
(2010) 04 MAD CK 0128

In the Madras High Court

Case No : C.M.A. No. 677 of 2005 and C.M.P. No. 3580 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

S. Padmavathy and V. Meganathan

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304, 337, 338

Citation : (2010) 04 MAD CK 0128

Hon'ble Judges : R. Banumathi, J;M. Venugopal, J

Bench : Division Bench

Advocate : S. Arunkumar, for the Appellant; A.N. Viswanatha Rao, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellant/Second Respondent/Insurance Company has preferred this Civil Miscellaneous Appeal as against the

Award dated 28.04.2004 in M.C.O.P. No. 4554 of 2000 passed by the Motor Accident Claims Tribunal viz., II Small Causes Court, Chennai.

2. The Tribunal had passed an Award in the original Claim Petition O.P. No. 4554 of 2000 granting a total compensation of Rs. 10,03,000/-

together with interest at 9% per annum from the date of filing of the petition till the date of deposit, etc., in favour of the first Respondent/Claimant

and directed the Appellant/Insurance Company to pay the Award amount within a period of two months from the date of passing of the award.

3. Before the Tribunal, a common Award was passed in M.C.O.P. Nos. 4973/2001, 4561/2000 and 4554/2000. However, in the present Civil

Miscellaneous Appeal before this Court, we concerned with M.C.O.P. No. 4554/2000. A common evidence was taken and witnesses P.Ws.1 to

5 were examined and Exs. P1 to P27 were marked in the aforesaid M.C.O.P. case.

4. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Insurance Company/Second Respondent has filed this Civil Miscellaneous Appeal as an Appellant before this Court.

5. According to the Learned Counsel for the Appellant/Second Respondent/Insurance Company, the Tribunal had committed an error in fastening the negligence on the driver of the Third Respondent/First Respondent and also, the Tribunal had wrongly assumed that the First Respondent/Claimant was earning a sum of Rs. 4,000/- p.m. Especially, when the First Respondent/Claimant had not produced even a single document to prove that she was in employment and earning income.

6. It is the further contention on the side of the Appellant/Insurance Company that the Tribunal after awarding a sum of Rs. 4,00,000/- under the head of "Future Loss of Earning" had duplicated the compensation by awarding a sum of Rs. 3,45,000/- under the caption "Loss of Earning Power."

7. Besides the above, the Tribunal was not right in awarding a sum of Rs. 1,00,000/- under the head of Permanent Disability when the First Respondent/Claimant had sustained only 80% disability.

8. In any event, it is contended on behalf of the Appellant/Insurance Company that the Award of Rs. 10,03,000/- is highly an excessive and an arbitrary one, based on the facts and circumstances of the case.

9. In response, the Learned Counsel for the First Respondent/Claimant submits that the Tribunal had taken into account of relevant and positive factors in awarding a just and fair compensation to the First Respondent/Claimant who had sustained 80% disability and prays for dismissal of the Civil Miscellaneous Appeal by this Court.

10. The Claims Tribunal after scrutinising the evidence of eyewitnesses P.Ws. 2, 3 and 4 coupled with Ex.P3 First Information Report and Ex.P5 Charge Sheet in and by which in Crime No. 630/2000 a case was registered under Sections 279, 337, 338 and 304A of I.P.C. against the container lorry driver bearing Registration No. TN-01-C-6248, came to the resultant conclusion that the offending container lorry driver drove the vehicle bearing Registration No. TN-01-C-6248 in a fast speed rashly and

negligently and caused the accident and therefore he was absolutely responsible for the happening of the occurrence and in this regard, we are in complete agreement with the view taken by the Tribunal.

11. As regards the quantum of compensation to be awarded, the First Respondent/Claimant in her claim Petition had claimed a compensation of

Rs. 20,00,000/- and the break up figures of the same is as under:

a) Loss of earnings from 22.07.2000

to 11.08.2000 - Rs. 4,000.00

b) Partial loss of earning from

to at the net rate of Rs. per day/week - Rs. Nil

c) Transport to hospital - Rs. 5,000.00

d) Extra Nourishment - Rs. 5,000.00

e) Damage to clothing and articles - Rs. 1,000.00

f) Others:

1. Medical Expenses - Rs. 1,20,000.00

2. Future loss of earning - Rs. 10,00,000.00

3. Loss of amenity of life - Rs. 1,00,000.00

4. Mental agony - Rs. 50,000.00

g) Pain and Suffering - Rs. 75,000.00

h) Compensation for continuing or

Permanent Disability if any - Rs. 2,00,000.00

i) Compensation for loss of earning power - Rs. 4,40,000.00

Total Rs. 20,00,000.00

12. P.W. 3/First Respondent/Claimant in her evidence had deposed that on 22.07.2000 at about 05.30 p.m., she was travelling along with her

husband P.W.4 and her child in the Government bus bearing Registration No. TN-01-M-6587 and near Maduranthagam Silavattam village, the

container lorry which came in the opposite direction dashed against the bus and that her child died in the accident and since her right hand was

injured in the accident, it was amputated.

