
(2010) 07 MAD CK 0109
In the Madras High Court
Case No : C.M.A. No. 938 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Boopathy Raj and Selvan

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0109

Hon'ble Judges : R. Banumathi, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; S.S. Swaminathan, for M. Selvam, for R.1, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by the quantum of compensation awarded to the claimant in M.C.O.P. No. 185 of 2003 on the file of

the Motor Accident Claims Tribunal (Fast Track Court No. 5 - Additional District Judge) at Tirupur for the injuries sustained by him in the motor

accident on 17.1.2003, the Insurance Company has preferred this appeal.

2. The brief facts of the case are that on 17.01.2003 at about 19.45 hours, when the claimant/1st Respondent was riding two wheeler bearing

Registration No. TN 39 T 3902, on Coimbatore-Palladam Road near Semmipalayam Privu, the van bearing Registration No. TN 02 D - 7401

came in a rash and negligent manner and dashed against the claimant and he was thrown out of the vehicle and as a result of which the claimant

sustained grievous injuries and he was immediately taken to Coimbatore Richmond Hospital where he had taken treatment. A criminal case was

registered in Crime No. 43 of 2003 on the file of Palladam Police Station.

3. The further case of the Claimant is that he was aged about 23 years at the

time of accident and running a studio and earning Rs. 6,000/- per month. Due to the accident, the Claimant lost his entire earning power and cannot go to the work as he was used to go before the accident and suffered permanent disability and claimed compensation of Rs. 7,00,000/- contending that the accident occurred due to rash and negligent driving of the 2nd Respondent - driver of the van and the Appellant Insurance Company and the 2nd Respondent are jointly and severally liable to pay the compensation.

4. The Appellant - Insurance Company resisted the case of the Claimant contending that the accident was not due to the rash and negligent driving of the van driver and pleaded that the claimant also contributed to the accident. The Insurance Company also disputed the age and income of the deceased and also denied the loss of earning power and contended that the compensation claimed is highly excessive.

5. Before the Tribunal, on behalf of the Claimant, the claimant examined himself as P.W.1 and 2 others viz., one Thangaraj, who was eye witness to the accident and pillion-rider of the two wheeler as P.W.2 and Dr.Senthil Kumar as P.W.3 and marked Exs.P.1 to P.11. No oral and documentary evidence was adduced on behalf of the Insurance Company.

6. Upon consideration of the oral and documentary and evidence adduced and the argument advanced on either side, though in the Claim Petition, the Claimant stated the income as Rs. 6,000/- per month, the Tribunal fixed the monthly income of claimant at Rs. 9,000/- and arrived at compensation of Rs. 18,36,000/- towards the loss of earning power by assessing the permanent disability of the Claimant at 100 percent and awarded a total compensation of 20,42,555/- together with interest at 9 percent per annum and the break up details of compensation are as under:

Loss of income : Rs. 18,36,000.00

Grievous injuries : Rs. 25,000.00

Pain and suffering : Rs. 10,000.00

Extra-Nourishment : Rs. 5,000.00

Future pain and suffering : Rs. 20,000.00

Medical Expenses : Rs. 1,46,555.00

Total : Rs. 20,42,555.00

Aggrieved by the said award, the present Appeal is filed by the Insurance Company.

7. It is not necessary for us to elaborate upon the manner of accident, as to who was responsible for the accident and the liability and the cover of

the Insurance Policy, since the Tribunal has recorded the findings on those aspects in favour of the Claimant and secondly the above aspects are

not under challenge in this Appeal. Only the quantum of compensation awarded to the Claimants is under challenge.

8. The learned Counsel for the Appellant Insurance Company has submitted that the Claimant had not established his income and while so the

Tribunal has erred in taking the monthly income of the Claimant at Rs. 9,000/- per month and fell into error by taking the permanent disability as

100 percent disability. The learned Counsel for the Appellant Insurance Company would further submit that even though P.W.3 - Dr. Senthil

Kumar has assessed the percentage of disability as 32 percent, the Tribunal erred in calculating the compensation by taking the percentage of

disability as 100 percent. It was further submitted that the compensation awarded by the Tribunal under the heads of grievous injuries and future

pain and suffering are not sustainable.

