

(2013) 11 MAD CK 0216

Madras High Court

Case No: C.M.A. No. 1646 of 2004

G. Uthiramuthu

APPELLANT

Vs

M.C. Sugumaran, V.M. Nazar and
The Oriental Insurance Company
Ltd.

RESPONDENT

Date of Decision: Nov. 29, 2013

Hon'ble Judges: S. Vimala, J

Bench: Single Bench

Advocate: C. Deivasigamani, for the Appellant; R. Sreevidhya for R-3, for the Respondent

Final Decision: Partly Allowed

Judgement

S. Vimala, J.

"This case highlights the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of appellant No. 1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous." observed the Supreme Court in the decision reported in [Bhagwan Dass and Another Vs. Punjab State Electricity Board](#), . This case is the best example which would fit in with the observation made above. How an employee/claimant/litigant who suffered compression fracture T12 Vertebra, Disc Bulging at L-3, L-4 and L-4, L-5 level and Postero-Central Disc Protrusion at L-3-L-4 and having been declared as "unfit to be completely/permanently incapacitated for further service of any kind" was treated by his own employer, by the Insurance Company as well as by the Court, would be evident, if the grounds of appeal are looked into.

2. This Appeal has been filed by the claimant/appellant seeking enhancement of compensation.

3. As against the claim made for a sum of Rs. 5,00,000/- in respect of the injuries sustained in an accident that took place on 17.02.2001, the Claims Tribunal awarded a sum of Rs. 76,650/-, with interest at 9% per annum.
4. Challenging the compensation as inadequate, this Appeal has been filed.
5. The main contention of the learned counsel for the claimant is that:
 - (i) 40% disability sustained in vertebrae cannot be equated with 40% disability in any other limb of the body and that the impact of injury in the vertebrae restricting the entire movement of the body has not been properly appreciated by the Claims Tribunal.
 - (ii) Strict adherence to evidence regarding the quantum would amount to denial of justice and this aspect of the matter, which has been laid down, in 2000-1-L.W. 222 has been omitted to be considered by the Tribunal.
 - (iii) The Tribunal ought to have granted damages on three categories, namely, (a) consolatory damages, (b) compensatory damages, (c) damages for loss of expectation of life, in the case of injury as reported in 2000 (2) TAC 58 and that the Tribunal omitted to grant the same.
6. The break up details of the award granted by the Tribunal and the reasons for not granting certain items of claim deserves to be discussed.
 - 6.1. According to the evidence of the claimant, he suffered fracture in the spinal cord; he had to be inpatient for two months at Perundurai Medical College Hospital; he took treatment from the doctor at Erode; he had been inpatient at Kovai Medical College for ten days; he incurred medical expenditure of Rs. 75,000/-; and even thereafter, he was not able to do his duty.
 - 6.2. According to the evidence of the Doctor, the twelfth bone in the spinal cord has been crushed and even after surgery there was mal-union, because of the alteration of the structure in the spinal cord; there is tightness of muscles in the hip neck and consequent pain; because of the injury there is limping, inability to carry weight and unable to travel for a long time and the disability is assessed at 40%.
7. Based on the evidence of the claimant and the Doctor, the Tribunal awarded compensation as per the break up details furnished below, but with the finding that there is no loss of income.
 1. In respect of 40% disability, compensation Rs. 40,000/-;
 2. For pain and sufferings - Rs. 20,000/-;
 3. Extra nourishment - Rs. 15,000/-;
 4. Transport Expenses - Rs. 1,000/-;
 5. Medical Expenses - Rs. 650/-;

6. Total - Rs. 76,650/-.

8. Whether the observation that, the claimant continues to be in job and therefore, there is no loss of income is correct, is the main issue to be considered.

8.1. The first contention of the insurance company is that the bus belonging to the Transport Corporation in which the injured had been travelling has not been impleaded and therefore, the petition is bad for non-impleadment for proper and necessary party. Whether the issue raised with regard to non joinder of party is justified?

8.2. On 17.02.2001, the vehicle bearing Registration No. TN38-N-0659 had been driven by the complainant, Akbar Basha, who was the driver, and in the First Information Report, under Ex. A-1, what is stated is that, he stopped the vehicle for the purpose of alighting the passengers, after the whistle from the conductor and at that time, the lorry bearing Registration No. KL-7-8990, lorry with a load of iron bar came behind and dashed against the bus. The Motor Vehicle's Inspector report also shows that the damages to the bus are only in the rear side, whereas the damages to the lorry are in the front side. Therefore, the averment in the First Information Report is probablised by the report of the Motor Vehicle's Inspector (Ex. A-3). Final report has been filed only against the lorry driver (Ex. A-4). The driver has also admitted the offence and has paid the fine amount, as per the judgment in STC No. 846 of 2001 (Ex. A-6). These circumstances show that there cannot be any negligence on the part of the bus driver. However, even assuming that there had been negligence on the part of the corporation bus, it is for the owner of the lorry, also to have taken appropriate steps to implead the owner of the bus, as a party responsible for the accident, but that has not been done.

