(2013) 10 MAD CK 0205

Madras High Court

Case No: C.M.A. No. 3581 of 2005

C. Veerasingam	APPELLANT
Vs	
I.S. Albertraj and The United India Insurance Co. Ltd.	RESPONDENT

Date of Decision: Oct. 31, 2013

Hon'ble Judges: S. Vimala, J

Bench: Single Bench

Advocate: S.S. Swaminathan, for the Appellant; C.G. Gopalakrishnan for R-2 and No Appearance for R-1, for the Respondent

Final Decision: Partly Allowed

Judgement

S. Vimala, J.
The claimant, Veerasingam, aged 35 years, self-employed, earning a sum of Rs. 3,500/- per month, sustained injuries, in an accident that took place on 08.05.2002.

1.1. At the time of accident, the petitioner/appellant was walking in the left hand side of the road, and at that time, he was hit by the motor cycle, bearing Registration No. TN45-J-5875. Contending that, because of the accident, he has suffered permanent disablement and consequent loss of earning capacity, the claimant filed a petition, seeking compensation of Rs. 5,00,000/-.

The Tribunal awarded a sum of Rs. 45,000/- as compensation and the following are the breakup details:--

1.2. Challenging the quantum as inadequate, the claimant has filed this Appeal.

2. P.W.3, Soundarrajan, who is the proprietor of Silicon Nettings has stated, in his evidence, that the petitioner had been employed by his industry as designer and foreman and he was paid a sum of Rs. 3,500/- per month. The Registration Certificate of that

Institution has been filed as Ex.P-7. The Manager of URL Garment Exports Industry has been examined as P.W.4, who has stated that the claimant had been employed as foreman and he was paid a sum of Rs. 3,000/- per month. The registration certificate of that Institute has been filed as Ex.P-9.

2.1. The Tribunal has observed that, in the claim petition, the claimant has stated as self-employed and whereas, the certificates have been filed giving an impression, as if he is employed under the two garment companies and therefore, those certificates cannot be relied upon.

2.2. A perusal of Exs.P-5 and P-6 would go to show that the claimant was not employed therein as an employee, but he is being paid a sum of Rs. 3,500/- and Rs. 3,000/-, respectively, for attending the maintenance work. His duty was to maintain the imported netting machines. It is quite possible to attend the maintenance work in two institutions. Therefore, it is clear that, without understanding the scope of the certificate issued and without properly appreciating the evidence given by the respective Managers of those institutions, the Tribunal has rejected the evidence.

2.3. Therefore, considering the nature of injury, period of treatment and nature of disability, there should have been loss of income, at least for a period of four months, which is awarded at the rate of Rs. 5,000/- per month, totaling to a sum of Rs. 20,000/-.

2.4. It is the case of the claimant that the wound certificate of the claimant has been filed as Ex.P-2. Under Ex.P-2, it is mentioned that the head injury suffered is a grievous injury. Under Ex.P-3, it is stated that the petitioner had been taking treatment as an inpatient from 08.05.2002 to 30.05.2002.

2.5. A perusal of Ex.P-2-wound certificate, coupled with the evidence of P.W.5, Dr. Senthilkumar (Orthopedic surgeon) would reveal that the claimant has been suffering from the following type of injuries:--

(i) There had been fracture on right temporal bone extending up to right ear.

(ii) There had been contusion and hematoma over the left frontal bone.

(iii) The claimant has been administered medicines, which would control fits.

(iv) The injured had suffered deafness over the right ear and he has been suffering from headache, vomiting and loss of sensation. Audiogram report has been relied upon to show the loss of hearing power and it has been found that the hearing capacity of the right ear was less by 60 decibels.

2.6. Considering the cumulative effect of all the consequences regarding deafness and possibility of fits, the disability has been assessed at 39.71%. All the relevant documents have been taken note of before issuing the disability certificate and the evidence has

been given in detail. But the Tribunal has commented that the ENT Surgeon has not been examined and that the evidence given by the Orthopedic Surgeon cannot be given much importance. Infact, the Tribunal has given an observation that those reports cannot be accepted.

2.7. The observation of the Claims Tribunal that the disablement and consequences of disablement, as spoken to by the Orthopedic Surgeon, cannot be accepted, does not merits acceptance and it has to be set-aside. When a person suffers from head injury, the consequences of head injury may reveal itself, at any time, without notice. There would be mental agony, on account of this uncertainty. Once there is giddiness, because of head injury, the person will lose the balance. This kind of physical illness will have an impact of imbalance in the quality of life itself. It will reduce the level of confidence, thereby life itself will become a question mark.

2.8. The loss of hearing power naturally would result in loss of confidence and the claimant would suffer loss of enjoyment of amenities. The consequences arising out of the head injury had not been properly appreciated by the Tribunal and the Tribunal has wrongly chosen to reject the evidence of the Orthopedic Surgeon.

2.9. Having regard to the nature and consequences arising out of the head injury, all the items, which are to be considered in respect of permanent disablement of that nature, have been omitted to be considered by the Tribunal.

2.10. In respect of permanent disablement of 40%, the learned counsel for the appellant/claimant submitted that it is a fit case to apply the multiplier method of quantification, as the consequences of disability is severe and not like in any other case, where there is malunion/no union of bones or loss of limbs.

2.11. This contention cannot be accepted, as the disability has not resulted in total and complete permanent disability and the disability is only partial. Therefore, adopting formula of applying Rs. 2,000/- per percentage of disability, the permanent disability would be at Rs. 80,000/- (Rs. 2,000/- x 40).

3. In view of the discussions made above, the compensation has to be quantified under the following heads:-

In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the quantum of compensation from Rs. 45,000/- to Rs. 1,70,000/-. The Insurance Company/second respondent shall deposit the entire amount of compensation, less already deposited, with interest at 7.5% per annum, from the date of petition, till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same. No costs.