

(2009) 12 MAD CK 0263

In the Madras High Court

Case No : C.M.A. No. 280 and C.M.P. No. 1460 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

P. Palaniappan and another

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

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

Citation : (2011) ACJ 1661

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Arun Kumar, for the Appellant; R. Neelakandan, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above civil miscella- decree, dated 31.12.2002, made in O.P. neous appeal has been filed by Appellant/ No. 408 of 1999, on the file of the Motor Respondent No. 2 against the award and Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Salem, awarding a compensation of Rs. 10,29,123 with 9 per cent interest per annum, from the date of filing the petition till the date of payment of compensation.

2. Aggrieved by the said order, the Appellant United India Insurance Company Ltd., has filed the above appeal praying for reconsideration of the award stating that the Tribunal erred in placing reliance on the exaggerated assessment of PW 4, doctor, to assume 60 per cent disability and grant a sum of Rs. 3,88,000 towards permanent disability. Further, even this calculation of the Tribunal of Rs. 3,88,000 is erroneous as 60 per cent of Rs. 4,80,000 is only Rs. 2,88,000. The Claims Tribunal has also failed to note that the Respondent No. 1 has received amount from other policies for the same accident and has to prove that no money was reimbursed by those insurance companies for medical expenses. Further, the Tribunal erred in granting Rs. 1,00,000 for pain and suffering and Rs.

1,00,000 towards loss of income without any proof of the same. The Tribunal has also failed to note that after the accident, the Respondent No. 1 has become chairman and earned a sum of Rs. 10,00,000 for the year ending 31.3.2002 as per Exh. P17. As such, it has been prayed by the Appellant that the award granted by the Tribunal has to be reconsidered and assessed correctly.

3. The short facts of the case are as follows:

On 25.3.1997, at about 8.30 a.m., the Petitioner was travelling in a Contessa Classic car, bearing registration No. TN 27-4456, belonging to the Respondent No. 1 and that when the car was nearing Manoj Kumar Spinning Mills in Salem to Nam-akkal Main Road, the driver of car drove the car in a rash and negligent manner and hit against the parapet wall. Due to this, the Petitioner sustained grievous multiple injuries and was admitted to Sri Gokulam Hospital, Salem. This accident was due to rash and negligent driving of the driver of Contessa Classic car. At the time of the accident, the Petitioner was aged about 50 years. He was hale and healthy. He was Director in many spinning mills. Now, after the accident, he is not able to work as he did earlier. He has lost his earning capacity.

4. The Respondent No. 1 is the owner of the car and Respondent No. 2 is the insurer of the car. Both of them are jointly and severally liable to pay the compensation to the Petitioner.

5. The Puduchataram Police have registered a criminal case in Crime No. 224/1997 under Sections 279 and 337, Indian Penal Code.

6. The Petitioner has claimed a compensation amount of Rs. 30,00,000 under various heads u/s 166 of Motor Vehicles Act.

7. The Respondent No. 2, United India Insurance Company Ltd., in its counter stated that the Respondent No. 1's driver drove the car slowly and carefully at the time of the accident and observing all traffic rules at the time of the accident. When the Respondent No. 1's driver was thus proceeding on its proper side, in order to avoid hitting against another vehicle dragged and dashed against a culvert. Hence, it was an inevitable accident and so this Respondent was not liable to pay any compensation. Further, the Respondent No. 2 did not admit that the Petitioner sustained grievous injuries all over the body. Further, even after the accident, the Petitioner continues to be the Director of various mills and continues to earn without any difficulty. Further, the age, income and occupation of the Petitioner were denied. Further, it was submitted that the compensation claimed was excessive and disproportionate to the injury suffered.

8. The Motor Accidents Claims Tribunal framed three issues for consideration, namely:

(i) Whether the accident was caused by the negligent driving of the driver of the Respondent No. 1?

(ii) Is the Petitioner entitled to receive compensation?

(iii) What other relief is the Petitioner entitled to?