8.3. A perusal of Accident Register Copy reveals that the claimant had been admitted in the Government Hospital on 17.02.2001 and discharged on 21.02.2001. Further perusal of the medical records go to show that the claimant has been admitted at IRT Perundurai Medical College Hospital on 02.03.2001 and discharged on 20.03.2001, with patient being referred to CMC for further investigation. Again he has been admitted on 27.03.2001, surgery performed on 07.04.2001 and the date of discharge is 01.05.2001. While being discharged, complete bed rest has been advised for three weeks and to come again for review. Again, he has been admitted in the hospital on 30.05.2001 and discharged on 19.06.2001, again, admitted on 19.07.2001 and discharged on 08.08.2001, again admitted on 23.08.2001 and discharged on 15.09.2001 and again admitted on 28.10.2002 and discharged on 11.11.2002.

8.4. These details have been extracted for the purpose of appreciating and interpreting the evidence given by the claimant in cross examination saying that he is in service of the Corporation. In the chief examination, he has stated that he is not able to do any work as before and he is not able to go for job and that, he is not

even able to stand or walk for a long distance.

8.5. This evidence ought to have been considered along with other medical records produced. When he has stated that he is in the service of the Corporation that would only mean that his status as conductor has not been terminated by the Corporation and that he continues to be an employee of the Corporation and it cannot amount to saying that he is actually/physically discharging the work in the Corporation.

8.6. Without understanding the nature of the injury, consequences of the injury and the impact of disability upon the daily life of the claimant, the Tribunal has disallowed loss of income simply by placing literal interpretation to the evidence given by the conductor. Therefore, the order passed by the Tribunal, disallowing loss of income has to be set-aside.

9. It would be relevant to point out the conduct of the Corporation under whom the claimant had been employed, which are filed by way of additional typed set of documents.

9.1. The claimant had sent a notice asking the Corporation to send at least a communication informing whether he has been terminated from service or to pay the salary to him. This pathetic request would go to show that the employer was also blind to the ailment of the claimant, even though the injury sustained by him was "out of" and "in the course of employment." when the injury is "out of" and "in the course of employment.", the first duty of the employer is ask the injured as to what happened to him and not why it happened to him. The step motherly treatment given to him at a time when he ought to have been treated with compassion would be evident from the following communications, which is filed by way of additional typed set of papers:-

(i) Show cause notice has been issued by the Corporation, dated 29.11.2003, as to why he should not be terminated from service on medical grounds, when the medical board has certified that he was permanently incapacitated from doing any further service.

(ii) The claimant has sought for alternative employment after explaining all his difficulties.

(iii) By the proceedings, dated 13.05.2007, the Minister issued announcement in the Assembly that those who suffer permanent disablement, during the course of employment, would be given light duty for the purpose of supporting the family.

(iv) Records have been called for by this court from the Corporation itself for the purpose of finding out how long the claimant was on leave and how long he was on duty. From the records, it is evident that from 17.02.2001 to 03.01.2002, i.e., for a period of 11 months, he has been paid compensation of Rs. 34,177.25.

(v) The claimant has also filed C.P. before the Labour Court, Coimbatore, claiming a sum of Rs. 2,79,562/- towards wages for the period 01.06.2003 to 31.05.2006.

(vi) The claimant was due for retirement on 31.03.2009.

(vii) When the claimant wanted light duty or alternative duty, it appears that he was compelled to withdraw C.P. No. 432 of 2006 and in fact, the claimant has submitted a letter, dated 28.01.2008 to that effect.

(viii) (Light duty has been given to him, by order dated 28.01.2008). Date of retirement is 31.03.2009.

9.2. It would be relevant to quote the factors an employer may wish to consider when deciding, whether to dismiss the employee for illness-related problems:-

- ◆ The duration of the employee's illness and the effect this illness upon the employer's business;
- ◆ The employee's entitlement to sick leave (paid and unpaid);
- ◆ The prospects of recovery of the employee and the possibility of them returning to work (which should be based on objective information such as a doctor's report);
- ◆ The length of time an employee has been employed with the employer;
- ◆ Steps the employer can take to aid rehabilitation, such as providing part-time or light duties;
- ◆ Exploring whether there are any alternatives to dismissal that are reasonable in the circumstances.

9.3. The issuance of show cause notice and reluctance to offer alternative employment on the part of the employer only go to show that the Corporation has added insult to injury. The claimant had suffered this insult partly on account of the injuries sustained and partly on account of insensitivity exhibited by the employer, for which, he has to be compensated.

10. The claim of the claimant has to be considered under the stated circumstances.

10.1. The Award has to be re-worked, considering the disability and the impact of disability upon his earning capacity.

10.2. On seven occasions, the injured had been taking treatment as inpatient for a total period of 129 days. Therefore, a sum of Rs. 50,000/- is awarded under the head of Pain and sufferings.

