

(2010) 12 MAD CK 0241

Madras High Court

Case No: C.M.A. No. 4003 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

A. Marimuthu and K. Siddhan

RESPONDENT

Date of Decision: Dec. 6, 2010

Citation: (2011) 2 LW 303 : (2011) 2 TAC 925

Hon'ble Judges: R. Sudhakar, J

Bench: Single Bench

Advocate: S. Arun Kumar, for the Appellant; No Appearance, for the Respondent

Final Decision: Allowed

Judgement

R. Sudhakar, J.

This appeal is filed against the award and decree dated 16.3.2005 made in M.C.O.P. No. 926 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (FTC III), Namakkal.

2. It is a case of injury. The accident in this case happened on 14.5.2003. The claimant Marimuthu, 45 years old photographer, was travelling as a passenger in the auto rickshaw insured with the Appellant. Due to rash and negligent driving by the driver, the auto rickshaw turned turtle. In that accident the claimant suffered injuries to his left arm, chest and face. The Wound Certificate Exhibit A2 states that he suffered fracture of the left shaft humerus and fracture of the 7th and 8th rib on the left side. The ultra sound shows rupture of the spleen. All the three injuries were found to be grievous in nature.

3. The injured/claimant was first treated at RPS hospital, Salem where certain procedures were done and discharged. Thereafter, he was treated at Amirtha Institute of Medical Sciences. The Discharge Summary of RPS Hospital, Salem is Exhibit A4 and the Discharge summary of Amirtha Institute of Medical Sciences is Exhibit A5. Consequent to the injury and treatment, the claimant claimed a sum of Rs. 5,00,000/- as compensation.

4. On behalf of the claimant before the Tribunal, the injured/claimant Marimuthu was examined as P.W.1. The Doctor was examined as P.W.2 and Exhibits A1 to A10 were marked, the details of which are as follows:

Ex.A1 is the First Information Report,

Ex.A2 is the Wound Certificate,

Ex.A3 is the Medical Bills,

Ex.A4 is the Discharge Summary,

Ex.A5 is the Discharge Summary,

Ex.A6 is the Scan Report,

Ex.A7 is the X-Ray,

Ex.A8 is the Blood donation reports,

Ex.A9 is the Disability Certificate and

Ex.A10 is the X-Ray

On behalf of the Appellant insurance company, the second Respondent before the Tribunal RW1, Kannan, R.W.2 S.R. Nagaraj and R.W.3 Anandhan were examined and Exhibits R1 to R4 were marked, the details of which are as follows:

Ex.R1 is the copy of the policy,

Ex.R2 is the Accident Register,

Ex.R3 is the Investigation Report and

Ex.P4 is the Driving License.

5. The Tribunal based on the oral and documentary evidence accepted the plea of negligence on the part of the driver of the auto rickshaw. This is based on the F.I.R. and other documents filed. The Tribunal came to the conclusion that the driver of the auto rickshaw was negligent and was responsible for the accident and consequently, fixed the liability on the Appellant to compensate the claimant.

6. In so far as compensation is concerned, as per Ex.A2, the Disability Certificate, the disability has been assessed at 50% by the Doctor. The medical records, namely, Discharge Summary Ex.A4 given by RPS Hospital Salem and Ex.A5 Discharge Summary treatment taken at Amirtha Institute of Medical Sciences shows that the injured/claimant has undergone injuries as follows:

Ex.A4:

15/05/03 I BLUNT INJURY - ABDOMEN

Dr.G.Sundaramoorthy, MS LAPARATOMY - SPLEENIC

Dr.Venkatesh, DA TEAR MULTIPLE -
SPLENECTOMY

Under S.A, midline incision extending lateral, abdomen open about 1lt. Of blood seen in the peritoneal cavity. It was sucked out. There are multiple thear seen in the surface of the spleen. Splenectomy done by applying clamp to the pedicle. Liver and other viscera found to be Normal. A drain kept in the (L). Wound closed in layers after complete hemostasis. After surgery, two units of blood is given.

18/05/03

Dr.K.G.Kandasamy, D.Ortho II PLATING
Dr.Venkatesh, DA (L) Humerous

Under Regional Anaesthesia, posterior approach, Radial Nerve found trapped in between fragment. Nerve released and plating done.

Ex.A5:

Course in Hospital:

Patient was managed with implant removal and open reduction and internal fixation and bone grafting of the fracture non-union of the left humerus. Postoperative period was uneventful. There was no evidence of any infection or increased nerve palsy. Patient was mobilized with immediate post operative, was having post op shoulder stiffness.

Ex.A5 states that the claimant was admitted on account of non union fracture of left humerus with implant failure on 15.12.2003 and discharged on 22.12.2003. A certificate has been issued on 22.12.2003 as follows:

Certificate

This is to certify that Mr. Marimuthu.A. had undergone treatment in this hospital as an inpatient from 15.12.2003 to 22.12.2003.

He was suffering from Non-Union fracture left humerus with implant failure.