9. Thirumathi Umayal, the wife of the Petitioner herein and who was also travelling as a passenger in the said car, along with the Petitioner, was examined as PW 1. The PW 1, in her evidence had adduced that the driver of the car, while overtaking a sand-laden lorry, saw a lorry coming from the opposite direction and in order to avoid hitting against the lorry dashed the car against the culvert. Further, even in the copy of F.I.R., which was marked as Exh. P1, the details regarding the manner of the accident were in consonance with the evidence adduced by PW 1. The Tribunal was of the opinion that the driver of the car, before overtaking the sand-laden lorry should have taken care to find out whether any vehicle is coming from the opposite direction and if he had observed this, he should have judged whether he could overtake the sand-laden lorry without causing any accident. In the instant case, the Tribunal was of the opinion that the driver of the car had driven the car very close to the sand-laden lorry and then tried to overtake it without taking any precaution to find whether any vehicle was coming from the opposite direction. As such, the Tribunal held that the accident was caused only by the negligence of the Respondent No. 1's driver and his carelessness in not following the traffic rules and Regulations and also due to the high speed at which he had driven the car.

10. The Claims Tribunal, for assessing the injury sustained by the Petitioner in the accident, examined Exh. P7, the discharge summary, issued by Gokulam Hospital, wherein the Petitioner had taken treatment. In Exh. P7, it has been stated that when the Petitioner was admitted in the hospital, both his legs were non-functional and that his bone in the right leg and the neck of the femur bone in his right leg had been fractured and that he was given medical treatment here initially and subsequently he had been admitted to United Hospital on 6.12.2000 and taken treatment up to 20.12.2000. At the time of the admission, it has been noted by the Medical Officers that the left leg of the Petitioner was shorter than normal and that the leg was not straight, but tilted outwards; that there was a swelling in his hip and that the movements here were restricted to 100 degree; that the Petitioner had only 20 to 25 degree movement in bending; and 5 degree in moving upward; to correct these defects, a surgery has been performed at the above hospital. Therefore, from an examination of Exh. P7 and from the scrutiny of the discharge summary, issued by United Hospital, which was marked as Exh. P9, the Tribunal came to the conclusion that the Petitioner had sustained disability due to the accident. From a scrutiny of Exh. P8, which is the discharge summary, it is evident that the Petitioner had been taking treatment from 21.9.1997 to 8.10.1997. It was further observed that a surgery has been done on his leg, wherein a plate and a screw have been fixed.

11. The doctor, one Dr. Sridhar, had inspected the Petitioner and taken X-ray on Petitioner's leg as has been marked as Exh. P12. During his examination, the doctor has gone through the documents given at Gokulam Hospital as well as the documents given at United Hospital, wherein it was mentioned that surgeries

