

(2011) 02 MAD CK 0099

In the Madras High Court

Case No : C.M.A. No. 417 of 2011 and M.P. No. 1 of 2011

The New India Assurance Company Ltd.

APPELLANT

Vs

R. Raja and S. Sekar

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

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

Citation : (2011) 02 MAD CK 0099

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

Bench : Single Bench

Advocate : J. Chandran, for the Appellant; M. Selvam, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—When the appeal came up for admission, by consent, the main appeal itself is taken up for final hearing.

2. The Civil Miscellaneous Appeal is filed by the Appellant-Insurance Company against the judgment and decree dated 14.09.2010 made in

M.C.O.P. No. 934 of 2007 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Krishnagiri.

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

R. Raja, the first Respondent/claimant, met with a motor vehicle accident that took place on 10.12.2006 at about 02.50 p.m. The claimant was

proceeding in his bicycle on Krishnagiri-Royakotta road towards Royakotta near T.N.H.B. Bus stop at Krishnagiri. At that time, the Eicher

Tempo bearing Registration No. TN-36 -7875, belonging to the second Respondent herein, which came from Royakotta road over bridge

towards Royakotta, driven by its driver, the second Respondent herein, in a rash and negligent manner, without following any rules of the road, and

also at high speed and hit the first Respondent/claimant. Due to the same, the first Respondent/claimant sustained grievous injuries. Immediately, he

was given first aid at Krishnagiri Government Hospital. Later he took treatment in St. John's Medical College Hospital, Bangalore and

Government Mohan Kumaramangalam Medical College Hospital, Salem. The claimant claimed a compensation of Rs. 5,00,000/-before the

Tribunal. The said tempo was insured with the Appellant-Insurance Company, who resisted the claim. On pleadings, the following issues were

framed by the Tribunal:

a) Whether the accident was due to rash and negligent driving of the Tempo No. TN-36-7875?

b) Whether the first Respondent is entitled for compensation? If so, what is the quantum of compensation payable to the first Respondent?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred due to the rash and negligent driving of the

driver of the tempo and awarded a compensation of Rs. 3,02,312/-with interest at the rate of 7.5% per annum from the date of petition till the date

of realization and with proportionate cost. The details of the compensation are as under:

Loss of income Rs. 2,75,400/-

Pain and sufferings Rs. 20,000/-

Medical bills Rs. 1,912/-

Transport and Extra Rs. 5,000/-

nourishment

Total... Rs. 3,02,312/-

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

4. Learned Counsel appearing for the Appellant-Insurance Company has questioned only the quantum of compensation awarded by the Tribunal

by contending that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and 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.

5. Learned Counsel appearing for the Respondents 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.

6. Heard the learned Counsel on either side 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.10 were marked. On the side the of the Appellant-Insurance Company, neither a

documentary evidence was marked nor a witness was examined. P.W.1 is the first Respondent/claimant herein. P.W.2 is Dr. D.V. Gandhi. Ex.P1

is the copy of First Information Report. Ex.P2 is the wound certificate. Ex.P3 is the discharge summary. Ex.P4 is the medical bills. Ex.P5 is the

driving licence of the second Respondent. Ex.P6 is the Tea and Tiffin stall tax receipts. Ex.P7 is the first Respondent's/claimant's photo. Ex.P8 is

the Policy copy. Ex.P9 is the disability certificate. Ex.P10 is the X-ray. 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 driver of the tempo and the finding given by the

Tribunal is based on valid materials and evidence and hence the same is confirmed.

7. The claimant was aged about 34 years at the time of the accident. He was running a Tea Stall and was earning Rs. 6,000/-per month. Ex.P6 is

the Tea and Tiffin stall tax receipts. The claimant (P.W.1) deposed in his evidence that the accident occurred due to the rash and negligent driving

of the driver of the tempo and the driver of the tempo was charge sheeted under Sections 279 and 337 of I.P.C. in Crime No. 948 of 2006 on the

file of the Krishnagiri Taluk Police Station. Immediately, after the accident he was given first aid at Krishnagiri Government Hospital. Later he took

treatment in St. John's Medical College Hospital, Bangalore and Government Mohan Kumaramangalam Medical College Hospital, Salem. In his

evidence he has further stated that he sustained following injuries:

1. Abrasion over right eye lateral aspect.

2. Abrasion over chest wall and anterior aspect.

3. Abrasion over the right thigh and knee.

4. Deep abrasion with skin and external muscle less with tendon loss exposing bone of dimension 30 x 7 cm. and left edge of muscle and tendon

bone without presidium with part of context abraded, loss of finger extended to index, third, ring, little finger and thumb.

