

(2008) 02 MAD CK 0251
In the Madras High Court
Case No : C.M.A. No. 1119 of 2002

Vijayakumar and New India Assurance Company Limited	APPELLANT
Vs	
Venkatapathy	RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2008) 02 MAD CK 0251

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : C. Ramesh babu, for the Appellant; N. Nagusha, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by the award of compensation of Rs. 6,00,000/- for the injuries sustained by the Respondent/Claimant, the Insurance Company has preferred this appeal.

2. Brief facts which are necessary for disposal of this appeal are as follows:

(i) On 26.7.1998 at 6.45 P.M. when the claimant was standing in the bus stand at Acharapakkam Koot Road, a lorry bearing registration No. TMA 9979 proceeding towards Madras driven by its driver in rash and negligent manner came at high speed and hit against the bus stop and the lorry got capcised. As a result of the accident, the claimant and other pedestrians sustained grievous injuries. One Manikandan died on the spot, the claimant sustained fracture injury in his left ankle and laceration over the occipital region. The Claimant was taken to Government Hospital, Chengalpattu, where he had taken first aid treatment. Thereafter, he was transferred to Tamil Nadu hospital at Chennai, where the claimant had taken treatment as inpatient. Alleging that the accident was due to rash and negligent driving of the lorry driver, the claimant has filed claim petition claiming compensation of Rs. 4,00,000/-. Later, by filing an amendment Application in I.A. No. 234/2001, the total claim was enhanced to Rs. 6,00,000/-.

(ii) Opposing the claim, the Insurance Company has filed the counter stating that

the lorry was driven in a careful manner and that the accident was inevitable and therefore the Insurance Company is not liable to pay the compensation. The Insurance Company has also disputed the age, income of the claimant, the nature of injuries sustained by the claimant, treatment and percentage of disability.

(iii) Before the Tribunal, the claimant examined himself as P.W.1. Dr. Kannan Issac was examined as P.W.2. Exs. P1 to P26 were marked. No evidence was adduced on the side of the Insurance Company. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent driving of the lorry driver and held that the owner of the lorry and the Second Appellant/Insurance company are jointly and severally liable to pay the compensation.

3. On the basis of the evidence of P.W.1 and 2 and on the basis of Exs. P1 Discharge summary and P.23 Disability Certificate, the Tribunal held that the claimant sustained 45% of the disability. The claimant was working as Village Administrative Officer and he was getting the salary of Rs. 6,975/-. Taking his monthly income as Rs. 6975/- and adopting the multiplier 18, the Tribunal has calculated the permanent disability and loss of earning power at Rs. 6,77,970/-. Taking the medical expenses at Rs. 2,50,144.39, the Tribunal has calculated the total compensation at Rs. 9,28,144/- and restricted the compensation payable at Rs. 6,00,000/-. In other words, the Tribunal awarded the compensation just as prayed for by the claimant.

4. Taking strong exception to the huge amount of compensation awarded to the claimant, the learned Counsel for the Appellant-Insurance company Mr. C. Ramesh Babu has submitted that the Tribunal erred in adopting the multiplier method. The learned Counsel for the Appellant has further submitted that the claimant being employed as Village Administrative Officer and continued to be working in the same capacity and earning the same salary, the Tribunal has grossly erred in awarding the lump sum, such a huge compensation of Rs. 6,00,000/-. The learned Counsel for the Appellant-Insurance Company placing reliance upon the Full Bench decision of this Court reported in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , has submitted that the Tribunal has not chosen to itemise the award and therefore, the huge amount of compensation awarded by the Tribunal cannot be sustained.

5. The learned Counsel for the Respondent-Claimant Mr. N. Nagusha has submitted that the Tribunal has rightly taken note of the percentage of the disability at 45% and rightly applied the multiplier method and awarded the compensation of Rs. 6,00,000/- and the quantum of compensation is just and reasonable and the same cannot be interfered with.

6. It is not necessary to narrate the entire facts in detail as to how the accident had occurred, who is responsible for the accident and who is liable to pay the compensation, it is for the reason the Tribunal has recorded the findings in favour

of the Claimant. Further, these findings are not under challenge. Only the quantum of compensation is in dispute. In his evidence P.W.1 has stated that in the accident, he sustained fracture injury in the left leg, occipital region and mandible. After the accident the claimant had taken first aid treatment in Government Hospital, Chengalpattu and from where he got himself admitted in Tambaram Deepam hospital and thereafter, in Tamil Nadu hospital, Chennai. Ex.P4 is the discharge summary in respect of nature of the treatment given in Deepam hospital. After discharging from Tamil Nadu Hospital, the claimant had also taken treatment at J.S.P. Hospital and Ex.P7 is the Discharge Summary. The claimant is also said to have taken treatment in Tindivanam Hospital and thereafter, in General Hospital, Chengalpattu. The claimant had produced the Discharge Certificate issued by various hospitals. Even after treatment, there was dislocation of the left tibia. In his evidence P.W.1 has stated that during treatment iron plate was inserted and even after the treatment, he is not in a position to walk with his ease and comfort and that he is limping.

