

(2009) 09 MAD CK 0196
In the Madras High Court
Case No : C.M.A. No. 1244 of 2003

The Managing Director, Metropolitan Transport Corporation
Limited

APPELLANT

Vs

W. Thomas

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Citation : (2009) 09 MAD CK 0196

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

Bench : Single Bench

Advocate : B. Vijayalakshmi, for the Appellant; P. Mani, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Transport Corporation against the award dated 29.04.2002 made in MCOP No. 3258 of 1998 by the Motor Vehicles Accident Claims Tribunal (3rd Fast Track Court), Chennai.

2. Background facts in a nutshell are as follows:

The respondent/claimant met with Motor Vehicle accident that took place on 13.12.1997 at about 21.30 hours. While the respondent/claimant was travelling as a passenger in the bus belonging to the appellant-Transport Corporation bearing Registration No. TN-29-N-0607, which was proceeding from Navalur to Cholinganallur. When the claimant tried to get down from the bus at Thulukathamman Koil bus stop, the driver of the bus suddenly started the bus without verifying whether the passengers were alighted. Due to which, the claimant fell down and had sustained injury in his right leg and multiple injuries all over the body. The claimant was immediately admitted in the Government General Hospital, Chennai as an inpatient for three months. Later the claimant was referred to K.M.C. Chennai and took treatment as inpatient for two months. He claimed a sum of Rs. 5,00,000/- as compensation. The appellant-Transport Corporation 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 bus driver?
2. What is the compensation the claimant is entitled to? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and awarded a compensation of Rs. 3,20,200/- with interest at 9% per annum from the date of petition and the details of the same are as under:

Permanent disability Rs. 2,00,000/- Loss of earning power Rs. 75,000/-
Transport to Hospital Rs. 2,000/- Medical expenses Rs. 4,000/- Extra
nourishment Rs. 3,000/- Pain and sufferings Rs. 25,000/- Loss of future earning
Rs. 5,000/- Attendant expenses Rs. 1,000/- Damages to clothing and articles
Rs. 200/- Mental agony Rs. 5,000/- ----- Total... Rs. 3,20,200/-
----- Aggrieved by that award, the appellant-Transport Corporation
has filed the present appeal.

3. The learned counsel appearing for the appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and further the Tribunal ought not to have fixed the disability at 70% as against 60% as per Workmen's Compensation Act, 1923 (19. Amputation below middle thigh to (8.89 cms.) below knee 60% in Injury Schedule). Further the Tribunal was wrong in awarding a sum of Rs. 75,000/- towards loss of earning power since already a sum of Rs. 2,00,000/- was awarded towards permanent disability and hence, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the respondent/claimant 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. On the side of the claimant was Pws 1 and 2 were examined and the documents Exs.P1 to P4 were marked. On the side of the appellant-Transport Corporation RW1-Yacoob, who was the driver of the bus, was examined and no document was marked to support their claim. The claimant himself was examined as PW1. PW2 is Dr. Thiagarajan. Ex.P1 is the Discharge Summary. Ex.P2 Photo and Negatives. Ex.P3 is the copy of the First Information Report. Exs.P4 is the Disability Certificate. After considering the 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 appellant-Transport Corporation bus and the finding is based on valid materials and evidence.

6. At the time of accident, the claimant was aged about 42 years . He is an agricultural coolie earning Rs. 3000/- per month. PW1-claimant has deposed in his evidence that at the time of accident, he was working as agricultural coolie and was earning Rs. 100/- per day. In his evidence the claimant further stated that the accident has occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation and due to the accident, the claimant's right leg was amputated and had also sustained multiple injuries all over body. After the accident, he was immediately admitted in the Government General Hospital, Chennai and took treatment as inpatient from 13.12.1997 to 30.03.1998. Thereafter he was admitted in K.M.C. Hospital for better treatment from 04.04.1998 to 10.06.1998. Due to accident, he is unable to walk and work as before. PW2 is a Doctor, who examined the claimant, has stated in his evidence that the claimant's leg was amputated. He assessed the disability at 70%. As per Schedule Part II of the Workmen's Compensation Act, 1923, the amputation below knee is 60%. Following the same in this case, the disability should be fixed at 60% as against 70% fixed by the Tribunal. The Tribunal has fixed the income of the claimant at Rs. 50/- per day. Considering the evidence of PW1, the claimant would have earned not less than Rs. 3000/- p.m. and also as per Minimum Wages Act, the amount is fixed at Rs. 3000/-. If Rs. 3000/- is taken into consideration, the monthly loss of income can be worked out as under:

$3000 \times 60/100 = 1800/-$ per month. Thus, the annual loss of income works out to Rs. 21,600/- (Rs. 1800 x 12). The age of the claimant was 45 years at the time of the accident. In Ex.P3-First Information Report and Ex.P4-disability certificate Ex.P4 the age of the claimant was mentioned as 45 years. If the age of the claimant is taken as 45 years the multiplier that should be adopted is 13. The learned Counsel appearing for the appellant-Insurance Company contended that the multiplier method should not be adopted for computing loss of income. The learned Counsel appearing for the respondent-claimant submitted that in this case, the claimant's right leg was amputated and it would certainly affect his earning capacity. In the case of United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , wherein 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.

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 visualise 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 method to be adopted in the present case is multiplier method. In this case, as the age of the claimant is taken as 45 years, the multiplier that should be adopted is 13. So, the loss of income due to disability works out to Rs. 2,80,800/- (Rs. 21,600 x 13).

7. The learned Counsel appearing for the appellant further submitted that while adopting multiplier method, deduction of 1/3rd towards miscellaneous expenditure should be deducted and in support of his contention he relied on the Supreme Court Judgment in the case Sunil Kumar v. Ram Singh Gaud and Ors. 2008 (1) TN MAC 43 (SC) wherein the Supreme Court has deducted 1/3rd towards miscellaneous expenditure. The recent Supreme Court Judgment in the case of Oriental Insurance Company Limited v. Ram Prasad Varma and Ors. 2009 (1) TN MAC 134(SC) it has been held as follows:

18. Following the aforementioned precedents, we are of the opinion that in the peculiar facts and circumstances of this case, it is not necessary to interfere either with the application of multiplier of eight or non-deduction of 1/3rd from his net salary. However, what was the net salary of the respondent for the said

purpose should have been determined. An employee when not in employment is not to pay his tax. Income tax payable from the salary, therefore, was required to be deducted.

8. Following the above, there is no need to deduct personal expenditure in the case of injuries. The Tribunal awarded a sum of Rs. 2,000/- towards Transport to hospitals. The claimant took treatment in different hospitals. Therefore, I feel that the amount awarded by the Tribunal 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 high. Considering the period of treatment it would be appropriate to award a sum of Rs. 2,200/- as against Rs. 3,000/- awarded by the Tribunal. Further the Tribunal awarded a sum of Rs. 200/- towards damage to clothing and articles which I feel is very reasonable and the same is confirmed. The Tribunal has also awarded a sum of Rs. 4000/- towards medical expenses and a sum of Rs. 1,000/- towards attendant charges, which I feel is very reasonable and the same are confirmed. The Tribunal has awarded a sum of Rs. 25,000/- towards Pain and Sufferings. Considering the nature of injuries sustained, I feel that the amount awarded by the Tribunal is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards mental agony. The learned Counsel appearing for the Transport Corporation submitted that already huge amount towards pain and sufferings is awarded. Therefore I feel that a sum of Rs. 5000/- towards mental agony is unwarranted. The Tribunal awarded a sum of Rs. 1000/- towards loss of amenities, which I feel is very reasonable and the same is confirmed. The details of compensation as per the above discussion are as under:

Transport to hospital Rs. 2,000/- Extra nourishment Rs. 2,200/- Damage to clothing and articles Rs. 200/- Medical Expenses Rs. 4,000/- Attendant charges Rs. 1,000/- Pain and sufferings Rs. 25,000/- Loss of amenities Rs. 1,000/- Loss of disability (at 60%) Rs. 2,80,800/- ----- Total... Rs. 3,20,200/- ----- The modified compensation arrived at above and the amount awarded by the Tribunal are one and the same. Therefore, the claimant is entitled to modified compensation of Rs. 3,20,200/-. The Tribunal has fixed the rate of interest at 9% p.a from the date of petition. The date of accident is 30.12.1997. Keeping in view the prevailing rate of interest at the time of accident, the interest awarded by the Tribunal is very reasonable and the same is confirmed.

9. The learned Counsel appearing for the appellant-Transport Corporation has stated that the appellant has already been deposited entire award amount as awarded by the Tribunal. Therefore, the claimant is permitted to withdraw the modified compensation amount of Rs. 3,20,200/- with interest at 9% p.a. from the date of petition after adjusting the amount if any, already withdrawn.

10. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.