9. We have heard Mr. Swamianthan, learned Counsel appearing for Respondent/claimant. The learned Counsel has submitted that the claimant has

been working as a photographer and after the accident he is having shivering in his hands and therefore he is unable to pursue his avocation as a

photographer and therefore the Tribunal was justified in taking the percentage of disability at 100 percent. It was further submitted that the Tribunal

had taken into account the future prospects of the Respondent/Claimant and was right in taking the income at Rs. 9,000/- per month.

10. We have carefully considered the submissions, judgment of the Tribunal and the materials on record.

11. In his evidence, P.W.1 has stated that in the accident, he has sustained injuries in his left leg, head and left shoulder. Immediately after the

accident, the Claimant was admitted in Richmond Hospital, Coimbatore, where he had taken treatment from 17.1.2003 to 1.2.2003. It is seen

from Ex.P.3 - discharge summary that the Claimant had sustained abrasions on his left side forehead and zygomatic area. He was also having painful movements in the left leg.

12. In his evidence, P.W.1 has further stated that the Respondent/Claimant was a photographer and videographer and earning Rs. 6,000/- per month. Even after treatment he is unable to fold his left leg and he is unable to sit cross legged and climb stair cases. The Claimant has also stated that because of the injuries sustained he is having frequent head ache and that he is having shivering in his both hands and legs and after the accident, he is not in a position to carry on his normal avocation of photography.

13. To substantiate the permanent disability, P.W.3 - Dr.Senthil Kumar was examined. In his evidence, P.W.3 has stated that a screw has been inserted in the left ankle because of which the Claimant has got difficulty in walking and climbing the stair cases. P.W.3 further stated that because the Claimant suffered fronto temporo parietal subdural haematoma in the accident, there is a possibility of injury being caused to the brain. P.W.3 has also opined that the Claimant is susceptible for frequent head ache and shivering of both hands and legs. After clinically examining the Claimant and also the medical records, P.W.3 has assessed the permanent disability at 32 percent and issued Ex.P.10 - disability certificate.

14. In his evidence, Claimant has stated that he has been running a photo studio under the name and style of Thendral Studio and has been earning Rs. 6,000/- per month. The Claimant has produced Exs.P.8 and P.9 - identity cards issued by Coimbatore District All Photographers Association and Coimbatore District Videographers Association respectively. He has also produced Ex.P.7 - receipt for payment of subscription. Even though the Claimant has stated that he was getting income of Rs. 6,000/- per month, the Tribunal has taken the monthly income at Rs. 9,000/- by observing that the Insurance Company has not seriously cross examined the Claimant as to the income.

15. By perusal of the records and the documents, we find that apart from the identity cards and the professional tax paid by the Claimant, the Claimant has not produced any other document to substantiate that he was getting higher income. Even going by the evidence of P.W.1, he was getting income only Rs. 6,000/- per month. Even if we are to take 25 percent of

income for future prospects, the income of the Claimant would only be Rs. 7,500/- per month. While so, the Tribunal erred in taking the monthly income of the Claimant at Rs. 9,000/-, which, in our considered view, is very much on the higher side and the same is reduced to Rs. 7,500/-.

16. At the time of accident, Respondent was aged 23 years. As per the II Schedule, proper multiplier to be adopted is 17. As pointed out earlier,

P.W.3 - Dr. Senthil Kumar has assessed the permanent disability at 32 percent. Ignoring the opinion and evidence of P.W.3, the Tribunal has

taken the percentage of disability at 100 percent and calculated the compensation for permanent disability at Rs. 18,36,000/- by adopting the

multiplier 17 (Rs. 9,000 x 12 x 17). In our considered view, when P.W.3 - Dr. Senthil Kumar has assessed the permanent disability at 32 percent

the Tribunal ought to have calculated the compensation amount by taking the loss of earning power permanent disability at 32 percent. Of course,

as held by the Division bench of this Court in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , even in cases

of personal injury, Court could adopt multiplier method to award compensation for permanent disability. While so determining the compensation,

the compensation to be awarded has to be just and reasonable and not a bonanza. The quantum of damages awarded should be in accordance

with the injury. Statutory provisions clearly indicate that the compensation must be ""just"" and not the outcome of guesses or arbitrariness.

