

(2010) 10 MAD CK 0423

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1301 of 2002

The Branch Manager, National Insurance Company Limited

APPELLANT

Vs

A.P. Maha Bharathi, Muthuraj, V.A.T. Swamiappan and The
Branch Manager, United India Insurance Company

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0423

Hon'ble Judges : S. Nagamuthu, J;R. Banumathi, J

Bench : Division Bench

Advocate : D. Sivaraman, for the Appellant; AR.L. Sundaresan for AL.
Gandhimathi, for R1, K.P. Ramachandran, for R3 and J.S. Murali, for R4, for the
Respondent

Judgement

R. Banumathi, J.—Being aggrieved by the award of compensation of Rs. 16,00,000/- for the injuries sustained by the 1st Respondent, the insurer of the lorry bearing registration No. TNG 5126 viz., Appellant-National Insurance Company has preferred this Appeal.

2. Brief facts are that on 21.09.2000 at 3.30 P.M., the Claimant-Maha Bharathi was travelling in the 3rd Respondent bus bearing registration No. TN-49 E 2676 and while the bus nearing the Mosque at Periyakulam, the lorry bearing registration No. TNG 5126 driven by its driver in a rash and negligent manner dashed against the back side of the bus. Due to the impact, the hook of the lorry pierced into the right shoulder of the Claimant, who was sitting on the right side of the bus and sustained fracture in his right hand and muscle of his right hand, particularly near the shoulder was completely crushed. Immediately, after the accident the Claimant was admitted in Government Hospital, Pudukottai and thereafter, he was admitted in Senthil Nursing Home, Madurai where his right hand was amputated up to his right shoulder. Regarding the accident, criminal case in Crime No. 665/2000 was registered against the lorry driver. At the time of accident the Claimant was aged 35 years and was working as District Treasury

Officer and was getting salary of Rs. 14,320/- per month. Alleging that the accident was due to rash and negligent driving of the lorry driver, the Claimant-1st Respondent has filed Claim Petition claiming compensation of Rs. 30,00,000/-.

3. The Insurer [National Insurance Company] of the lorry resisted the Claim Petition contending that at the time of accident Claimant had protruded his right shoulder out side the body of the bus and thereby contributed to the accident.

4. 3rd Respondent-owner of the bus filed counter stating that the bus was insured with the 4th Respondent-United India Insurance Company and 3rd Respondent is not liable to pay any compensation. Case of 4th Respondent, insurer of the bus is that the accident took place only due to the rash and negligent driving of the driver of the lorry and that the FIR was also registered against the driver of the lorry and therefore, 4th Respondent is not liable to pay any compensation to the Claimant.

5. Before the Tribunal, Claimant-Maha Bharathi examined himself as PW1. Dr. Azhagappan, who treated the Claimant and issued Ex.P16-Disability certificate was examined as PW2. Exs.P1 to P17 were marked. No oral and documentary evidence was adduced on the side of the Appellant-Insurance Company as well as contesting other Respondents.

6. Upon consideration of oral and documentary evidence, Tribunal held that the accident occurred due to rash and negligent driving of the lorry driver. Tribunal held that at the time of accident, Claimant was working as District Treasury Officer, Pudukottai and was drawing salary of Rs. 15,070/- per month. Taking the disability at 100%, Tribunal awarded lumpsum compensation of Rs. 7,00,000/- for "permanent disability". Adding compensation for other heads i.e. "medical expenses", "mental agony", "transport charges", "attended charges" and "boarding and lodges", Tribunal has awarded total compensation of Rs. 16,00,000/-.

7. Even though, plea of contributory negligence was pleaded by the Appellant-Insurance Company, it is to be pointed out that the criminal case in Crime No. 665/2000 was registered only against the lorry driver. The driver of the lorry has also admitted the offence and paid the fine. It is pertinent to note, neither the lorry driver nor the other witnesses were examined to substantiate the plea of contributory negligence. Pointing out that registration of criminal case against the lorry driver and that no substantial evidence was adduced by the insured, the Tribunal held that the accident was due to rash and negligent driving of the lorry driver. Since no evidence was adduced on the side of the Appellant, the said findings of the Tribunal cannot be assailed.

8. At the time of accident, the Claimant who was travelling in the bus seated on the right side of the bus and at that time the hooks of the lorry pierced into the right shoulder of the Claimant. Claimant sustained grievous injury on his right hand up to his right shoulder and the tissues of right shoulder joint was exposed

to a great extent. Immediately after the accident the Claimant took treatment in Government Head Quarters Hospital, Pudukottai and thereafter, he was admitted in Centhil Nursing Home, Madurai where he had taken treatment from 21.09.2000 to 09.10.2000. By perusal of Ex.P14-series photographs, his right hand was amputated up to the right shoulder. Since surgical injury was not healed, Claimant took further treatment on 12.03.2001.

9. PW2-Dr.Azhagappan, who treated the Claimant and also examined him opined that Claimant had sustained grievous injuries and that his right hand up to the shoulder was amputated. In his evidence, PW2 has stated that for fixing the artificial limb, it would require Rs. 4,00,000/-. Exs.P16 is the disability certificate issue by PW2. Because of the total amputation of the right hand up to right shoulder, PW2 has assessed the "permanent disability" at 85% in respect of his right hand.

10. The Claimant was then serving as District Treasury Officer in Pudukottai and was drawing monthly salary of Rs. 15,070/-. He had studied M.Com, ICIWA. Claimant was selected as meritorious candidate in Group-I TNPSC Examination in 1993 and posted as Accountant at Secretariat. Claimant had also stated that he was pursuing his further studies on the Company Manager Legal Studies. In his evidence, PW1 has stated that due to amputation of his right hand up to the shoulder, he could not pursue his further studies and his future prospects are doomed. In his evidence Claimant has stated that because of amputation of the right hand, all the time he has to cover his right shoulder with towel for the rest of his life and that he is unable to write and that he always needs the help of others to do his day today routine and work.