10.3. The employer of the injured has paid compensation through Court for a period from 2001 to 2002. In respect of the claim for the periods 2003 to 2006, C.P. was pending for a sum of Rs. 2,79,562/-. It is alleged that the injured himself came to a settlement under which he agreed to withdraw the C.P., provided he is given light

duty by the Corporation. The alleged settlement could not have been a settlement in the real sense of the term, much less a voluntary settlement. The poor conductor, who was earning a sum of Rs. 7,900/- per month, who had been under continuous treatment, would not have volunteered to forego his claim for arrears of salary. It ought to have been out of the compulsion to get alternative job. This settlement is against law and against a public policy. Therefore, this settlement cannot be attached with any sanctity and the claimant is entitled to loss of salary for those years also.

10.4. It would be pertinent to quote the decisions of the Hon''ble Supreme Court Jit Ram Shiv Kumar vs. State of Haryana (1991 (1) SCC 11), wherein, it is pointed out that it is only in public interest that it is recognised that an authority acting on behalf of the Government or by virtue of statutory power cannot exceed his authority. While dealing with a case arising under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, the Hon''ble Supreme Court deprecated the conduct of the employer in refusing to accept the request for withdrawal of retirement request made by a visually challenged employee. The relevant observation reads thus.

Appellant No. 1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was depreciable.

..... The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

10.4.1. It would be relevant to quote Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

7. Non-discrimination in Government employments (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

10.5. The Corporation as an employer, should have come forward to settle his claim under Employees Compensation Act, 1923. But the corporation refusing to recognise the victim as an equal citizen, has extended step motherly treatment and thus making his position miserable.

10.6. Invoking the public trust doctrine, the Hon"ble Supreme Court has pointed out that the authorities are under the legal obligation to exercise the power reasonably as well as in good faith and the observation made in the decision reported in [Noida Entrepreneurs Association Vs. NOIDA and Others](#), is reproduced hereunder for useful reference:-

Power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. Public Authorities cannot play fast and loose with the powers vested in them. A decision taken in arbitrary manner contradicts the principle of legitimate expectation. An Authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred.

11. Had there been a compulsion to withdraw his claim for arrears of salary towards providing alternative employment, it would be illegal, unjust and unethical also. The Corporation should have come forward to settle his claim under The Employees Compensation Act, and instead of settling the claim, the Corporation has dragged the claimant to pillar-to-post, though the injury suffered by the claimant was an employment injury. The Corporation, which should have shown compassion, has shown the step motherly treatment towards the claimant.

12. A perusal of Ex. P-9 goes to show that the injured/claimant has received the salary of Rs. 6,734.25 during January 2001. In respect of the period 2001 to 2002 the Corporation has paid it. For the year 2003 to 2006, he claimed for a sum of Rs. 2,72,562/-. This will be amount payable towards the loss of salary. In respect of 2007, on par with the claim made for three years, a sum of Rs. 73,000/- would become payable. Therefore, towards loss of salary, from 2003 to 2007, a sum of Rs. 3,52,562/-, rounded off to Rs. 3,53,000/-, would be payable. During 2008, alternative

employment has been provided and during 2009, the claimant has attained superannuation. Therefore, for rest of the periods, loss of earning capacity has to be awarded.

12.1. Under Ex. P-7 permanent disability certificate the Doctor has stated that the claimant is walking with limping and he cannot bend forward and he cannot travel long distance by road; and that the activities of daily living is difficult.

12.2. This part of the statement has been proved by his non-employment for nearly four to five years. If taking the modest estimate of Rs. 7,000/- per month, as the monthly salary and adopting the multiplier of "11", in respect of total loss of earning capacity, the compensation for loss of earning capacity would be Rs. 9,24,000/- (Rs. 7,000/- x 12 x 11). This method is not adopted as the claimant had attended light duty for a period of one year and the loss of earning capacity may be slightly less than the total and complete disability.

12.3. As he has attended light duty during 2008-2009, in respect of remaining years, compensation of Rs. 2,00,000/- will be appropriate towards loss of earning capacity.

12.4. Even though bills have been produced only to the extent of Rs. 650/- having regard to the period of treatment in several hospitals for years spreading over, medical expenses are allowed at Rs. 50,000/-; transport expenses at Rs. 20,000/-; extra nourishment at Rs. 20,000/-; loss of expectation of life at Rs. 15,000/-; loss of enjoyment of amenities at Rs. 30,000/-; Cost of attendant at Rs. 10,000/-. Thus, the total compensation payable would be Rs. 7,48,000/-.

12.5. The amount of compensation claimed in the petition is Rs. 5,00,000/-.

12.6. The learned counsel for the appellant submitted that there is no impediment to grant more than what is claimed, if the claimant is found entitled to more than what is claimed.

12.7. The reasons stated above would go to show that the claimant has suffered victimization from his own employer and loss on account of mental agony. The claimant is entitled to a reasonable compensation of Rs. 7,48,000/-, as indicated above. Hence, the claimant shall pay the necessary court fees before the drawal of the cheque.

In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the quantum of compensation from Rs. 76,650/- to Rs. 7,48,000/-. No costs.

12.8. The Insurance Company shall deposit the entire amount of compensation, less the amount already deposited, if any, along with interest at 7.5% per annum, on the enhanced amount, from the date of petition to 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 would be entitled to withdraw the same, less the amount already withdrawn, if any.