5. Right Fore arm, wrist with extension back and bone and also sustained multiple injuries all over the body.

Ex.P2 is the wound certificate, Ex.P3 is the discharge summary, Ex.P4 is the medical bills, Ex.P9 is the disability certificate and Ex.P10 is the X-

ray. P.W.2 - Doctor, who examined the claimant, in his evidence has stated that he found injuries in his hand, which was disfigured and due to the

same, he cannot lift or carry any objects and also the movements of the right hand was restricted and he cannot do his work as before.

Considering the facts and circumstances of the case, he determined the disability at 65%. P.W.2-doctor has not given treatment to the first

Respondent/claimant and he examined the first Respondent/claimant only on 23.02.2010 i.e. after three years of the accident. The doctor has not

deposed that on what basis he has arrived the percentage of disability whether on the basis of the Indian Medical Guideline or Workmen

Compensation. Considering the facts and circumstance of the case, the Tribunal fixed 45% disability and determined the monthly income at Rs.

3,000/-and calculated the annual income works out to Rs. 36,000/-(Rs. 3,000/-x 12). In this case, after taking into consideration the age of the

claimant at 34 years, the Tribunal has adopted the multiplier "17" and arrived at the loss of income at Rs. 6,12,000/-(Rs. 36,000 x 17). Out of the

said sum, the Tribunal has awarded Rs. 2,75,400/-being 45% of disablement sustained by the first Respondent/claimant. The learned Counsel

appearing for the Appellant-Insurance Company vehemently contended that the Tribunal ought not to have adopted the multiplier method in the

case of injury. Further, no concrete evidence available to show that 45% permanent disability affects the 100% earning capacity of the claimant.

The learned Counsel appearing for the Appellant-Insurance Company relied upon a judgment in Raj Kumar v. Ajay Kumar and Anr. reported in

2010 (2) TNMAC 581, the Honourable 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.

13. We may now summarise 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.

After taking into consideration the principles enunciated in the above decision, I am of the view that the Tribunal is wrong in awarding compensation on the basis of multiplier method and also there is no evidence

available on record to show that the disability affects the earning capacity of the claimant. Hence, the method that should be adopted in this case is percentage method. Normally, the Courts award Rs. 1,000/-to Rs. 2,000/-per percentage of disability. Hence, after taking into consideration the facts and circumstances of the case, it would be reasonable to award a sum of Rs. 2,000/-per percentage of disability and for 45% disability the loss of income works out to Rs. 90,000/-(45% x Rs. 2,000/-) as against Rs. 2,75,400/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 20,000/-towards pain and suffering. The amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 1,912/-towards medical expenses. Ex.P4 is the medical bills and therefore, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded a consolidated sum of Rs. 5,000/-towards transport expenses and extra nourishment. The amount awarded under this head is very low and it would be reasonable to award a sum of Rs. 5,000/-towards transport expenses and Rs. 10,000/-towards extra nourishment as against Rs. 5,000/-awarded by the Tribunal towards extra nourishment and transport expenses. Though the Tribunal has not awarded separately any amount towards loss of amenities, attendant charges, loss of income during the treatment period and future medical expenses, considering the facts and circumstances of the case, this Court is inclined to award a sum of Rs. 10,000/-towards loss of amenities, Rs. 6,000/-towards attendant charges, Rs. 15,000/-towards loss of income during the treatment period and Rs. 5,000/-towards future medical expenses. The Tribunal has awarded interest at the rate of 7.5% per annum. The accident has occurred on 10.12.2006. Keeping in view the prevailing rate of interest at the time of the accident and the date of award, I feel that the rate of 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 Rs. 90,000/-

Pain and sufferings Rs. 20,000/-

Medical bills Rs. 1,912/-

Extra nourishment Rs. 10,000/-

Transport expenses Rs. 5,000/-

Loss of amenities Rs. 10,000/-

Attendant charges Rs. 6,000/-

Loss of income during the period Rs. 15,000/-

Future Medical expenses Rs. 5,000/-

Total... Rs. 1,62,912/-

Rounded off to Rs. 1,63,000/-

Therefore, the claimant is entitled to the modified compensation of Rs. 1,63,000/- with interest at the rate of 7.5% per annum from the date of petition as against Rs. 3,02,312/-awarded by the Tribunal

8. In these circumstances, the Appellant-Insurance Company is directed to deposit the compensation of Rs. 1,63,000/-with interest at the rate of 7.5% per annum, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the modified award amount of Rs. 1,63,000/-with interest at the rate of 7.5% per annum from the date of petition, after adjusting the amount, if any, already withdrawn, on making proper application.

9. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.