

(2013) 11 MAD CK 0117

Madras High Court

Case No: C.M.A. No. 1860 of 2008 and M.P. No. 1 of 2013

Senthamizhan

APPELLANT

Vs

R. Raju and The Branch
Manager, United India Insurance
Co. Ltd.

RESPONDENT

Date of Decision: Nov. 5, 2013

Hon'ble Judges: S. Vimala, J

Bench: Single Bench

Advocate: Murugan for Ms. M. Nithya, for the Appellant; N. Vijayaraghavan for R2 and No appearance for R1, for the Respondent

Final Decision: Allowed

Judgement

S. Vimala, J.

The petitioner/Senthamizhan, aged 26 years, salesman-cum-student, earning a sum of Rs. 4,000/- per month, met with an accident on 12.06.2002. In respect of injuries sustained, especially the crush injury suffered over the left elbow, he filed a claim petition, claiming compensation of Rs. 5,00,000/-. The Tribunal quantified the compensation at Rs. 1,03,400/- under the following breakup details:--

1.1. While quantifying the compensation for loss of earning capacity, the Tribunal adopted multiplier method of quantification and awarded Rs. 86,400/- (Rs. 1,000/- x 12 x 18 x 40/100). Challenging the same as inadequate, the claimant has preferred this appeal.

2. Learned counsel for the appellant/claimant submitted that the Tribunal did not consider the award of compensation, under the appropriate heads, which ought to have been considered in respect of any case of permanent disablement. It is pointed out that, when the claimant has suffered crush injury leading to external fixation of implant, the Tribunal should have considered the claim under the heads of, loss of enjoyment of amenities, cost of attendant and loss of income at least for a period of

few months.

2.1. A perusal of the order passed by the Tribunal goes to show that only in respect of three heads, the claim has been considered. Appropriate itemization has not been done by the Tribunal. It is imperative to do so as per the guidelines issued in the decision reported in the case of [Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others](#), which is quoted, by this Court, in the case of The Managing Director vs. T. Nagaraj (CMA. No. 289 of 2005). The relevant observations read thus.

18. While penning down the judgment His Lordship Hon"ble Mr. Justice A.P. Shah in [Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others](#), has held that; the Motor Accident Claims Tribunal should itemize the award under each of head namely Pecuniary Losses and Non-pecuniary Losses. Under the head of Non-Pecuniary Losses Tribunal shall consider--

(a) pain and suffering

(b) loss of amenity

(c) loss of expectation of life, hardship, mental stress, etc., and

(d) loss of prospect of marriage.

Under the head of Pecuniary Losses, 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 date of accident till date of trial. His Lordship has also observed that, when loss of earning capacity is compensated the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemized.

3. Learned counsel for the appellant has also filed a petition in M.P. No. 1 of 2013 in CMA No. 1860 of 2008 seeking to accept the documents listed therein, as additional documentary evidence. The medical bills, covering an extent of Rs. 3,785.25 has been filed.

3.1. Petition to receive additional documents was heard along with the main appeal and during arguments, this Court felt that those documents are essential for the purpose of deciding the issue and therefore, they must be received in additional evidence. Hence M.P. No. 1 of 2013 is allowed. Those documents are marked as Exs.P-10 (Medical Bills) and P-11 (Photographs).

3.2. The learned counsel for the claimant submitted that grant of medical expenses is imperative in cases of injury and the medical bills having been filed to prove the medical expenses has to be granted at Rs. 4,000/-.

3.3. This contention of the learned counsel for the appellant is well founded and the same has not been opposed by the other side. Therefore, the medical expenses are awarded at Rs. 3,785.25, rounded off to Rs. 4,000/-.

4. Photographs and negatives of the claimant has been filed to show the nature and extent of injury over his left hand. Already the Doctor has certified the disability at 45%. Having regard to the nature of injury and the impact of injury upon his earning capacity, the quantification is done, taking into account the period of treatment, loss of income and consequences of disability upon his earning capacity.

5. In the result, the Appeal is allowed, enhancing the compensation from Rs. 1,03,400/- to Rs. 1,64,000/-, along with interest at 7.5% per annum. In view of the enhancement of award, the Insurance Company/second respondent shall deposit the entire amount of compensation, with interest at 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/appellant will be entitled to withdraw the amount, less the amount already withdrawn. No costs. M.P. No. 1 of 2013, as discussed above, stands allowed.