(2008) 01 MAD CK 0008

In the Madras High Court

Case No : C.M.A. (MD) No. 1 of 2008 and M.P. (MD) No. 1 of 2008

The Managing Director, State Express Transport Corporation (Division I) Ltd. — APPELLANT

Vs

A. Shanmugathayee, G. Vickram and New India Assurance Company Limited — RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0008

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Rajnish Pathiyil, for the Appellant; K. Mahendran, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This appeal is focussed as against the judgment and decree dated 12.04.2005, passed in M.C.O.P. No. 877 of 2001, on

the file of the Motor Accidents Claims Tribunal (II Additional Sub Court), Madurai.

2. Heard both sides.

3. The challenge in this Civil Miscellaneous Appeal is relating to the quantum of compensation awarded by the Tribunal, vide judgment dated

12.04.2005, to a tune of Rs. 3,31,123/-(Rupees Three Lakhs Thirtyone Thousand One Hundred and wenty three only) on the following sub-

heads:

(i) For Injuries - Rs. 40,000.00

(ii) For Loss of Earnings - Rs. 2,02,500.00

(iii) For Artificial Leg - Rs. 25,000.00

(iv) For Medicial Expenses - Rs. 63,623.00

Total - Rs. 3,31,123.00

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4. The pith and marrow of the grounds of appeal as stood exposited from the memorandum of appeal would run thus:

The Tribunal awarded a sum of Rs. 2,02,500/- under the sub-head loss of earnings without any criterion. This is a case in which the multiplier

system should not have been applied at all as the injured sustained amputation of left leg alone. Accordingly, he prays for modification of the

compensation awarded by the Tribunal.

5. The point for consideration is as to whether the Tribunal awarded ''just compensation''?

6. During joint trial with M.C.O.P.875 of 2001, on the side of the claimant P.W.1 to P.W.3 were examined and Exs.P.1 to P.10 were marked

and on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R.1 to R.7 were marked.

7. Point: The learned Counsel for the appellant/Transport Corporation would submit that even as per the documents produced on the side of the

claimants the petitioner is alleged to have sustained only 80% permanent disability in view of the amputation of her left leg above knee. However,

the Doctor gave Disability Certificate as though the claimant sustained 90% permanent disability, which was accepted by the Tribunal and applied

the multiplier system. The learned Counsel for the claimant would submit that the compensation awarded by the Tribunal is moderate and no

interference is required.

8. At this juncture I would like to refer to the decision of the Division Bench of this Court reported in United India Insurance Company Ltd.,

Branch Officer Vs. Veluchamy and Another, . An excerpt from the aforesaid decision would run thus:

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 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 the 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 multiplier system can be applied relating to matters where the injured was made to lead a vegetative or idle life. No doubt in this case the

injured being a house wife lost her left leg. If in all cases the amputation above knee is taken as one on par with total permanent disability and the

multiplier system is applied then that would be counter productive to the principles enunciated in the Workmen''s compensation Act, which under

Schedule I, Part II, Sl. No. 18 for amputation below hip with stump only would contemplate 70% permanent disability.

In such a case I am of the opinion that the compensation could be rearranged as under:

For 70% permanent disability a sum of Rs. 1,40,000/- (Rupees One Lakh and Forty Thousand only) could be awarded at the rate of Rs. 2,000/-

for each percentage of permanent disability as she sustained permanent disability at her age of 40 during the year 1998. However the Tribunal has

not awarded compensation amounts under various other sub-heads, which were expected to be awarded as per law. At this juncture I could

fruitfully cite the Full Bench decision of this Court in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, . An excerpt from it

would run thus:

19. In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal,

while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-

pecuniary losses the Tribunal shall consider: (a) pain and suffering, (b) loss of amenity, (c) loss of expectation of life, hardship, mental stress, etc.

(d) loss of prospect of marriage and under the head pecuniary losses, the Tribunal shall consider loss of earning capacity and loss of future earnings

as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of

earning capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised.

Adhering to the aforesaid decision compensation has to be awarded under the following sub-heads also. Under the caption loss of amenities a sum

of Rs. 20,000/- (Rupees Twenty Thousand only) could be awarded as she is expected to look after her family as correctly pointed out by the

learned Counsel for the claimant and that she cannot move like any other lady in view of she having been made immobile. Under the sub-heads

expectation of life a sum of Rs. 15,000/- (Rupees Fifteen Thousand only) and towards Transportation charges a sum of Rs. 5,000/- (Rupees Five

Thousand only), could all be awarded. Considering the nature of the injury, towards taking nutritious food a sum of Rs. 5,000/- (Rupees Five

Thousand only) could be awarded. Towards loss of income during the treatment period and convalescent period, no compensation was awarded

and therefore a sum of Rs. 17,500/- (Rupees Seventeen Thousand and Five Hundred only) could rightly be awarded as for more than six months

she may not be able to move about freely at all.

9. Under the caption injuries a sum of Rs. 40,000/- was awarded by the Tribunal and that could be brought under the caption pain and sufferings.

In as much as she underwent amputation of her left leg, awarding a sum of Rs. 40,000/- (Rupees Forty Thousand only) towards pain and

sufferings would meet the ends of justice. Towards medical expenses a sum of Rs. 63,623/- was awarded based on bills for which no exception

could be taken by the appellant. Towards artificial leg a sum of Rs. 25,000/- was awarded which is quite reasonable. Accordingly if the

compensation is quantified, the total compensation arrived at by the Tribunal requires no interference; only the captions under which the amounts were awarded were rearranged and recaptioned. Interest was awarded at the rate of 9% p.a. during the year 1998. Taking into account the

interest rate prevailing at that time no interference is required. Accordingly, there is no merit in this appeal.

10. In the result, this appeal is dismissed Consequently, connected M.P.(MD) No. 1 of 2008 is closed. No costs.