

(2008) 11 MAD CK 0078

In the Madras High Court

Case No : C.M.A. No's. 1485 and 1545 of 2002

The New India Assurance Co. Ltd.

APPELLANT

Vs

Senthil Kumar and Vaigai Sanitation (P) Ltd.
Senthil
Kumar Vs Vaigai Sanitation (P) Ltd. and New India Assurance
Co. Ltd.

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (2010) ACJ 1587 : (2009) 2 LW 767 : (2011) 1 TAC 725

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : T.M. Venkatraman, in C.M.A. No. 1485 of 2002 and Salim Fathima, for Manoranjitham, in C.M.A. No. 1545 of 2002, for the Appellant; T.M. Venkatraman, for 2nd Respondent in C.M.A. No. 1545 of 2002 and Salim Fathima, for Manoranjitham, for 1st Respondent in C.M.A. No. 1485 of 2002, for the Respondent

Judgement

R. Sudhakar, J.—Both the above appeals have been filed against the award dated 21.9.2001 passed in M.C.O.P. No. 1003 of 1998 on

the file of the Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai.

2. C.M.A. No. 1485 of 2002 has been filed by the New India Assurance Company, challenging the award seeking reduction in the compensation.

3. C.M.A. No. 1545 of 2002 has been filed by the injured claimant seeking enhancement of the compensation.

4. It is a case of injury. The brief facts of the case are as follows:- The accident in this case happened on 21.10.1997. The injured claimant

Senthilkumar, aged 24 years, employed in ESI Hospital, K.K. Nagar, was about to cross the road at Anna Salai, near Pay & Accounts Office,

Chennai. He was hit by a van TN-07-F-9072 driven by its driver in a rash and negligent manner. In that accident he suffered fracture and injuries

as follows:

Fracture and Compression of spinal chord which has been diagnosed as paraplegic injury.

A sum of Rs. 12 lakhs was originally claimed as compensation and subsequently amended to Rs. 25,35,000/- stating that the disability suffered by

the injured claimant is 100%. According to the injured claimant, he was treated in the Government Hospital as inpatient from 21.10.1997 to

13.2.1998 and thereafter from 13.2.1998 to 8.6.1998. On the third occasion he was treated at Sri Ramachandra Hospital from 8.6.1998 to

13.11.1998. He was treated for nearly 399 days as inpatient.

5. In support of the claim, the injured claimant Senthilkumar was examined as P.W.1. P.W.2 is the claimant in another case relating to the same

accident. P.W.3 is the mother of the injured claimant. P.W.4 is the co-worker of the injured claimant. P.W.5 is Dr.Thiagarajan, who assessed the

disability of the injured claimant. P.W.6 is the Inspector of Police. P.W.7 is the employer of ESI Corporation. Exs.A-1 to A-17 were marked as

detailed below:

Exs.A-1 to A-3 are the discharge summaries,

Ex.A-4 series are the medical bills,

Ex.A-5 is the doctor's estimate,

Ex.A-6 is the salary certificate,

Ex.A-7 is the leave certificate,

Ex.A-8 is the F.I.R.,

Ex.A-9 is the sketch,

Ex.A-10 is the O.P. Chit,

Ex.A-11 is the service certificate of P.W.4, Sanjeevi,

Ex.A-12 is the disability certificate of the injured claimant,

Ex.A-13 is the disability certificate of Padhmini, the claimant in another case,

Ex.A-14 is the details of leave certificate,

Ex.A-15 is the letter from medical department,

Ex.A-16 is the certificate stating that the claimant cannot work and

Ex.A-17 is the certificate for retirement from service.

No oral or documentary evidence was let in on behalf of the insurance company.

6. As per the evidence of the doctor supported by medical records and Ex.P-12 disability certificate, it is assessed at 100% and also taking into

consideration the age, occupation, nature of injury, period of treatment and the treatment given, the Tribunal granted the following amounts as

compensation with interest at 9% per annum:

Sl. Heads Amount

No. granted by the

Tribunal

1. Transport to hospital expenses Rs. 7,500/-

2. Extra nourishment Rs. 10,000/-

3. Attender charges (for helping the injured
claimant in daily work) Rs. 60,000/-

4. Attender charges (for helping the injured
claimant in attending daily duties) Rs. 15,000/-

5. Mental agony Rs. 15,000/-

6. Medical expenses Rs. 3,35,500/-

7. Loss of marital prospects Rs. 25,000/-

8. Loss of expectation of life Rs. 25,000/-

9. Loss of earning power Rs. 2,00,000/-

10. Pain and suffering Rs. 60,000/-

11. Disability assessed at 100% Rs. 1,00,000/-

Total Rs. 8,53,000/-

7. The insurance company has filed the appeal C.M.A. No. 1485 of 2002 stating that the compensation granted in this case is erroneous and has to be reduced and modified.

