(2010) 09 MAD CK 0242

Madras High Court (Madurai Bench)

Case No: C.M.A. (MD) No. 1290 of 2010 and M.P. (MD) No. 3 of 2010

The Divisional Manager New India Assurance Company Limited		APPELLANT
	Vs	
C.L. Chinnamuthu and Baskaran		RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 338

Citation: (2010) 09 MAD CK 0242

Hon'ble Judges: P.P.S. Janarthana Raja, J

Bench: Single Bench

Advocate: K. Elangovan, for the Appellant; G. Kasinathadurai, for R1, for the Respondent

Final Decision: Dismissed

Judgement

P.P.S. Janarthana Raja, J.
This Civil Miscellaneous Appeal is preferred by the Appellant-Insurance Company against the judgment and Decree dated 24.08.2009 made in M.C.O.P. No. 287 of 2007 on the file of the learned Motor Accidents Claim Tribunal, Sub-Court, Periyakulam.

2. When this appeal came up for admission today, the same is opposed by the learned Counsel for the first Respondent. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal.

3. Background facts in a nutshell are as follows:

The injured claimant Chinnamuthu met with motor traffic accident on 30.06.2007 at about 1.45p.m. The said injured was riding his TVS XL bearing registration No. TN-60-B-2344 on the Vadugapatti-Kamatchipuram road from West to East direction. At that time, a TVS

Suzuki bearing Registration No. TN-59-M-3080 came from the opposite direction in a rash and negligent manner at high speed and hit the TVS XL which the injured was riding. Due to the said impact, the rider of the TVS XL was thrown out of the vehicle and sustained multiple injuries. He claimed a compensation of Rs. 5,00,000/- before the Tribunal. The said TVS Suzuki was insured with the Appellant Insurance Company who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the rider of the TVS Suzuki?

2. Whether the claimant is entitled for compensation? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the rider of the TVS Suzuki and awarded a compensation of Rs. 3,65,179/- with interest at 8% per annum from the date of petition and the details of the same are as under:

For loss of income due to 65% disability	Rs. 65,000/-
For pain and suffering	Rs. 75,000/-
For attendant''s charges	Rs. 10,000/-
For extra nourishment	Rs. 10,000/-
For transport expenses	Rs. 2,000/-
For damage to clothe	Rs. 500/-
For damage to vehicle	Rs. 3,000/-
For loss of future income	Rs. 90,000/-
For medical bills	Rs.1,09,679/-

	Total Rs.3,65,179/-

Aggrieved by that award, the Appellant-Insurance Company has filed the present appeal.

4. Learned Counsel appearing for the Appellant-Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant and also without any basis and justification. He further contended that when the Tribunal awarded compensation of Rs. 65,000/- towards loss of income due to 65% disability, the Tribunal ought not to have awarded compensation towards loss of future income at Rs. 90,000/-. Further it was contended that the Tribunal has also awarded interest at the rate of 8% per annum which is also excessive. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Learned Counsel appearing for the first Respondent-claimant submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the counsel and perused the materials available on record. On the side of the first Respondent-claimant, P.W.1 and P.W.2 were examined and documents Exs.P.1 to P.33 were marked. On the side of the Appellant-Insurance Company, no one was examined and no document was marked. P.W.1 is the claimant. P.W.2 is Dr. Kannan. Ex.P.1 is the copy of First Information Report. Ex.P.2 is the wound certificate. Ex.P.3 is the M.V.I. report. Ex.P.4 is the copy of the judgment. Ex.P.5 is the X-ray. Ex.P.6 is the discharge summary. Ex.P.7 is the X-rays. Ex.P.8 is the discharge summary of Anbu Hospital. Ex.P.9 is the C.T. Scan. Ex.P.10 is the C.T. Scan report. Ex.P.11 is the Dopplor Scan report. Ex.P.12 is the Scan report related to urine. Ex.P.13 is the discharge summary of Krishnammal Hospital. Ex.P.14 is the report for the test made in Krishnammal Hospital. Ex.P.15 is the X-ray taken in the heart side. Exs.P.16 to P.24 are the medical bills. Ex.P.25 is the ECG report. Ex.P.26 is the hospital record. Ex.P.27 is the doctor''s prescription. Ex.P.28 is the photo copy of the driving licence. Ex.P.29 is the learner''s driving licence. Ex.P.30 is the original death certificate of the claimant''s wife. Ex.P.31 is the death certificate of the claimant''s wife. Ex.P.32 is the X-ray. Ex.P.33 is the wound certificate. On behalf of the Appellant Insurance Company, no one was examined and no document was marked to support the claim. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the rider of TVS Suzuki. It is a question of fact and therefore the same is confirmed.

7. The injured claimant was 65 years old at the time of accident. He was an agriculturist. In the evidence of P.W.1, it is stated that the injured claimant was earning a sum of Rs. 15,000/- per month. Further in his evidence, it is stated that it was only the rider of TVS Suzuki who has caused the accident and he was charge sheeted by the Periyakulam Police Station in Cr. No. 235 of 2007 under Sections 279, 338 of I.P.C. Further it was stated that due to the accident, the claimant sustained a fracture in his right thigh and also grievous injuries all over the body. He was admitted in Dr. Muthuvelrajan private hospital, K.K. Nagar, Madurai where he was treated as inpatient from 30.06.2007 to 05.07.2007. Later, he was admitted in Anbu hospital, Madurai and took treatment from 24.07.2007 to 15.08.2007. Further, it is stated that due to the injuries, he is unable to walk as before. P.W.2 is the doctor, who examined the injured claimant and determined the disability at 65%. Ex.P.33 is the disability certificate and Exs.P.7 and P.32 are X-rays. Ex.P.9 is the CT Scan. In the evidence of P.W.2, it is stated that there is a fracture in the right thigh of the injured claimant and also other multiple injuries all over the body. Due to the same, the injured claimant is unable to stand, sit, climb and walk substantially and surgeries were also done and steel plates were also inserted. Ex.P.2 is the wound certificate, which also corroborate with the same. In the case of Sri B.T. Krishnappa Vs.