13. It is the further evidence of P.W.3/Claimant/First Respondent that her six front teeth were broken and she had fixed artificial teeth and the

muscle in her right thigh was torn in full and her nose was fully broken. Moreover, she had. in her knee and her lips were torn in full and also, the

nerve on her left hand was cut and she was immediately taken into the Government Chengalpattu General Hospital and the Accident Register

xerox copy is Ex.P11 and O.P. Chit is Ex.P12 and Ex.P13 is the Discharge Summary pertaining to her inpatient treatment at Balaji hospital from

22.07.2000 to 09.08.2000. Ex.P14 is the Balaji hospital medicine bills. Ex.P15 is the transportation receipt for attending the hospital daily from

her house in a car.

14. The evidence of P.W.3/First Respondent/Claimant is that at the time of accident, she had completed her B.A. Economics degree and she was

working as D.T.P. Operator and as Typist as in Hasthinapuram and received a salary of Rs. 2,500/- p.m. and further, she worked at Jupiter Press

wherefrom she obtained a monthly salary of Rs. 2,000/- and in all, she received a salary of Rs. 4,500/- p.m.

15. P.W.5, Doctor who examined P.W.3/First Respondent/Claimant had deposed that he examined the First Respondent/Claimant on

19.03.2004 and in the accident, her right upper hand was crushed and her right hand below the Joint portion was amputated and therefore, he had

given 80% Disability Certificate. Further, it is the evidence of P.W.5 doctor that she sustained fracture in her ring finger of the left hand and since

presently her joints had constricted, she could not hold the articles tightly and therefore, there was disability of 10% and totally, she had suffered a

disability of 90% as per Ex.P27 Disability Certificate.

16. The Tribunal for the loss of Earning from 22.07.2000 to 11.08.2000 awarded a sum of Rs. 3,000/-. Towards Transport to hospital, a sum of

Rs. 2,000/- was granted. For Extra Nourishment, a sum of Rs. 3,000/- was granted. Under the head "For Damages to Clothing and Articles", a

sum of Rs. 1,000/- was awarded to the First Respondent/Claimant. Towards Medical Expenses, a sum of Rs. 84,000/- was awarded. Towards

Future Loss of Earning, the First Respondent/Claimant was awarded with a sum of Rs. 4,00,000/-. For Loss of Amenity of Life, a sum of Rs.

20,000/- was awarded. Towards Mental Agony a sum of Rs. 25,000/- was granted. Towards Pain and Suffering, a sum of Rs. 20,000/- was

awarded. For Permanent Disability, a sum of Rs. 1,00,000/- was granted. Towards Loss of Earning Power, a sum of Rs. 3,45,000/- was

awarded. Thus in all, the First Respondent/Claimant was awarded a compensation of Rs. 10,03,000/- together with interest at 9% p.a. from the date of filing of the petition till the date of payment, etc.,

17. It is to be pointed out that a Court of Law/Tribunal is duty bound to award a sensible and a fair sum of compensation. The Concern of a Court

of Law/Tribunal is to look into the aspect what is pecuniary consideration which will make good to the sufferer as far as money can do so, the loss

she suffered as the natural result of wrong done to her.

18. None can precisely say that an individual by any Arithmetical calculation prove what is the exact amount of money which would represent such

a thing like Pain and Suffering which an individual had undergone by reason of accident. As far as possible a Court of Law/Tribunal must get add

that sum of money which will put the injured person in the same position as she would have been if she had not sustained the wrong.

19. A perusal of Ex.P21 Appointment order dated 02.01.1999 in respect of the First Respondent/Claimant shows that she was appointed in

Jupiter Paper Allied & Industry as Computer Operator from 04.01.1999 with a salary of Rs. 2,500/- per month. She is a B.A. Graduate as seen

from Ex.P16 Provisional Certificate issued by Bharathiyar University. Ex.P17 is the Transfer Certificate issued by Centre for Distance Education,

Bharathidasan University, Trichirappalli in favour of the First Respondent/Claimant wherein it was mentioned that she had discontinued her M.A.

Economics II Semester Course. Ex.P18 is the Senior Grade Technical Examination Certificate issued to the first respondent/claimant that she had

passed Second class in Typewriting Tamil in July 1997. Ex.P19 is the Second class pass in English Typewriting Senior Grade Certificate in the

examination held in July 1997 issued to the First Respondent/Claimant. Ex.P20 is the Hindi Lower Grade Typewriting Examination Certificate

issued to the First Respondent/Claimant that she had passed the same in June 1997. Considering the fact that the First Respondent/Claimant was

appointed as Computer Operator from 04.01.1999 on monthly salary of Rs.

