

(2013) 10 MAD CK 0181

Madras High Court

Case No: C.M.A. No's. 3402 and 3680 of 2011 and M.P. No. 1 of 2011 in C.M.A. No. 3402 of 2011

The New India Assurance
Company Limited

APPELLANT

Vs

G.K. Srinivasan (rep. by his wife
Amutha as natural guardian), V.
Ramsingh and Dhayalan

G.K. Srinivasan (Comatose)
rep. by his wife and next friend
Amutha Vs V. Ramsingh, The
New India Assurance Company
Limited and Dhayalan

RESPONDENT

Date of Decision: Oct. 11, 2013

Citation: (2013) 8 MLJ 129

Hon'ble Judges: R. Subbiah, J; R. Banumathi, J

Bench: Division Bench

Advocate: Elveera Ravindran in C.M.A. No. 3402 of 2011 and Ms. Ramya V. Rao for Mr. A.N. Viswanathan Rao in C.M.A. No. 3680 of 2011, for the Appellant; Ramya V. Rao for Mr. A.N. Viswanathan Rao for R. 1 in C.M.A. No. 3402 of 2011 and Elveera Ravindran in C.M.A. No. 3680 of 2011, for the Respondent

Judgement

R. Subbiah, J.

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal/VI Court of Small Causes, Chennai dated 18.4.2011 made in M.C.O.P. No. 775 of 2007, the insurance company has filed the appeal in C.M.A. No. 3402 of 2011. Being not satisfied with the same award, the claimant has filed the appeal in C.M.A. No. 3680 of 2011. Since both the appeals arise out of the same award, these appeals are disposed of by way of a common judgment.

2. For the sake of convenience, the parties will be referred as per their ranking in C.M.A. No. 3402 of 2011.

3. The claim was made by the first respondent/injured victim represented by his wife Amutha, since the victim fell into coma subsequent to the accident.
4. It is the case of the first respondent/claimant before the Tribunal that on 12.12.2005 at about 12.00 hours, when the injured victim was riding a motor cycle bearing registration No. TN 22 AA 8313 at Kovilambakkam Main Road, near Ganesh Saw Mill, Chennai, and when he was proceeding from Nanmangalam towards Kizhkattalai, a car bearing registration No. TN 07D7070 came from the opposite direction in a rash and negligent manner and endangering the public safety and hit on the motor cycle driven by the victim, as a result of which, the victim had sustained head injuries and other fracture injuries all over the body and became unconscious. It is the further case of the injured victim that from the date of accident, he is living in a vegetative state of life. At the time of accident, he was aged about 39 years and he was doing a business of civil contract by name Bhavani Construction. He was also doing real estate business and he was also a ward member of Nanmangalam Panchayat Ward No. 4. He was earning a sum of Rs. 10,000/- per month through his contract business and another sum of Rs. 10,000/- through real estate business. Hence, he has filed a claim petition through his wife, claiming a sum of Rs. 90,00,000/- as compensation.
5. The case of the claimant was resisted by the insurance company by filing counter affidavit, taking a defence that the accident is only due to the rash and negligent driving of the motor cycle by the victim and as such, the insurance company cannot be held responsible to pay the compensation amount. In any event, there was a head on collision of the said vehicles and hence, the decree of the negligence ought to have been fixed at the ratio of 50:50 as against the owner and the insurer of the vehicle.
6. In order to prove the claim, on the side of the injured victim, the wife of the victim examined herself as P.W. 1 besides examining three witnesses and marked 33 documents as Exs. P. 1 to P. 33. On the side of the insurance company, no oral and documentary evidence was adduced.
7. The Tribunal, after analysing the entire evidence, both oral and documentary, has come to the conclusion that the accident is the result of rash and negligent driving of the driver of the insured vehicle and passed an award for a sum of Rs. 45,74,000/- under different heads. The break up details are as follows:-

Loss	of	Rs. 23,04,000/-
annual		
income		

Loss of income for five years at the rate of Rs. 12,000/- p.m.	Rs. 7,20,000/-
Transportation	Rs. 50,000/-
Extra nourishment	Rs. 50,000/-
Medical expenses	Rs.10,00,000/-
Future medical expenses	Rs. 3,00,000/-
Attendant charges	Rs. 50,000/-
Pain and suffering	Rs. 1,00,000/-
Total	Rs. 45,74,000/-

Questioning the said quantum of compensation, the insurance company has filed the appeal in C.M.A. No. 3402 of 2011. Seeking enhancement of the compensation, the injured victim has filed the appeal in C.M.A. No. 3680 of 2011.

8. Learned counsel appearing for the appellant insurance company submitted that the Tribunal fixed the disability suffered by the victim as 100% and awarded an exorbitant sum of Rs. 23,04,000/- as compensation under the head of loss of income. In this regard, the learned counsel appearing for the insurance company submitted that 100% disability fixed by the Tribunal is on the higher side. That apart, the Tribunal for the purpose of awarding compensation under the head of disability had taken a sum of Rs. 12,000/- as monthly income of the injured victim. But, absolutely, no documentary evidence was produced on the side of the claimant to prove the monthly income of the deceased. Further, the learned counsel has submitted that the Tribunal after awarding a sum of Rs. 23,04,000/- towards loss of income by fixing the disability at 100%, again has awarded another sum of Rs. 7,20,000/- under the head of loss of income for five years at the rate of Rs. 12,000/- per month. The said sum of Rs. 7,20,000/- awarded by the Tribunal separately after awarding a sum of Rs. 23,04,000/- towards loss of income based on the disability suffered by the victim, is not legally sustainable. Further, the learned counsel has submitted that the amounts awarded under the other heads are also on the higher side and therefore, proper reduction has to be made in the amount awarded by the Tribunal by way of re-assessment.