The Divisional Manager, United Insurance Company Ltd. and Another, , the Apex Court has considered the relevant factors that are to be taken into consideration before awarding compensation in the injury cases and held as follows:

15. Although the Tribunal concluded by holding that the assessment of future loss of earnings should be made only at 20 per cent, we feel that the High Court, while making the observation that the Tribunal''s compensation under the heads "loss of amenities and enjoyment of life and loss of earnings during laid up period" was on the lower side, should have given reasons and made its own assessment under these heads, since High Court, as the first appellate authority, is an authority both on facts and law. The High Court''s orders starkly lack in any details on assessment of compensation under these heads. These areas need proper introspection and a more sensitive approach as the Appellant being a mason and a workman represent the weaker section of the community. The Appellant had suffered an irreversible damage to his right leg which will pose difficulties for him in carrying out his avocation as a mason. This Court in Concord of India Insurance Co. Ltd v. Nirmala Devi, 1980 ACJ 55 , has observed that:

...The jurisprudence of compensation for motor accidents must develop in the direction of no fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.... [at page 56, para 2]

16. In the case of Divisional Controller, Karnataka State Road Trans. Corporation v. Mahadeva Shetty 203 ACJ 1775 , where the claimant was also a mason, this Court held that:

...It has to be borne in mind that compensation for loss of limb or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance to 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 the mental and physical loss, 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...." [at page 1780, para 15]

17. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation, that impacts the life expectancy as well.

18. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:

... No amount of compensation can restore the physical frame of the Appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to

equate the money with the human suffering or personal deprivations. Money cannot renew a broken and shattered physical frame." [See R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,]

19. Further, the Court in the same case also held that:

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. [at page 370, para 12]

After considering the principles enunciated in the judgment cited supra, let me consider the facts of the present case.

8. Normally the Courts award a sum of Rs. 1,000/- to Rs. 2,000/- per percentage of disability. In the present case, the Tribunal has awarded a sum of Rs. 1000/- per percentage of disability. After taking into consideration the nature of injuries and also the evidence of the doctor as well as the documentary evidence on record, it is reasonable to award a sum of Rs. 1,400/- per percentage of disability as against a sum of Rs. 1,000/- per percentage awarded by the Tribunal. If a sum of Rs. 1,400/- per percentage is taken, the loss due to 65% disability works out to Rs. 91,000/- and it is rounded of to Rs. 90,000/-. In view of the Full Bench decision of this Court in the case of Cholan Roadways Corporation Limited v. Ahamed Thambi and Ors. reported in 2006(3) L.W.1025, that once the Tribunal awarded a compensation towards loss due to disability, the Tribunal ought not to have awarded compensation towards loss of future income, the award amount towards loss of future income of Rs. 90,000/- is unwarranted and hence, the same is deleted. The Tribunal has also awarded a sum of Rs. 75,000/- towards pain and suffering. In the evidence of P.W.2, the doctor, it is stated that on 01.07.07, a surgery was made on the right thigh of the injured and the plates were also implanted. Further it was stated that the injured claimant was in the hospital from 03.06.2007 to 05.07.2007. After discharged from the hospital, he was taking treatment as outpatient. Due to the accident the injured not only suffered physically, but also mentally and the same affected his normal day to day activities. Further he was admitted in the private hospital at Madurai from 24.07.2007 to 15.08.2007. He was in the hospital as inpatient for the period of 23 days. After taking into consideration the above facts, the Tribunal has correctly awarded a sum of Rs. 75,000/- towards pain and suffering. Hence, the same is confirmed. There is no serious dispute on the compensation awarded under other heads i.e. a sum of Rs. 10,000/- for attendant''s charges, a sum of Rs. 10,000/- for extra nourishment, a sum of Rs. 2,000/- for transport expenses, a sum of Rs. 500/- for damage to cloth and sum of Rs. 3,000/- for damage to vehicle. These are all very reasonable and hence the same are confirmed. The Tribunal has also awarded a sum of Rs. 1,09,679/- towards medical expenses. Ex.P.16 to P.24 are the series of medical bills. It is an actual expenditure. Also the amount awarded by the Tribunal towards the head is very reasonable and hence, the

same is confirmed. The Tribunal has also awarded an interest of 8% interest p.a. from the date of petition. After taking note of the date of accident i.e on 30.06.2007 and the date of award i.e. on 24.08.2009 and also the prevailing interest during the period, the interest awarded by the Tribunal is modified to 7.5% per annum as against 8% per annum as awarded by the Tribunal.

9. The details of the modified compensation as per the above discussion are as under:

For loss of income due to 65% disability	Rs. 90,000/-
For pain and suffering	Rs. 75,000/-
For attendant''s charges	Rs. 10,000/-
For extra nourishment	Rs. 10,000/-
For transport expenses	Rs. 2,000/-
For damage to clothe	Rs. 500/-
For damage to vehicle	Rs. 3,000/-
For medical bills	Rs.1,09,679/-
	Rs.3,00,179/-

10. The claimant is entitled to the modified compensation of Rs. 3,00,179/- with interest of 7.5% per annum as against a sum of Rs. 3,65,179/- with interest at 8% p.a. awarded by the Tribunal. Under these circumstances, the Appellant Insurance Company is directed to deposit the modified compensation of Rs. 3,00,179/- less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same on making proper application.

11. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.