7. P.W.2 Dr.Kannan Issac had examined the claimant and assessing the percentage of disability as 45%, he had issued Ex.P23 Disability Certificate. There was fracture of tibia and fibula. P.W.2 has noticed post traumatic stiffness and soft tissue loss on left leg. P.W.2 had noticed that the claimant had difficulty in walking because of ankle stiffness and difficulty in climbing stairs. There was restricted ankle movements. The claimant had also sustained fracture of mandible, which was also treated for.

8. Of course, the claimant had sustained fracture injury in his left leg and had extensive treatment in various hospitals by taking treatment as inpatient. Merely on the nature of treatment taken by the claimant without adopting the rational method, lumpsum compensation cannot be awarded. To ensure accountability and transparency, it is always desirable that the Tribunal should itemise the award. In Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , the Full Bench of this Court has held as follows:

19. In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary losses the Tribunal shall consider: (a) pain and suffering, (b) loss of amenity, (c) loss of expectation of life, hardship, mental stress, etc., (d) loss of prospect of marriage and under the head pecuniary losses, the Tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised.

9. In claims for Insurance, the Court is to award just and reasonable compensation. The compensation so awarded is not to be a source of profit nor a bonanza. Observing that "just compensation" would depend upon the facts and

circumstances of the case 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 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 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."

10. Since the Tribunal has not itemised the award, I have carefully examined the materials on record and the percentage of disability sustained by the claimant. As per Ex.P3, P6, P8, P9 and P14, the total medical expenses comes to Rs. 2,17,970/-. But the Tribunal has awarded Rs. 2,50,144.39. The amount of compensation of Rs. 2,50,144.39 (rounded to Rs. 2,50,145/-) awarded by the Tribunal for Medical Expenses is confirmed.

The Claimant had taken treatment in various hospitals by remaining as inpatient. The Claimant is said to have remained unconscious for quite a few days. Therefore, under the head Pain and Suffering an amount of Rs. 40,000/- is awarded as compensation. For Transport Charges a sum of Rs. 10,000/- is awarded. For Attendant charges a sum of Rs. 10,000/- is awarded.

11. The claimant was working as Village Administrative Officer and he continued to be working in the same capacity. As such there is no actual loss of income. But the claimant has sustained fracture in the left leg in both bones tibia and fibula.

Even after treatment, the claimant is not in a position to walk freely has difficulty in walking. He has also stiffness in the left leg. P.W.2 has assessed the permanent disability at 45%. Having regard to the nature of injuries and the permanent disability the amount of Rs. 1,00,000/- would be reasonable for permanent disability and loss of earning power. The compensation amount of Rs. 6,00,000/- awarded by the Tribunal is reduced to Rs. 4,31,145/-, which is payable to the Claimant with interest at the rate of 9% p.a. under the following heads:

Permanent disability ...	Rs. 1,00,000	Loss of income ...	Rs. 21,000/-	Medical expenses ...	Rs. 2,50,145/-	Pain and Suffering ...	Rs. 40,000/-	Transport charges ...	Rs. 10,000/-	Attendant charges ...	Rs. 10,000/-	-----	Total
Rs. 4,31,145/- -----													

12. In the result,

The Order of the Subordinate Judge/Motor Accident Claims Tribunal, Madurantakam dated 30.10.2001 in M.C.O.P. No. 10 of 1999 is modified and this C.M.A. is allowed in part.

The compensation amount of Rs. 6,00,000/- awarded by the Tribunal is reduced to Rs. 4,31,145/-, which is payable with interest at the rate of 9% p.a. from the date of petition.

The Appellant-Insurance Co. is said to have deposited the entire award amount before the Tribunal, out of which, the First Respondent/Claimant is said to have withdrawn part of the amount. The Claimant is entitled to withdraw the balance amount payable to him (as per the Judgment in this Appeal) along with interest at 9% thereon.

The excess amount shall be refunded to the Second Appellant-Insurance Company on filing necessary Application before the Tribunal.

There is no order as to costs in this Appeal.