17. Observing that the compensation has to be just and reasonable, in State of Haryana and Another Vs. Jasbir Kaur and Others, , the Supreme

Court held as under:

7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the

amount of compensation which is to be in the real sense ""damages"" which in turn appears to it to be ""just and reasonable"". It has to be borne in

mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the

compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be ""just"" and it cannot

be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and

quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

(underlining added)

18. In this case, the Tribunal fell in error by taking loss of earning capacity at 100 percent. When the disability is shown as 32 percent, the tribunal on its own cannot fix the loss of earning power at 100 percent without any basis. In our considered view, taking the evidence of P.W.3, the loss of earning power has to be taken as 32 percent as opined by P.W.3 - Dr. Senthil Kumar. The compensation for disability/loss of earning power is calculated as Rs. 4,89,600/- ($\text{Rs. } 7,500 \times 12 \times 17 \times 32/100$), which is rounded off to Rs. 4,90,000/-.

19. Insofar as the compensation under other heads, Tribunal has awarded compensation of Rs. 25,000/- for grievous injuries. When the Courts/Tribunals are awarding compensation for loss of earning power/permanent disability, award of compensation under the separate head "grievous injuries" is not sustainable. However, from the records, it was found that the Claimant was taking treatment in Richmond Hospital for nearly one month and thereafter he was advised to come for review on 17.2.2003. having regard to the nature of injuries and the duration of treatment, which the Claimant had undergone, the amount of Rs. 25,000/- awarded under the head "grievous injuries" is modified as compensation under the head of "loss of actual earnings". Insofar as "pain and suffering", Tribunal has awarded Rs. 10,000/-. As pointed out earlier, the Claimant had sustained injuries in the ankle as well as head injuries/fronto temporo parietal subdural

haematoma. Having regard to the nature of injuries and the duration of treatment, the compensation of Rs. 10,000/- awarded under "pain and suffering" is enhanced to Rs. 50,000/-. A sum of Rs. 10,000/- is awarded for "transportation". The compensation amount of Rs. 5,000/- awarded by the Tribunal under the head "extra nourishment" is maintained.

Likewise, the damages awarded for medical bills to the tune of Rs. 1,46,555/- is also confirmed. Thus, the total compensation amount of Rs.

20,42,555/- awarded by the Tribunal is reduced to Rs. 7,26,555/- as under:

Loss of earning power/permanent : Rs. 4,90,000.00

disability

Pain and suffering : Rs. 50,000.00

Actual loss of earning : Rs. 25,000.00

Extra nourishment : Rs. 5,000.00

Transport charges : Rs. 10,000.00

Medical bills : Rs. 1,46,555.00

Total : Rs. 7,26,555.00

The Tribunal has awarded interest at the rate of 9 percent and the same is maintained.

20. In the result, the compensation awarded to the Claimant in M.C.O.P. No. 185 of 2003 on the file of Motor Accident Claims Tribunal (Addl.

District Judge Fast Track Court No. 5), Tiruppur is reduced to Rs. 7,26,555/- and the Civil Miscellaneous Appeal is partly allowed. It was stated

that the Appellant Insurance Company has deposited Rs. 6,00,000/- together with interest and out of which the Claimant has withdrawn lumpsum

amount of Rs. 5,00,000/-. The Appellant Insurance Company is directed to deposit the balance compensation amount along with the accrued

interest within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, Claimant is permitted to withdraw the

entire compensation amount payable to him. No costs.