

(2011) 01 MAD CK 0280

In the Madras High Court

Case No : C.M.A. No. 3572 of 2010 and M.P. No. 1 of 2010

The Manager Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

D. Murugesan, P. Kannan, S. Rukkumani and The Manager
United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0280

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

Bench : Single Bench

Advocate : M.B. Gopalan, for the Appellant;

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeal is filed by the Appellant-Insurance Company against the judgment and decree made in M.C.O.P. No. 131 of 2010 dated 12.07.2010 on the file of the Motor Accidents Claims Tribunal, namely Chief Judicial Magistrate Court, Erode.

2. The background facts in a nutshell, are, as follows:

D. Murugesan, the claimant, met with a motor vehicle accident that took place on 25.02.2008 at about 12.30 p.m. The claimant, at the time of accident, was riding the Motorcycle bearing Registration No. TN-45-Q-1883 along with one Rangan as pillion rider from south to east on Uthukuli to Chennimalai Road. When the Motorcycle was proceeding near Thoppupalayam Kanuvaimedu, at that time another Motorcycle bearing Registration No. TN-38-AQ-9379, belonging to the second Respondent herein, came from opposite direction in a rash and negligent manner and also high speed and hit the claimant's Motorcycle. Due to the same, the claimant sustained fracture and multiple grievous injuries. Immediately, he was given first aid at Perundurai and Erode Kovai Medical Centre Hospital and then admitted in the same hospital an in-patient from 25.02.2008 to 04.03.2008 for treatment. The claimant claimed a compensation of Rs. 7,00,000/- before the Tribunal. The Appellant-Insurance Company resisted the claim. On pleadings, the

following issues were framed by the Tribunal:

- a) Who is responsible for the accident?
- b) Whether the claimant is entitled for any compensation?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred due to the rash and negligent driving of the second Respondent and awarded a compensation of Rs. 2,38,536/- with interest at 7.5% p.a. from the date of petition, in default with penal interest at 9%. The details of the compensation are as under:

Permanent disability Rs. 1,22,400/- Pain and suffering Rs. 5,000/- Extra
nourishment Rs. 3,000/- Transport charges Rs. 2,000/- Damage to cloths Rs.
1,000/- Medical Expenses Rs. 1,05,136/- ----- Total... Rs. 2,38,536/-

Aggrieved by that award, the Appellant-Insurance Company has filed the present appeal.

3. Learned Counsel appearing for the Appellant-Insurance Company questioned only the quantum of award passed by the Tribunal. It is also submitted that the award of the Tribunal is excessive and exorbitant, without basis and justification, and that the Tribunal is wrong in adopting the multiplier method in the case of injury and that therefore, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Heard the learned Counsel appearing Appellant-Insurance Company and perused the documents available on record. On the side of the claimant, witnesses P.W.1 and P.W.2 were examined and documents Ex.P.1 to Ex.P.29 were marked. On the side the of the Respondents, neither a documentary evidence was marked nor a witness was examined.

5. P.W.1 is the claimant/first Respondent herein. P.W.2 is Dr. S.M. Duraisamy. Ex.P1 is the copy of the First Information Report. Ex.P2 is the copy of the rough sketch. Ex.P3 is the Observation Mahazar. Ex.P4 and Ex.P5 are the copy of the Motor Vehicle Inspector's Report. Ex.P6 is the copy of the wound certificate. Ex.P7 is the Copy of the Charge-sheet. Ex.P8 is the judgment copy. Ex.P9 , Ex.P22 and Ex.P24 are the Medical Bills. Ex.P10 is the M.R.A. Scan Bill. Ex.P11 and Ex.P2 are the Doctor's prescriptions. Ex.P12 is the Medical Bills. Ex.P13, Ex.P15, Ex.P18 and Ex.P20 are the Hospital Bills. Ex.P14 is the Medical check up report.

Ex.P16 is the M.R.A. Scan Report. Ex.P17 and Ex.P26 are the Scan Reports. Ex.P19 is the Physiotherapy treatment Bills. Ex.P21 and Ex.P23 5 are the discharge summary. Ex.P27 and Ex.P29 are the X-rays. Ex.P.28 is the permanent disability certificate. Considering the above oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the Motorcycle belonging to the second Respondent

herein and the finding given by the Tribunal is based on valid materials and evidence and hence the same is confirmed.

