
(2008) 01 MAD CK 0170
In the Madras High Court
Case No : C.M.A. No. 2811 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

V. Rajavelu and G. Chandra Sekar

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2008) 01 MAD CK 0170

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : J. Jayendra Krishnan, for J. Raja Kalifulla, for the Appellant; R. Muralidharan, for R-1, for the Respondent

Judgement

R. Banumathi, J.—Challenging the quantum of compensation of Rs. 2,22,000/- awarded as compensation, first respondent claimant for

injuries sustained by him, the Insurance Company has preferred this appeal.

2. Brief facts which are necessary for disposal of this appeal are as follows: On 09.09.1996, the petitioner was accompanying candidates for

Village Panchayat Election who went for filing nomination. At about 5.00 p.m., when the petitioner was walking along with his friends from

Sankarapuram to Devapandalam Main Road, near Kathirvelu Farm, van bearing registration No. TN-31-W-0212, driven in a rash and negligent

manner dashed against the petitioner/claimant from behind. Due to the accident, claimant had sustained head injuries. Alleging that the accident was

due to rash and negligent driving of the van driver, claimant has filed Petition u/s 166 M.V. Act, claiming compensation of Rs. 3,00,000/-.

3. Opposing the claim, Insurance Company has filed counter stating that the claimant suddenly crossed the road. Though the driver of van applied

brakes and stopped the van, the van slightly touched the claimant from behind due to which, the claimant fell down and sustained injuries.

Therefore, Insurance Company is not liable to pay any amount of compensation. The Insurance Company has also disputed the age, income and percentage of disability of the claimant.

4. Before the Tribunal, claimant examined himself as PW-1. Dr. Chandrasekar was examined as PW-2. Exs.P-1 to P-5 were marked. No

evidence was adduced on the side of the respondents. Upon consideration of oral and documentary evidence, Tribunal held that the accident was

due to rash and negligent driving of the Van driver. On the basis of evidence of PW-2, fixing disability at 50% and taking the income of the

claimant as Rs. 2,000/- p.m., the Tribunal has awarded Rs. 2,04,000/-, by applying the multiplier 17. The Tribunal has also awarded Rs. 5,000/-

for pain and suffering and Rs. 10,000/- for medical expenses and Rs. 3,000/- for extra nourishment and awarded total compensation of Rs.

2,22,000/-.

5. It is not necessary to narrate the entire details as to how the accident has occurred, who is responsible and on whom the liability is to be

fastened. It is for the reason that these findings were recorded in favour of claimants. Secondly these findings are not challenged. Only the quantum

of compensation is under challenge.

6. The learned Counsel for the Appellant has submitted that the injured/ claimant has sustained only simple injuries and the Tribunal had

misconstrued Ex.P-2 Wound Certificate and erred in finding that the injured has suffered permanent disability. It was also submitted that in the

absence of any evidence as to nature of treatment taken, the Tribunal ought not to have assessed the permanent disability at 50%. The learned

Counsel further argued that the Tribunal erred in applying higher multiplier 17.

7. Supporting the findings of the Tribunal and quantum of compensation, the learned Counsel for the first respondent claimant submitted that the

quantum of compensation awarded is just and fair and the same cannot be interfered with.

8. In the accident, claimant has sustained head injuries and bone fracture. After the accident, claimant had taken treatment at Kallakurichi

Government Hospital. Thereafter, claimant got himself admitted in Salem Private

Hospital and is said to have taken treatment for nearly 20 days.

Neurologist Dr. Sundarraaj has issued Ex.P-2 Wound Certificate describing the injuries. In Ex.P-2, Doctor has opined that the claimant sustained

Occipital Bone Fracture, Petrous Bone Fracture & Impaired hearing ability, cerebral extra-dural acute haematoma and intra-ventricular

hemorrhage. PW-2 has examined the claimant and opined that due to the injuries, claimant had lost his equilibrium. PW-2 has also stated that the

claimant suffers from impairment of hearing at present and claimant had chronic headache and difficulty in walking. PW-2 has stated that the

deformities are permanent and assessed deformities at 50%.

9. Though the claimant is said to have sustained head injuries and taken treatment in private hospital, he has not produced any medical bills nor has

he produced the discharge summary from the hospital, evidencing the nature of treatment. If the claimant had taken intensive treatment, he would

have produced medical bills. PW-2 has examined the claimant nearly after five years after the accident. The assessment of permanent disability at

50% is not supported by other materials.

10. The compensation awarded must be just and reasonable and cannot be a bonanza and a source of profit. In Mrs. Helen C. Rebello and

Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Hon''ble Supreme Court observed that the Tribunal constituted under

the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has

to be borne in mind that the compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation

which entitles the claimant to damages. Quantum of damages fixed should be in accordance with the injury. An injury may bring about many

consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for

mental and physical impairment, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of

physical handicap. The normal expectation of life is impaired. 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 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. The measure of changes cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and the attending peculiar or special features, if any. Every method or mode adopted or assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just", a wide discretion is vested on the claims 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-arbitrariness.

11. At the time of accident, claimant was aged 32 years. The Tribunal has taken 17 as multiplier. Claimant was an agriculturist. He was said to be earning Rs. 2,000/- p.m. and Rs. 24,000/- per annum. On the basis of evidence of PW-2 and Ex.P-5, Tribunal has assessed the permanent disability at 50%. As the permanent disability is not supported by other acceptable evidence, the permanent disability is fixed at 25%.

Compensation for permanent disability and loss of earning is calculated at Rs. 1,02,000/- (2000 x 12 x 17 x 25/100).

12. The amount of compensation for permanent disability - Rs. 2,04,000/- is reduced to Rs. 1,02,000/- and compensation amount is reduced from Rs. 2,22,000/- to Rs. 1,20,000/- as under:

Amount in Rs.

Permanent Disability at 25% : 1,02,000/-

Pain and suffering : 5,000/-

Medical Expenses : 10,000/-

Extra Nourishment : 3,000/-

1,20,000/-

13. In the result, Award dated 3.1.2002 passed in O.P. No. 158/1998 on the file of the Motor Accident Claims Tribunal, Kallakurichi is reduced to 1,20,000/- payable with interest @ 9% from the date of Petition.

It is stated that the entire amount has been deposited to the credit of O.P. No. 158/1998 from out of which, the claimant is said to have withdrawn 50%.

Claimant is entitled to withdraw the balance amount if any payable to him [as per the order in this appeal].

Excess amount lying in the credit of O.P. No. 158/1998 on the file of the Motor Accident Claims Tribunal, Kallakurichi shall be refunded to the appellant/Insurance Company on necessary application being filed.