9. Per contra, learned counsel appearing for the first respondent/claimant submitted that due to the accident, the injured victim fell into coma and thereafter, he is living only a vegetative state of life. In order to prove the disability suffered by the victim, Dr. K.J. Mathiazhagan was examined as P.W. 2, who had stated in his evidence that the claimant is living only a vegetative state of life on account of the injuries sustained by him in the accident and the disability suffered by the victim is 100%. Based on his evidence only, the Tribunal has fixed the disability as 100%. Therefore, the said disability fixed by the Tribunal needs no modification. Further, the learned counsel appearing for the first respondent/claimant has submitted that the victim was earning amount by doing real estate business and he was also a civil contractor by profession. In order to prove the claim, on the side of the victim, the real estate agreement and building agreements were marked as Exs. P. 19 to P. 21. Based on the said agreements only the Tribunal has fixed the monthly income of the victim as Rs. 12,000/-. Therefore, it is incorrect to state that the Tribunal has fixed a sum of Rs. 12,000/- as monthly income without any basis. Considering the facts and circumstances of the case, the amount awarded by the Tribunal needs further enhancement. Hence, by fixing atleast a sum of Rs. 20,000/- as monthly income of the victim, the amount awarded by the Tribunal has to be enhanced.

10. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

11. From the evidence of P.Ws. 1 and 2, we find that the victim is still living only a vegetative state of life. In fact, on a perusal of the materials available on record, we find that when the victim was produced before the Tribunal in a wheel chair, he was not in a position to answer the questions posed to him. Thereafter, the Tribunal has allowed the wife of the injured to examine herself as P.W. 1. Therefore, the Tribunal, by placing reliance on the evidence of P.Ws. 1 and 2, fixed the disability suffered by the victim as 100%. Considering the facts and circumstances of the case, we do not find any infirmity in fixing 100% disability suffered by the victim.

12. We find that, in order to prove the income earned by the victim, except the real estate agreement and building agreements, no other crucial document such as income tax returns were not produced before the Tribunal. In the absence of any tangible evidence to prove the income of the injured victim, we are of the opinion that a sum of Rs. 12,000/- fixed by the Tribunal as monthly income of the victim is on the higher side. Therefore, by fixing a lesser sum than Rs. 12,000/- as monthly income, the amount awarded by the Tribunal has to be modified.

13. Though no documentary evidence was produced before the Tribunal by the claimant to prove the actual income earned by the injured victim, the real estate agreement and the building agreements marked on the side of the claimant as Exs. P. 19 to P. 21 would show that the victim was doing real estate business and also doing building construction work. Considering the cost of living of the present day, we are of the opinion that a sum of Rs. 10,000/- could be fixed as monthly income of

the injured victim to arrive at a just and proper compensation. If a sum of Rs. 10,000/- is fixed as monthly income of the victim, the annual loss of income works out to Rs. 1,20,000/-. The injured was aged about 39 years at the time of accident and the correct multiplier that has to be adopted in this case is 16. If multiplier 16 is applied, the loss of income works out to Rs. 19,20,000/- (Rs. 10,000/- x 12 x 16), which amount could be awarded as a just and proper compensation under the head of loss of earning power. Since we have adopted the multiplier method to arrive at a sum of Rs. 19,20,000/- towards loss of earning capacity, we are of the opinion that a sum of Rs. 7,20,000/- awarded by the Tribunal under the head of loss of income for five years at the rate of Rs. 12,000/- per month is liable to be set aside. If it is not set aside, it would amount to awarding of double compensation under the same head. Hence, a sum of Rs. 7,20,000/- awarded by the Tribunal under the head of loss of income for five years is hereby set aside.

14. We find that the Tribunal has awarded only a sum of Rs. 50,000/- towards attendant charges. Considering the fact that the injured victim needs assistance of an attendant throughout his life, a sum of Rs. 50,000/- awarded by the Tribunal under the head of attendant charges needs proper enhancement. Hence, considering the facts and circumstances of the case, the said amount is enhanced to Rs. 2,00,000/-. Further, the Tribunal has awarded a sum of Rs. 50,000/- towards extra nourishment. Considering the facts and circumstances of the case, we are of the opinion that the said amount could be enhanced. Hence, a sum of Rs. 50,000/- awarded by the Tribunal under the head of extra nourishment is enhanced to Rs. 1,00,000/-. Except this modification, the amount awarded under the other heads remains unaltered. Thus, a sum of Rs. 45,74,000/- awarded by the Tribunal is hereby reduced to Rs. 36,70,000/-. The break up details of the same are as follows:

Loss of annual income	Rs. 19,20,000/-
Transportation	Rs. 50,000/-
Extra nourishment	Rs. 1,00,000/-
Medical expenses	Rs. 10,00,000/-
Future medical expenses	Rs. 3,00,000/-
Attendant charges	Rs. 2,00,000/-
Pain and suffering	Rs. 1,00,000/-

Total Rs. 36,70,000/-

15. In the result, the appeal preferred by the insurance company in C.M.A. No. 3402 of 2011 is partly allowed and the appeal preferred by the first respondent/claimant in C.M.A. No. 3680 of 2011 is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant insurance company is directed to deposit the entire compensation amount of Rs. 36,70,000/- with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount that has already been deposited by them, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the entire amount with proportionate interest.