11. Tribunal has awarded Rs. 7,00,000/- for "permanent disability". As held by the Division Bench of this Court in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , in injury cases multiplier method could be adopted. Even after the amputation of the right hand, the Claimant continues to work. As such there is no loss of income. However, as opined by PW2, the Claimant had sustained 85% disability. While awarding lumpsum compensation of Rs. 7,00,000/- for "permanent disability", the Tribunal has pointed out that mental agony and social seclusion of the Claimant is affected. Ofcourse, the physical frame of the Claimant has been shattered and the same cannot be restored. Money cannot compensate what has been shattered. We cannot put the Claimant to his original position, but just and reasonable compensation has to be awarded to compensate the loss. Taking the nature of injury sustained by the Claimant and the disability and loss of amenities and also considering the nature of work of the Claimant that he is exercising the administrative control over the others, the compensation of Rs. 7,00,000/- awarded by the Tribunal for "permanent disability" appears to be quite reasonable warranting no interference and the same is maintained.

12. In so far as the other heads, Tribunal has awarded Rs. 1,00,000/- for "medical expenses". Learned Counsel for Appellant-Insurance Company has

submitted that there is no proof to show that Claimant had spent to Rs. 1,00,000/- for his medical treatment. Claimant had produced Exs.P4-series and Ex.P5-series medical bills to show that he had incurred a sum of Rs. 42,424.95 and Rs. 3851.40 respectively. After the accident, Claimant had taken treatment from 21.9.2000 to 09.10.2000 and since, his surgical injury was not healed, he had again taken treatment on 12.03.2001. Considering the nature of injury sustained by the Claimant and the period of treatment, compensation of Rs. 1,00,000/- awarded by the Tribunal for "medical expenses" is reasonable and the same is maintained.

13. Tribunal has awarded Rs. 2,00,000/- for "mental agony". In personal injury cases, there can be no award for "mental agony" and the same is deleted. The Tribunal has not awarded any amount for "pain and suffering". Since the right hand of the Claimant up to right shoulder was amputated, Claimant continues to suffer pain and suffering. Therefore, we are of the considered view that it would be reasonable to award a sum of Rs. 2,00,000/- for "pain and suffering". Tribunal has awarded Rs. 70,000/- for "mental anguish suffered by wife and children". In personal injury cases, there is no question of awarding compensation for "mental anguish suffered by wife and children" and the same is deleted.

14. In so far as compensation for "future medical expenses", the Tribunal has awarded Rs. 3,50,000/-. Learned Counsel for Appellant submitted that the amount of Rs. 3,50,000/- awarded by the Tribunal for "future medical expenses" is very much on the higher side. Placing reliance upon R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , the learned Counsel for Appellant further contended that no interest could be awarded for the compensation of "future medical expenses" and the interest awarded for "future medical expenses" has to be set aside. In his evidence, PW1 has stated that for fixing artificial limb, it requires Rs. 2,90,000/- to Rs. 3,90,000/-. Like wise, in his evidence, PW2-Dr.Azhagesan who treated the Claimant and issued Ex.P16-Disability certificate has stated that for fixing the artificial limb, it requires Rs. 4,00,000/-. Even though, the Claimant and PW2 have categorically stated that for fixing the artificial limb Rs. 4,00,000/- is required, the Tribunal has awarded only Rs. 3,50,000/-. In such view of the matter, interest awarded for future medical expenses/artificial limb need not be interfered with and the same is maintained.

15. Tribunal has awarded Rs. 1,50,000/- for "attendant charges". Learned Counsel for Appellant-Insurance Company has submitted that Tribunal erred in awarding such a huge amount of Rs. 1,50,000/- for "attendant charges" and needs reduction. For the amputation of right hand up to right shoulder, the Claimant had to depend on others to do his day to-day normal avocation throughout his life. Though, it is difficult for the Claimant to do his official as well as his domestic work without right hand, we feel that the compensation of Rs. 1,50,000/- awarded by the Tribunal for "attendant charges" is slightly on the higher side. However, we deem it appropriate to award a sum of Rs. 1,00,000/-

for "attendant charges".

16. Since the Claimant had taken treatment in two spells i.e. from 21.9.2000 to 09.10.2000 and thereafter on 12.03.2001, the Tribunal has awarded a sum of Rs. 10,000/- for "boarding and lodging". Tribunal has also awarded a sum of Rs. 20,000/- for "transport charges" and "extra-nourishment" and the same are maintained.

17. In modification, the compensation of Rs. 16,00,000/- awarded by the Tribunal is reduced to Rs. 14,80,000/- as under:

Permanent disability	: Rs. 7,00,000.00	Medical expenses	: Rs. 1,00,000.00	Pain and suffering	: Rs. 2,00,000.00	Future medical expenses	: Rs. 3,50,000.00
Attendant charges	: Rs. 1,00,000.00	Transport charges and extra-nourishment	: Rs. 20,000.00	Boarding and Lodging	: Rs. 10,000.00	-----	Total
Rs. 14,80,000.00							-----

Tribunal has awarded interest at the rate of 9% p.a. and the same is maintained.

18. In the result, the order of Motor Accident Claims Tribunal [Principal District Judge, Pudukittai] in M.C.O.P. No. 955/2000 dated 04.10.2001 is modified and the Civil Miscellaneous Appeal is partly allowed. Compensation of Rs. 16,00,000/- awarded by the Tribunal is reduced to Rs. 14,80,000/-. However, there is no costs in this Appeal.