6. The claimant was aged about 30 years at the time of the accident. He was working as Mason and was earning Rs. 6,500/- per month. The claimant (P.W.1) deposed in his evidence that the accident occurred due to the rash and negligent driving of the second Respondent. Immediately he was admitted at Erode Kovai Medical Centre Hospital. Ex.P.6-Wound certificate in which it is also stated that the claimant sustained grievous injury at left leg knee and other fracture injuries all over the body. Exs.P9 to P27 would show that the claimant taken treatment in Hospital. P.W.2 -Doctor, who examined the claimant in his evidence has stated that he sustained grievous injury all over the body and an injury at the right hand elbow. He determined the disability at 30%. Ex.P28 is disability certificate and Ex.P29 is the X - Ray. Further it is stated that due to the malunion of bone, he is unable to lift any articles. Even though it is contended that the claimant was earning Rs. 6,000/- by doing masonry at the time of accident, 6 since no document was produced in support of the said income, the Tribunal determined the monthly income at Rs. 3,000/- and thus the annual income comes to Rs. 36,000/-(Rs. 3000 x 12). In the case of injury, the Tribunal has adopted the multiplier method and awarded a compensation towards loss of income. In this case, after taking into consideration the nature of injuries suffered and also the claimant has lost his employment due to the injury and he is unable to do any work, the Tribunal adopted the multiplier of 17 and arrived at the loss of income at Rs. 1,83,600/-(Rs. 3,000/- x 12 x 17 x 30%). After deducting 1/3 share towards his personal expenses, the loss of income would come to Rs. 1,22,400/-. The Tribunal has correctly estimated the monthly income as well as annual income and adopted the correct multiplier. The learned Counsel appearing for the claimant submitted that the disability affected 100% of the earning capacity of the claimant and also due to the disability, he lost his job. It is well settled principle that when the disability affects 100% earning capacity, for determining loss of income, multiplier method should be adopted and in the case of United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , the Division Bench of this Court has formulated certain guidelines to be followed in the matter of adopting multiplier method, precisely in the case of permanent disability, which reads as follows.

11. The following principles emerge from the above discussion:

(a) In all case of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc., and if so, to what extent?

(c)(1) If there is categorical evidence that because of the injury and consequential disability, the injured lost his employment or avocation completely

and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying "multiplier method" as provided under Second Schedule to Motor Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

6. The Supreme Court in the case of A.P.S.R.T.C. rep. by its Chief Law Officer v. M. Pentaiah Chary 2007 (2) TN MAC 152 (SC), held as follows:

13. We therefore, fail to visualize that in a case of this nature a claimant can be deprived of a reasonable amount of Compensation despite the fact that he has permanently lost his capacity to earn and remain dependent on other besides physical sufferance of such magnitude as to why the multiplier suggested by the parliament should not be accepted.

14. We do not, however, intend to lay down a general law. We wish to point out that minimum Compensation payable in a case of this nature should be considered from the sufferings of disability undergone by the victim. We are not suggesting that in certain situations, the multiplier specified in the Second Schedule cannot and should not be altered but therefore there must exist strong circumstances.

Taking note of the principles enunciated in the above Judgments, I am of the view that the Tribunal is correct in adopting multiplier method. In this case, a specific finding was given by the Tribunal that the disability affected the earning capacity of the claimant. Therefore, the amount awarded by the Tribunal towards permanent disability at Rs. 1,22,400/- is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards pain and suffering. Considering the nature of injury sustained, I feel that the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 3,000/- towards extra nourishment, which I feel is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 2,000/- towards transport charges, which I feel is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 1,000/- towards damage to clothes, which I feel is very reasonable and the same is confirmed. Further the Tribunal has awarded a sum of Rs. 1,05,136/- towards Medical expenses. Exs.P9, P10, P12, P13, P15, P18, P20, P22 and P24 are the Medical Bills and it will prove the same. Considering the nature of injuries sustained, I feel that the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded interest at the rate of 7.5% per annum. The accident has occurred on 25.02.2008. Considering the prevailing rate of interest on that date, I feel that it is very reasonable and the same is confirmed. It is also pertinent to note that in

paragraph 2 of the decree it has been stated that if the award amount is not deposited within two months from the date of order, the Appellant-Insurance Company has to pay 9% penal interest to the claimant, is unwarranted, therefore, the same is set aside. Except the rate of penal interest, the finding given by the Tribunal is based on valid materials and evidence and I do not find any error, illegality or infirmity in the order of the Tribunal, which requires interference by this Court. In view of the foregoing reasons, the compensation awarded by the Tribunal is confirmed. Accordingly, the claimant is entitled to the compensation of Rs. 2,38,536/- with interest at the rate of 7.5% p.a. from the date of petition.

7. In these circumstances, the Appellant-Insurance Company is directed to deposit the compensation of Rs. 2,38,536/- with interest at 7.5; per annum, less the amount already deposited. On such deposit, the claimant is permitted to withdraw the award amount of Rs. 2,38,536/- with interest at 7.5% per annum from the date of petition, after adjusting the amount if any, already withdrawn on making proper application.

8. In view of the above, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.