8. The finding of negligence on the part of the driver of the van and the liability of the insurance company to compensate the claimant is not disputed by the Counsel appearing for the insurance company, the only contention raised by the Counsel for the insurance company is with regard to the quantum of compensation.

9. According to the Counsel appearing for the insurance company, the sum of Rs. 2,00,000/- granted towards loss of earning power and Rs.

1,00,000/- granted towards disability cannot be granted in view of the Full Bench decision of this Court in Cholan Roadways Corporation Ltd.

Vs. Ahmed Thambi and Others, . Further, there is an error in compensation granted based on the medical bills in a sum of Rs. 3,35,500/-. The

actual amount payable to the injured claimant is Rs. 2,85,000/- only as per bills. An excess amount is granted which is relatable to the advance

paid and it has to be deducted. He pleaded that the Tribunal granted substantial amount towards loss of marital prospects and therefore, the sum

of Rs. 25,000/- granted towards loss of expectation of life cannot be justified. For pain and suffering higher amount has been granted. He further

pleaded that in this case multiplier method can be adopted and the compensation granted under disability has to be set aside. If multiplier method is

adopted, at best, the claimant will be entitled to Rs. 5,40,000/- (Rs.3,000/- x 12 x 15 = Rs. 5,40,000/-) towards loss of earning power, besides

compensation on other heads. Hence, he sought for modification of the award.

10. Learned Counsel for the injured claimant, who filed C.M.A. No. 1545 of 2002 for enhancement of compensation stated that the injured

claimant is totally immobile and paraplegic and therefore, he needs the support of an attender throughout his lifetime. He needs constant medical

attention in future. She, therefore, prayed enhancement of the award amount.

11. In this case, the injured claimant suffered fracture and compression of the spinal chord and has been diagnosed as a paraplegic injury.

According to Webster Dictionary paraplegic means "complete paralysis of the lower half of the body usually resulting from damage to the spinal

chord". The disability assessed in this case under Ex.A-12 is 100% and that is not in dispute. Therefore, adopting multiplier method will be

appropriate. In view of the Full Bench decision in Cholan Roadways Corporation, compensation under two heads, viz., loss of earning power and

for disability cannot be granted.

12. In so far as the medical expenses is concerned, it is not disputed by the claimant's Counsel that the amount paid as advance should be deleted

and the actual amount as per medical bills is Rs. 2,85,000/- and not Rs. 3,35,500/-. Therefore, the amount granted for medical expenses has to be

modified.

13. In view of the grievous nature of the injury, the injured claimant would require an attender for the rest of his life. The Tribunal has granted a sum

of Rs. 60,000/- and Rs. 15,000/- separately. Whether it is during the period of treatment or after the treatment, the compensation towards

attender charges has to be granted as one component. Therefore, the sum of Rs. 60,000/- and Rs. 15,000/- has to be suitably modified under one

head as compensation towards attender charges. Keeping in mind the expenses which occur for taking care of the injured claimant, the claimant is

granted a sum of Rs. 50,000/- towards attender charges as one component.

14. The Tribunal has granted a sum of Rs. 25,000/- towards loss of marital prospects. Therefore, the grant of further sum of Rs. 25,000/- towards

loss of expectation of life cannot be justified. Accordingly, the said sum of Rs. 25,000/- granted towards loss of expectation of life is set aside.

15. There is no dispute that the injured claimant was earning Rs. 3,000/- per month. The age of the injured claimant was 24 years at the time of

accident. The injured claimant suffered 100% disability.

16. The Division Bench of this Court in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, sets out the

parameters as to when the multiplier method can be adopted in the case of injury. In Paragraph 11 of the decision reads thus:

11. The following principles emerge from the above discussion:

(a) In all cases 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 for the rest of his life, in that event loss of income or earnings may be ascertained by applying the "multiplier method" as

provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even 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.

17. The choice of multiplier will depend upon the facts and circumstances of each case. The Apex Court in General Manager, Kerala State Road

Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, has broadly summarized the position in paragraph 11, which reads as

follows:

11. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have

proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost,

deducted a percentage therefrom towards uncertainties of future life and

awarded the resulting sum as compensation. This is clearly unscientific.

For instance, if the deceased was, say, 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the lost

of dependency for 45 years i.e. virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the

uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible.