He underwent Implant removal and open reduction and internal fixation and bone grafting on 16/12/2003. He is advised rest for 6 weeks w.e.f.16.12.2003

7. The Tribunal considering the oral evidence and the claimant plea of occupation as photographer fixed the income of the injured claimant at Rs. 3,000/-p.m. The Tribunal considering the seriousness of the injuries suffered, adopted the multiplier of 15 and for the 50% disability assessed by the Doctor granted compensation with interest at 9% per annum as follows:

Pain & Suffering	Rs. 2,70,000/-
Rs. 2	10,000/-
Rs. 3	93,500/-
Total	Rs. 3,73,500/-

8. Though a plea has been raised by the learned Counsel for the Appellant that the injured/claimant was at fault, there is no reliable material to come to the conclusion that the claimant was at fault and was also responsible for the accident in which he suffered the injuries. Whereas, as per the finding of the Tribunal the Accident Report, Investigation Report, F.I.R. all go to show that the negligence was on the part of the driver of the auto rickshaw. Therefore, the Appellant counsel plea on claimant's negligence is rejected.

9. The only point, therefore, arises for consideration is whether the compensation granted is just and reasonable. In order to examine the award of the Tribunal on compensation certain factors will have to be considered. The injured/claimant is 45 years old photographer. The nature of treatment taken by him as per Ex.A4 and Ex.A5 clearly establish that there was a complex fracture of the left hand, chest ribs, damage to the spleen besides other injuries. The fracture was to the left humerus and the 7th and 8th rib of the left side rib cage. The ultra sound shows spleen rupture. The Discharge Summary clearly explains the removal of the spleen and the first round of treatment given at RPS Hospital at Salem did not give the proper relief to the claimant and therefore, he was given further treatment at Amirtha Institute of Medical Sciences from 15.12.2003. The Discharge Summary Ex.A5 clearly goes to show that the previous treatment did not cure the claimant properly. The claimant had undergone series of procedures to correct the complex fracture and that would have made him suffer great pain and suffering besides mental agony.

10. The claimant is a Photographer. The long period of treatment would have affected his income for quite sometime. He would need an attender to take care of during the period of treatment. No amount has been given for attendant charges and for loss of income during the period of treatment. In this case, the fracture of the humerus and the rib is a serious fracture and that will affect the earning capacity of the claimant. Furthermore, the spleen has been removed. It will create further complications in the future as it is an important organ. The function of the spleen as per medical text is as follows:

Human spleen: function, body location, diseases The human spleen is an organ that creates lymphocytes for the destruction and recycling of old red-blood cells. The spleen is also a blood reservoir. It supplies the body with blood in emergencies such as a bad cut. The spleen is also the location where white blood cells trap organisms.

11. The Division Bench of this Court in [United India Insurance Company Ltd., Branch Officer Vs. Veluchamy and Another](#), sets out the parameters as to when the

multiplier method can be adopted in the case of injury. Para 11 of the decision reads thus:

11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the "multiplier method" as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

The claimant in this case has suffered serious injury that will affect his earning capacity as a photographer. The fracture of the hand has not been cured properly. This is an important factor for a photographer. The Tribunal was justified in adopting the multiplier method.

12. In this case, there is no discussion by the Tribunal as to why the multiplier of 15 has been adopted. The multiplier which is applicable in the case of death was adopted and that is not justified. The principle that emerges from the decision cited above clearly points out that in a case of injury with serious consequences on the earning capacity of the claimant, multiplier method can be adopted, but not the same as in the case of death. Keeping the said principle in mind, the compensation towards loss of earning capacity consequent to the disability requires to be re-worked.

13. It will be pertinent to point out that the Tribunal has omitted to grant compensation on certain heads which the claimant is entitled to under law such as compensation for attendant charges, compensation for loss of income during the treatment period.

14. In such view of the matter keeping the principle laid down in Veluchamy's case as above and taking note of the fact that there was no specific pleading that the earning capacity has been totally lost for the rest of his life time, this Court is

inclined to grant compensation by adopting lesser multiplier.

15. Accordingly, the award of the Tribunal is modified as follows:

Sl. No.	Head
1	Rs.2,70,000/-
2	Rs.1,80,000/-
3	Rs.29,000/-
4	Rs.93,500/-
5	Rs.71,000/-
6	Rs.18,000/-
	Rs.3,73,500/-

16. In this case the accident happened in the year 2003 and the award is of the year 2005. In view of the Supreme Court decision laid in [Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others](#), , the interest stands reduced to 7.5% as against the interest of 9% awarded by the Tribunal.

17. In the result, the Civil Miscellaneous Appeal is allowed as follows:

(i)The award of the Tribunal is reduced to Rs. 3,24,000/-from Rs. 3,73,500/-.

(ii)The interest granted by the Tribunal is reduced to 7.5% from 9% per annum.

(iii)It is stated that as per order dated 14.12.2005 in C.M.P. No. 19659 of 2005, entire award amount has been deposited. The claimant was permitted to withdraw 50% of the award amount. Hence, the first Respondent/claimant is permitted to withdraw the balance award amount as ordered by this Court.

(iv)The Appellant transport corporation is at liberty to withdraw the excess amount in deposit after settling the claimant.

(v) There will be no order as to costs.