
(2011) 02 MAD CK 0312

In the Madras High Court

Case No : C.M.A. No's. 85 and 430 of 2011 and M.P. No. 1 of 2011 in C.M.A. No. 85 of 2011

The New India Assurance Co. Ltd.

APPELLANT

Vs

G. Velmurugan, K. Vadivel and M. Moorthy
G.
Velmurugan Vs K. Vadivel, M. Moorthy and The New India
Assurance Co. Ltd.

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2011) 02 MAD CK 0312

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

Bench : Single Bench

Advocate : K.S. Narasimhan, in CMA.85/11 and V. Jaganathan, in CMA430/11, for the Appellant; K.S. Narasimhan, R3 in CMA. 430/11 and V. Jaganathan, R1 in CMA. 85/11, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—These appeals were filed by the Insurance Company as well as the claimant against the judgment and decree dated 29.06.2009 made in MCOP No. 880 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, FTC-2 at Poonamalee.

2. When the matter came up for admission, by consent of both parties, both the appeals were taken up for final hearing and disposed of by a common judgment.

3. Background facts in a nutshell are as follows:

The injured Velmurugan, met with a motor traffic accident on 16.08.2007 at about 7.12am. The said injured was riding his motorcycle bearing Regn. No. TN 10/P5505, at GST Road, from West towards East and when he was proceeding towards Nehru Statue Rountana, Guindy, a mini lorry bearing Regn. No. TN09/T4779, came in a rash and negligent manner and also in a high speed in the same direction and hit the two-wheeler from behind and due to the same, he sustained multiple injuries and fracture and claimed compensation of Rs.

30,03,000/-. The said mini lorry was insured with the Appellant-New India Assurance Company (in CMA No. 85 of 2011), who resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of the mini lorry bearing Regn. No. TN09/T4779?
2. Whether the claimant is entitled to compensation. If so, What is the compensation the claimant is entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of the mini lorry and awarded a compensation of Rs. 11,09,400/- with interest at 7.5% per annum from the date of petition and the details of the same are as under:

Loss of earning capacity

Rs. 10,40,400/-

Pain and sufferings

Rs. 40,000/-

Mental Agony

Rs. 25,000/-

Transportation to Hospital

Rs. 1,000/-

Extra Nourishment

Rs. 3,000/-

Rs. 11,09,400/-

Aggrieved by that award, the Insurance Company has filed appeal in CMA No. 85 of 2011 and the claimant has also filed CMA No. 420 of 2011 for enhancement.

4. The learned Counsel appearing for the insurance company questioned only the quantum of award passed by the Tribunal and vehemently contended that the compensation awarded by the Tribunal is excessive, exorbitant, without basis and justification. Further, he contended that the Tribunal has wrongly fixed the monthly income at Rs. 6,000/- and wrongly adopted the multiplier "17". Further, it was contended that there is no basis for adopting 85% disability and it was also contended that the Tribunal ought not to have awarded a sum of Rs. 25,000/- towards mental agony, after awarding Rs. 40,000/- towards pain and suffering. Therefore, he contended that the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. The Learned Counsel appearing for the claimant submitted that the Tribunal ought to have awarded compensation as claimed by the claimant and the amount

awarded under various heads is very low and the Tribunal has not followed the principles of assessment before passing the award and the order passed by the Tribunal is not in accordance with law and it is a fit case for enhancement.

6. Heard the counsel and perused the document on record. On the side of the claimant, P. Ws.1 and 2 were examined and documents Exs.P1 to P14 were marked. Injured himself was examined as P.W.1. Dr. Balasubramaniam, who treated the injured was examined as PW2. Ex.P1 is the copy of the First Information Report. Ex.P2 is the copy of the Accident Register. Ex.P3 is the copy of the Charge sheet. Ex.P4, is the discharge certificate. Ex.P5, is the medical bills. Ex.P6 is the x-ray and the report. Ex.P7, is the copy of the Driving License. Ex.P8, is the copy of the agreement for running a shop. Ex.P9, is the documents in support of payment of income. Ex.P10, is the certificate in physiotherapy. Ex.P11, is the copy of the Physiotherapist Member Slip. Ex.P12, is the certificate for higher education. Ex.P13, is the Photo. Ex.P14, is the disability certificate. On the side of the Insurance Company, no one was examined and no document was marked to support their claim. After considering the above 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 mini lorry. It is a question of fact and based on valid materials and evidences. Hence, the same is confirmed.

7. At the time of the accident, the injured was 28 years old. P.W.1, in his evidence, has stated that he is a Physiotherapist and M. Pt. (Neuro.) and a II year student in Meenakshi College of Therapy, Virugambakkam. Further he has stated that he is self-employed and earning a sum of Rs. 50,000/- per month. He also stated that the accident occurred due to rash and negligent driving of the driver of the mini lorry and he was also charged by GST Road Traffic Investigation Section in Cr. No. 338/07 under Sections 279, 337 IPC @ 279, 338 IPC. Due to the accident, he sustained severe crush injuries on the right hand leading to amputation of right hand and also severe bleeding injuries on the right cheek, both lips and right chest. Immediately, he was admitted to Balaji Hospital, Guindy. Due to the said nature of injuries, he is unable to do any work as before. PW2, is the Doctor, who examined the claimant. Ex.P14, is the disability certificate and Ex.P13, is the photo. The Doctor assessed the disability at 95% and issued disability certificate Ex.P14. In his evidence, he has also stated that his right hand was amputated and for that he determined the disability at 85% and further 10% for other grievous injuries all over the body. Because of the amputation of the right hand, the Tribunal had adopted the multiplier method, as the said disability would affect the earning capacity of the claimant and he could not do any work as before and therefore, the Tribunal is correct in adopting the multiplier method in the present case.