We are aware that some decisions of the High Courts and of this court as well have arrived at compensation on some such basis. These decisions

cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of

computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle,

lack of uniformity and an element of unpredictability and an element of unpredictability for the assessment of compensation. Some judgments of the

High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939, in so far as

it envisages the compensation to be "just", the statutory determination of a "just" compensation would unshackle the exercise from any rigid

formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a "just" compensation which will make for

uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the

multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very

exceptional cases.

The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take, for instance, a case where annual

loss of dependency is Rs. 10,000/-. If a sum of Rs. 1,00,000/- is invested at 10 per cent annual interest, the interest will take care of the

dependency perpetually. The multiplier in this case works out to 10. If the rate of interest is 5 per cent per annum and not 10 per cent, then the

multiplier needed to capitalise the loss of the annual dependency at Rs. 10,000/- would be 20. Then the multiplier, i.e., the number of years'

purchase of 20 will yield the annual dependency perpetually. Then allowance to

scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last, etc. Usually in English courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.

18. Considering the young age of the injured claimant, if multiplier 15 is adopted the injured claimant will be entitled to a sum of Rs. 5,40,000/-

(Rs.3,000/- x 12 x 15 = Rs. 5,40,000/-) towards loss of income due to the injury.

19. Due to the prolonged period of hospitalisation and also the mental agony undergone by the injured claimant, suitable compensation is to be

granted. A sum of Rs. 60,000/- towards pain and suffering and a sum of Rs. 15,000/- towards mental agony, totally Rs. 75,000/- has been

granted. Adequate compensation has been granted for loss of earning power. Therefore, as against the sum of Rs. 75,000/-, the sum of Rs.

40,000/- is granted towards pain and suffering and mental agony.

20. The sum of Rs. 7,500/- granted towards transport expenses is enhanced to Rs. 10,000/- considering the long period of treatment. The sum of

Rs. 10,000/- granted for extra nourishment is confirmed as the health of the injured claimant is affected due to the spinal chord injury.

21. Accordingly, the compensation granted by the Tribunal is modified as follows:

Sl. Heads Amount Amount

No. granted by granted by

the Tribunal this Court

1. Transport to hospital expenses Rs. 7,500/- Rs. 10,000/-

2. Extra nourishment Rs. 10,000/- Rs. 10,000/-

3. Attender charges (for helping

the injured claimant in daily
work) Rs. 60,000/- ---

4. Attender charges (for helping
the injured claimant in
attending daily duties) Rs. 15,000/- ---

5. Attender charges --- Rs. 50,000/-

6. Mental agony Rs. 15,000/- ---

7. Pain and suffering Rs. 60,000/- ---

8. Pain and suffering and mental
agony --- Rs. 40,000/-

9. Medical expenses Rs. 3,35,500/- Rs.2,85,000/-

10. Loss of marital prospects Rs. 25,000/- Rs. 25,000/-

11. Loss of expectation of life Rs. 25,000/- ---

12. Loss of earning power Rs. 2,00,000/- Rs.5,40,000/-

13. Disability assessed at 100% Rs. 1,00,000/- ---

Total Rs. 8,53,000/- Rs.9,60,000/-

22. The interest granted at 9% stands confirmed as the accident in this case
happened in the year 1997 and the award is of the year 2001.

However, the enhanced compensation of Rs. 1,07,000/- will suffer interest at 7.5% per annum from the date of claim petition till date of deposit.

23. Counsel appearing for the insurance company states that as per order dated 16.9.2002 passed in C.M.P. No. 11428 of 2002 entire award

amount has been deposited and the claimant was permitted to withdraw 50% of the award amount as per order dated 15.11.2002. He prays eight

weeks" time to deposit the enhanced compensation and is granted.

24. C.M.A. No. 1485 of 2002: In the result, the Civil Miscellaneous Appeal No. 1485 of 2002 filed by the insurance company is dismissed.

There will be no order as to costs.

25. C.M.A. No. 1545 of 2002: In the result, the Civil Miscellaneous Appeal No. 1545 of 2002 filed by the injured claimant is allowed in part as

follows:

(i) The award of the Tribunal is enhanced to Rs. 9,60,000/- from Rs. 8,53,000/-.

(ii) The enhanced amount of compensation of Rs. 1,07,000/- will suffer interest at 7.5% per annum from the date of claim petition till date of deposit.

(iii) The insurance company is granted eight weeks" time to deposit the enhanced award amount with interest.

(iv) The claimant is entitled to withdraw the balance compensation lying in court deposit. Further, he is also entitled to withdraw the enhanced

compensation as determined by this Court on deposit by the insurance company.

(v) There shall be no order as to costs.