2,500/- as per Ex.P1 Certificate and also taking into account of the evidence of P.W.3/First Respondent/Claimant that she worked in Jupiter Press and received salary of Rs. 2,000/- and in all, she received a sum of Rs. 4,500/- per month. Even though there was no documentary proof that the First Respondent/Claimant had received a salary of Rs. 2,000/- from the Jupiter Press, yet in a summary proceedings of compensation claims, the evidence of the First Respondent/Claimant is that she had received a salary of Rs. 2,000/- p.m. from Jupiter Press apart from the salary of Rs. 2,500/-p.m. she received from her employer, this Court considering her future prospects her qualification, etc., fixes her income at Rs. 4,500/- per month towards Loss of Income on account of Permanent Disability sustained by her arising out of the road traffic accident. From and out of Rs. 4,500/- per month, after we deduct Rs. 1,500/- towards one third personal expenses of the First Respondent/Claimant, then the balance works out to Rs. 3,000/- per month and the same is fixed as Loss of Income of the First Respondent/Claimant per month. The First Respondent/Claimant at the time of accident was aged 27 years. For a year, the Loss of the First Respondent/Claimant comes to Rs. 36,000/- (Rs.3,000X12). Since the First Respondent/Claimant had suffered Permanent Disability of 90% as per Ex.P27 Disability Certificate issued by P.W.5 Doctor and taking into account of the fact that she was employed as D.T.P. Operator and as Typist and because of her higher qualification adopts a proper multiplier of 18 for determining the fair just and equitable compensation and accordingly, the same works out to Rs. 5,83,200/- (Rs. 3,000X12X18X90/100). Therefore, we award a sum of Rs. 5,83,200/- towards Loss of Income to the First Respondent/Claimant on account of 90% Permanent Disability sustained by her arising out of the road traffic accident. Towards Transportation to hospital, though the First Respondent/Claimant had claimed a sum of Rs. 5,000/-, we grant a sum of Rs. 3,000/- in this regard. Towards Extra Nourishment though the First Respondent/Claimant had claimed a sum of Rs. 5,000/- we aptly award a sum of Rs. 4,000/- in this regard. Towards Damages to Clothing and Articles, we award a sum of Rs. 1,000/- as claimed by the First Respondent/Claimant. Towards Medical Expenses, the First Respondent/Claimant had produced Ex.P14 Medical Bills which showed an expense

of Rs. 83,125/- and accordingly, we award the said sum of Rs. 83,125/- towards Medical Expenses. Towards Loss of Amenity of Life, we award

a sum of Rs. 1,00,000/-. Towards Pain and Suffering, we award a sum of Rs. 1,00,000/-. Since the First Respondent/Claimant had sustained

90% permanent disability and since she requires assistance and held of another person whom she had to hire for rendering assistance in her normal

day to day activity, we award a sum of Rs. 1,00,000/- towards Expenses for hiring a person and towards Future Medical Expenses, we grant a

sum of Rs. 28,675/- taking into account of the amputation of her right hand, etc., Thus, we award a total sum of Rs. 10,03,000/- (Rupees Ten

lakhs and three thousand only) to the First Respondent/Claimant as compensation with interest at 9% per annum from the date of accident till the

date of deposit with pro costs payable by the Appellant/Insurance Company (being the insurer of the offending container lorry bearing Registration

No. TN-01-C-6248 for the permanent disability of 90% sustained by her arising out of a road traffic accident. The break up figure of the

compensation amount of Rs. 10,03,000/- awarded by this Court is mentioned hereunder:

- a) Loss of Income - Rs. 5,83,200
- b) Transportation to Hospital - Rs. 3,000
- c) Extra Nourishment - Rs. 4,000
- d) Damages to Clothing and Articles - Rs. 1,000
- e) Medical Expenses - Rs. 83,125
- f) Loss of Amenity of Life - Rs. 1,00,000
- g) Pain and Suffering - Rs. 1,00,000
- h) Expenses for hiring a person - Rs. 1,00,000
- i) Future Medical Expenses - Rs. 28,675

Total Rs. 10,03,000/-

20. Earlier this Court in C.M.P. No. 3580 of 2005 on 09.03.2005 had passed an order of stay on condition that the Petitioner/Appellant deposits

the balance compensation amount including interest and costs to the credit of

M.C.O.P. No. 4554 of 2000 on the file of II Judge, Court of Small

Causes (MACT), Chennai within a period of eight weeks from the date of order, etc., It was further ordered that on such deposit being made, the

First Respondent/Claimant was permitted to withdraw 50% of the award amount with interest and costs without furnishing security and the

Tribunal was directed to invest the balance amount in Indian Bank, No. 9, First Trust Link Street, East Raja Annamalaipuram, Chennai 600 028,

initially for a period of three years and renewable thereafter till the disposal of the appeal under re-investment scheme.

21. In the light of the detailed discussions and on consideration of the entire game of the matter in a proper perspective, we are of the considered

view that the Civil Miscellaneous Appeal is devoid of merits and the same is dismissed leaving the parties to bear their own costs. The connected

Miscellaneous Petition is closed.

22. The First Respondent/Claimant is permitted to withdraw her compensation (less the amount already withdrawn if any) by filing necessary

payment out application before the Tribunal in the manner known to law and the Tribunal is directed to pass appropriate orders thereto on merits.

The Advocate fee is fixed at Rs. 17,030/-.