were carried out to set the hip bone in order and further an artificial hip bone was also set in its place. Further, the doctor has also seen that a plate and a screw had been fixed in the fractured tibia bone in the left knee and that a bone has been taken from his hip and implanted in the fractured area and had further noticed that a plate and screw had been fixed in the fractured portion of the humerus bone in the right arm. During the period of inspection, the doctor has noticed that the Petitioner has pain in his right arm and the muscles have become weak and that the Petitioner's movement of his right arm joint is only from 30 degree to 120 degree and that the Petitioner has not been able to use his right hand to perform his day-to-day work. Further, it was observed that the Petitioner had pain when moving his left knee due to the improper joining of the bones in his left knee and that the movements of his left knee were reduced. Further, it was observed that there was a shortening of length of left leg and his hip movements were restricted and painful and the flesh in these areas had reduced strength and that the Petitioner had difficulty in squatting and sitting. As such, the doctor assessed the permanent disability suffered by the Petitioner as 60 per cent and marked the Exh. P11, the disability certificate. Further, even on the cross-examination of the Petitioner by the Respondents, on the disability, they were not able to get any contradictory answers from him on this count and the Respondents also did not procure the services of an expert doctor to contradict this claim of the Petitioner that the disability suffered by him in the accident was 60 per cent. As such, the Tribunal did not feel that the doctor, PW 4, has given an exaggerated assessment on disability and hence took the disability sustained by the Petitioner in the accident as 60 per cent. PW 5 has adduced evidence that the Petitioner is a Director in the said Nachiyammai Cotton Mills and that Exhs. P16 and P17 are the certificates to prove his salary. PW 5 is the Secretary of the said mill. As such, the Tribunal accepted the evidence marked as Exh. P5 and took the salary of the deceased at the time of the accident as Rs. 4,80,000 per year. Further, the Petitioner had taken treatment from 25.3.1997 till 20.12.2000 for the injuries sustained in the accident. That the Petitioner was under treatment for a period of three years and nine months is evident on scrutiny of the discharge summary of hospital marked as Exh. P9. As such, Tribunal decided that he would have suffered a loss of income due to hospitalisation. For computing this, the Tribunal considered only the actual time spent by the Petitioner in going to the hospital and coming back and did not take the full period of three years and nine months as laid out in the claim due to the lack of evidence. As such, the compensation claimed by the Petitioner as loss of income during this (sic) had taken treatment in three hospitals. The Tribunal awarded a sum of Rs. 2,000 for transport expenses incurred for going to the hospital and a sum of Rs. 10,000 for nutrition. Further, an award of Rs. 2,000 was granted towards damage to clothes and articles. On a scrutiny of Exh. P10, it is evident that the Petitioner has spent a sum of Rs. 1,39,123.64 towards medical expenses. As such, they granted an award of Rs. 1,39,123.64 under this head. Further, taking into account the fractures sustained in femur bone in the left and right legs and considering that these were grievous

injuries and also taking into account the pain and suffering undergone by the Petitioner during the period of treatment, the Tribunal granted a sum of Rs. 1,00,000 as award under the head pain and suffering. Taking into account that the Petitioner had sustained 60 per cent disability, the Tribunal had calculated 60 per cent of Rs. 4,80,000 as Rs. 3,88,000 and awarded the same. Further, the Tribunal considering that this 60 per cent disability if sustained by the Petitioner may also affect his future earning capacity awarded a sum of Rs. 2,88,000. In total, the Tribunal awarded compensation of Rs. 10,29,123 to the Petitioner.

12. The Tribunal directed the Respondent No. 2 to deposit the said award with interest at the rate of 9 per cent per annum from the date of filing of the petition till the date of payment of compensation into the credit of O.P. No. 409 of 1999, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Salem, within a period of one month from the date of this order and also permitted the Petitioner to withdraw the entire amount, after such deposit was made, immediately after deposit. The Petitioner was permitted to receive excess court-fees paid by her on the award.

13. Learned Counsel appearing for the Appellant, in support of his case, cited a Division Bench judgment made in United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another, , the head notes of which are as follows:

Compensation in case of disability arising in non-fatal accidents. In case of permanent or partial disablement, court can arrive at amount payable by multiplying annual loss of income by multiplier applicable to age on date of determining compensation. Proper multiplier is prescribed in Clause 1 of the Second Schedule--Percentage of permanent total disablement or permanent partial disablement arising out of injuries has to be arrived at as per Schedule I under Workmen's Compensation Act, 1923. However, court should not mechanically apply multiplier method to ascertain future loss of income or earning power in all non-fatal accident cases. Compensation depends upon factors like nature and extent of disablement, avocation of injured and manner in which disablement would affect employment or earning power of injured. Multiplier method provided under the Second Schedule to the Motor Vehicles Act, 1988, could be adopted if injured lost his employment or avocation completely and has to be idle till rest of his life and in such cases also same period as applicable to fatal cases need not be adopted.

14. The Learned Counsel appearing for the Respondent has argued that the Motor Accidents Claims Tribunal had well considered the nature of injuries, documentary evidence and evidence of parties and had then granted compensation. As such, no error is found in the award and decree passed by the Motor Accidents Claims Tribunal. The claimant is the Director of three private concerns and earning a sum of Rs. 40,000 per month. Because of this accident, his normal life has been affected and he has difficulty in performing his day-to-day work.

