequate, neither should be unreasonable, excessive nor deficient...

14. In the light of the observations made in the above said judgments, this Court is satisfied that there is substance in the above said contention made by the learned Counsel for appellant and hence comes to a conclusion that the petition for amendment of the appeal memorandum regarding the value of the appeal has got to be allowed. But at the same time before the appellant-claimant could get a copy of the judgment, the balance court-fee payable based on the amendment allowed should be collected.

15. In order to prove the nature of injuries and the resultant disability, the appellant-claimant besides examining himself as PW 1, has also examined one Dr. Illangovan as PW 2. PW 2 was the doctor who medically examined the appellant-claimant to assess the disability and issued the disability certificate marked as Exh. A13. The X-ray has been marked as Exh. A11. In Exh. A13, he has certified that the appellant-claimant suffered a permanent disability of 70 per cent. Claims Tribunal seems to have accepted the assessment of disability made by PW 2 at 70 per cent to be a correct assessment. At the same time, the Tribunal has awarded a total compensation of Rs. 1,25,000 with the following particulars:

For loss of expectation of life and loss of amenities and comforts Rs. 70,000 For medical expenses Rs. 40,000 For pain and suffering Rs. 10,000 For extra nourishment and loss of income during the relevant period Rs. 5,000
----- Total Rs. 1,25,000 -----

16. Learned Counsel for the appellant-claimant, taking the court through the above said details of assessment made by the Tribunal, has rightly contended that the Tribunal has not only clubbed different heads of assessment of compensation to award a lesser amount but also failed to award reasonable amount as compensation under all permissible heads. In fact, the Tribunal has awarded a sum of Rs. 40,000 for medical expenses. The medical bills produced by the appellant-claimant in Exh. A12 series covers only a sum of Rs. 38,339. Therefore, the award of Rs. 40,000 towards medical expenses cannot be termed either low or excessive and the same has got to be confirmed. While assessing compensation in injury cases, the damages should be first of all divided into two broad components: (1) Damages for pecuniary loss; and (2) Damages for non-pecuniary loss. Damages for pain and suffering falls under the category of non-pecuniary damages, whereas damages for loss of income from the date of accident and prior to the date of claim shall fall under the category of pecuniary damages. Both of them cannot be combined and fused into one and the same category. The Tribunal combined expenses for extra nourishment and loss of income during the relevant period into a single category and awarded a sum of Rs. 5,000. The same is erroneous. They should have been assessed under separate heads. Considering the nature of the injuries and the period of treatment especially the fact that the appellant's-claimant's right leg has been amputated above ankle, this Court feels that the amount of Rs. 5,000 awarded by the Tribunal should be confined to the head of expenses for extra nourishment and separate assessment of loss of income from the date of accident during treatment should be made. Even though the appellant-claimant might have contended that he was in receipt of Rs. 3,600 per month as salary and batta as a driver of the tanker lorry, there is no evidence to lend any kind of support to the interested testimony of PW 1 in this regard. The Tribunal has also not made any endeavour to fix the pre-accident income of the appellant-claimant. Taking into account, the prevailing trend during the relevant period, we can assume that the driver of the tanker lorry could have earned at least a sum of Rs. 2,500 per month. Therefore, it can be assumed that the petitioner might have suffered total loss of income for a minimum period of 5 months from the date of accident, during a part of which period he might have taken bed rest and the other part might have been used for getting himself trained to do other works, as he could no longer continue his job as driver, because of the amputation of the right leg above ankle. If such an assessment is made, we can arrive at a figure $(Rs. 2,500 \times 5) = Rs. 12,500$ as the reasonable compensation for the loss of earnings during the period he was under treatment and rest from the date of the accident.

17. The Tribunal has awarded a sum of Rs. 70,000 for loss of expectation of life and loss of amenities and comforts alone, which according to the opinion of this

Court, is on the higher side. At the same time, this Court is of the considered view that the Tribunal ought to have followed either the method of awarding lump sum compensation for the permanent disability as such which will take into its fold, the future loss of earning capacity as well as loss of amenities in life or awarding compensation for loss of future earning capacity and loss of amenities in life as two different components of compensation, in which case, no amount could be awarded under a separate heading of permanent disability as such. The Tribunal has not followed either of the two methods. From the documents, namely, wound certificate and other medical records produced by the appellant-claimant, he is found to be aged about 35 years at the time of accident. His monthly income prior to the accident is assessed at Rs. 2,500 as indicated above. He is certified to have suffered permanent disability to the extent of 70 per cent. In fact, it cannot be disputed that the said disability will not allow him to continue his job as a driver any longer. Even then, we cannot assume that he will be left with no job and no income for the rest of his life. On the other hand, it can be assumed that within a short span of time, he could have trained himself to do other works, out of which, some amount, if not equal to the amount that was earned by him prior to the accident, could be earned. Therefore, it shall be just and proper to hold that the appellant-claimant has suffered a loss of future earning capacity to the extent of 50 per cent alone. Thus, the future loss of earning capacity is assessed at 50 per cent, i.e., Rs. 1,250 per month which shall be equal to Rs. 15,000 per annum. Considering the fact that the appellant-claimant had completed the age of 35 years as on the date of accident, 15 shall be the proper multiplier to be adopted for the assessing compensation for future loss of earning capacity. If the above said multiplicand, namely, Rs. 15,000 is multiplied by the selected multiplier 15, we can arrive at the figure Rs. 2,25,000 representing the reasonable amount of compensation for the loss of future earning capacity. If the nature of injuries and disabilities suffered by the appellant-claimant are taken into consideration, one can definitely come to the conclusion that the lifespan shall be shortened to some extent.

18. Therefore, for loss of expectation of life awarding a sum of Rs. 7,500 shall be reasonable. For loss of amenities in life caused due to permanent disability awarding a sum of Rs. 15,000 shall be reasonable. In the facts and circumstances of the case, awarding a sum of Rs. 25,000 for past and future pain and suffering, according to the opinion of this Court, shall be quite reasonable. If all the above said amounts are put together, the same will make out a total of Rs. 2,87,500. At the cost of repetition, in order to make it more clear, the split-up particulars of the total amount arrived at are given as under:

For loss of earnings during treatment from the date of accident	Rs. 12,500
For loss of future earning capacity	Rs. 2,25,000
For loss of expectation of life	Rs. 7,500
For loss of amenities of life	Rs. 15,000
For past and future pain and suffering	Rs. 25,000
-----	Total Rs. 2,85,000
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In view of the above said discussions, this Court comes to the conclusion that the

appellant-claimant has made out a clear case for enhancement of compensation and that the interest of justice requires enhancement of compensation awarded by the Claims Tribunal from Rs. 1,25,000 to Rs. 2,85,000. In all other respects, the award of the Claims Tribunal shall stand confirmed.

19. In the result,

(i) M.P. No. 1 of 2006 is allowed and the appellant is permitted to amend the appeal memorandum as prayed for; and

(ii) The civil miscellaneous appeal is allowed and the compensation awarded by the Tribunal is enhanced to Rs. 2,85,000 from Rs. 1,25,000, subject to the above said modification. In all other respects, the award of the Tribunal shall stand confirmed. There shall be no order as to payment of costs. The court-fee payable based on the amended appeal memorandum should be collected from the appellant before he could get a copy of the judgment.