8. 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.

9. In the case of Raj Kumar v. Ajay Kumar and Anr. reported in 2010 (2) TNMAC 581, the Honorable Apex Court has held as follows:

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence i. Whether the disablement is permanent or temporary, (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability, then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability, then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether i. the claimant is totally disabled from earning any kind of livelihood or (ii) whether in spite of the

permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions, and in that event, the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less, in fact, there may not be any need to award any compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes, the injured claimant may be continued in service, but may therefore be shifted to some other suitable for lessor emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity, it may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise, there may be a duplication in the award of compensation. Be that as it may.

10. We may now summaries the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity;
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability.)
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

11. After taking into consideration the principles enunciated in the above judgments, the Tribunal is correct in adopting the multiplier method in the present case on the ground that the disability affects the earning capacity of the claimant. Even though the claimant has stated that he was earning Rs. 50,000/- per month, there is no material evidence on record to show that he was earning Rs. 50,000/- at the time of the accident. Therefore, the Tribunal has fixed the monthly income of the claimant at Rs. 6,000/-. After considering the age of the claimant, the Tribunal adopted "17" multiplier and the computation of loss of income due to 85% disability is as follows:

$$\text{Rs. } 6,000/- \times 12 \times 17 \times 85 / 100 = \text{Rs. } 10,40,400/-.$$

Even though the Doctor fixed the disability at 95%, the Tribunal fixed the disability at 85% only. The claimant is a 2nd year student of Meenakshi College of Therapy, Virugambakkam. Considering the same, the Tribunal is correct in fixing the monthly income at Rs. 6,000/-. The learned Counsel for the Insurance Company submitted that the Tribunal is wrong in adopting the multiplier of "17" and the correct multiplier to be adopted in this case is "16". There is no serious dispute by both the counsel. Hence, the multiplier "16" is adopted in the present case. Though Doctor fixed the disability at 95% and Tribunal fixed the same at 85%, it is reasonable to fix 80% disability, as there may be variation in determining the disability as between two doctors. Therefore, the loss of income due to 80% disability is computed as follows:

$$\text{Rs. } 6,000/- \times 12 \times 16 \times 80 / 100 = \text{Rs. } 9,21,600/-.$$

Accordingly, the claimant is entitled to a modified compensation of Rs. 9,21,600/- towards loss of income due to 80% disability as against Rs. 10,40,400/-, awarded by the Tribunal. The Tribunal has also awarded a sum of Rs. 40,000/- towards pain and suffering. After considering the period of treatment in the hospital and loss of the right hand, sum of Rs. 40,000/- awarded by the Tribunal towards pain and suffering is reasonable and the same is confirmed. Further, the tribunal has awarded a sum of Rs. 25,000/- awarded towards mental agony. After awarding Rs. 40,000/- towards pain and suffering, a sum of Rs. 25,000/- towards mental agony, is unwarranted and therefore, the same is deleted. Further the Tribunal has also awarded a sum of Rs. 1,000/- towards transportation to the hospital. It is not in dispute that the claimant has taken treatment in Balaji Hospital, Guindy and after discharge, he took further treatment and therefore, it is reasonable to award a sum of Rs. 15,000/-, towards transportation to the hospital as against Rs. 1,000/- awarded by the Tribunal. Further the Tribunal has also awarded a sum of Rs. 3,000/- towards Extra Nourishment. After considering the nature of injuries and that he was in the hospital for more than 3 1/2 months, it is reasonable to award Rs. 10,000/- towards Extra Nourishment, as against Rs. 3,000/- awarded by the tribunal. The Tribunal has not awarded any sum towards loss of income during the period of treatment and also for loss of amenities. There is no dispute that he was taking treatment for 3 1/2 months in Balaji Hospital. Therefore, after considering the

same, it is reasonable to award a sum of Rs. 24,000/- towards loss of income and another sum of Rs. 10,000/- towards loss of amenities. The Tribunal has awarded interest at the rate of 7.5%. After taking into consideration the date of accident, date of award and also the prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income due to 80% disability

Rs. 9,21,600/-

Loss of income during the period of treatment

Rs. 24,000/-

Loss of Amenities

Rs. 10,000/-

Transportation to Hospital

Rs. 15,000/-

Pain and sufferings

Rs. 40,000/-

Extra Nourishment

Rs. 10,000/-

Total

Rs.10,20,600/-

Therefore, the claimant is entitled to modified compensation of Rs. 10,20,600/ with interest at 7.5% from the date of petition as against Rs. 11,09,400/ awarded by the Tribunal.

12. In these circumstances, the Appellant-Insurance Company in CMA No. 85 of 2011, is directed to deposit the modified compensation of Rs. 10,20,600/- with interest at 7.5% per annum, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this order. On deposit of the same, the claimant is also permitted to withdraw the modified compensation of Rs. 10,20,600/- with interest at the rate of 7.5%, less the amount already withdrawn, if any, on making proper application.

13. With the above modification, both the Civil Miscellaneous Appeals are disposed of. No costs. Consequently the connected Miscellaneous Petition is closed.