15. After going through the facts and circumstances of the case, appeal grounds and arguments advanced by the Learned Counsel for both sides, the court is of the view that claimant is entitled to get compensation for grievous injuries sustained by him in the accident. The Tribunal's mode of compensation assessed was a little improper and the court, therefore, restructures the award as under for rectifying the minor error.

16. Motor Accidents Claims Tribunal had awarded compensation under various heads as follows:

(1) For loss of income

Rs. 1,00,000

(2) For transport expenses

Rs. 2,000

(3) For nutrition

Rs. 10,000

(4) For damage to clothes

Rs. 2,000

(5) For medical expenses including medical bills

Rs. 1,39,123

(6) For pain and suffering

Rs. 1,00,000

(7) For 60 per cent disability suffered (based on annual income of Rs. 4,80,000)

Rs. 3,88,000

(8) For loss of earning capacity in future for 60 per cent disability

Rs. 2,88,000

In total, an award of Rs. 10,29,123 was granted.

17. This Court wants to make the following observation at this stage. Permanent disability gives rise to the loss of earning power. It is only after taking into consideration the disability of 60 per cent, the Tribunal decided to grant compensation for loss of earning capacity. In the court's view, loss of earning power and loss of amenities are different concepts. But, it is not correct to say that the loss of earning power has no nexus or connection with permanent disability. In the present case, the claimant is a person, aged about 52 years and was a Director in three mills. The effect of such an accident on his lifestyle, movements and mental agony and physical distress undergone by him and which may persist in the future also are imponderables, which the court cannot assess

correctly. This Court, therefore, considers that claimant is entitled to receive compensation under the head of loss of amenities in life. This Court also points out that the Tribunal has not taken a specific multiplier as contended by the Appellant in computing loss of earnings due to permanent disability. They have only taken a yearly income of Rs. 4,80,000 of the claimant, in which there is no dispute, and then had calculated for disability of 60 per cent of Rs. 4,80,000 erroneously as Rs. 3,88,000, instead of Rs. 2,88,000. As such, the judgment cited by Learned Counsel appearing for Appellant is not wholly applicable to this case.

18. Therefore, the court awards the compensation as follows:

(1) For 60 per cent disability sustained by the Petitioner (Taking Rs. 2,000 for 1 per cent disability)

Rs. 1,20,000

(2) For pain and suffering

Rs. 50,000

(3) For transport expenses

Rs. 10,000

(4) For nutrition

Rs. 25,000

(5) For medical expenses including medical bills

Rs. 1,39,123

(6) For damage to clothes

Rs. 2,000

(7) For loss of income

Rs. 3,00,000

(As there is proof that the claimant had undergone treatment for a period of more than three years from 25.3.1997 to 20.12.2000, taking into account his yearly salary as Rs. 4,80,000).

(8) Compensation for loss of amenities in life and for mental agony and physical distress

Rs. 2,50,000

In total, this Court awards a compensation of Rs. 8,96,123 together with interest at the rate of 9 per cent per annum from the date of filing the petition till the date of payment, which is fair and equitable.

19. This appeal came before this Court on 16.3.2005, when this Court directed the Appellant insurance company to deposit the balance compensation amount, including interest and costs to the credit of O.P. No. 408 of 1999, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Salem. After deposit, claimant was permitted to withdraw 50 per cent of the award amount with entire accrued interest and costs.

20. It is open to Respondent-claimant to receive the balance amount lying to the credit of O.P. No. 408 of 1999, on the file of Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Salem, by filing necessary payment out application in accordance with law. The excess amount of Rs. 1,33,000 with accrued interest deposited by the Appellant United India Insurance Company Ltd., can be withdrawn in the manner known to law.

21. In the result, the civil miscellaneous appeal is partly allowed on the above terms and the award passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-I, Salem in O.P. No. 408 of 1999 is modified. Consequently, connected miscellaneous petition is also closed. No costs.