

## **The United India Insurance Company Limited Vs K.K. Nandhikeswaran, S. Mayilsamy, S. Natarajan and National Insurance Company Limited**

**Court:** Madras High Court

**Date of Decision:** Dec. 22, 2010

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

**Bench:** Single Bench

**Advocate:** N. Vijayaraghavan, for the Appellant; M. Elango, for R1, for the Respondent

### **Judgement**

P.P.S. Janarthana Raja, J.

The appeal is preferred by the Appellant-Insurance company against the award dated 10.12.2007 made in

MCOP No. 85 of 2004 by the Motor Accident Claims Tribunal (Subordinate Court), Mettur.

2. Background facts in a nutshell are as follows:

The first Respondent/claimant met with motor vehicle accident that took place on 27.02.2004 at about 06.30p.m. While the said injured was

standing with his TVS Victor Motor cycle bearing registration No. TN-30-Z8833 insured with the fourth Respondent on the left extreme end of

Salem-Mettur Main road, a tanker lorry bearing registration No. TAS6383 belonging to the second Respondent and insured with the Appellant-

Insurance company driven by its driver in a rash and negligent manner and hit the TVS motor cycle and the claimant. Due to the said impact, the

claimant sustained fracture and grievous injuries all over the body. The claimant was immediately admitted in S.K.S Hospital as in patient. He

claimed a sum of Rs. 7,00,000/-as compensation before the Tribunal. The Appellant-Insurance company resisted the claim. On pleadings the

Tribunal framed the following issues :

1. In whose negligence, the accident occurred?
2. Whether the claimant is entitled to any compensation from the Appellant-Insurance company?
3. What is the compensation the claimant is entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of

the tanker lorry, and awarded a compensation of Rs. 3,66,000/-with interest at 7.5% per annum and the details of the same are as under:

Loss of income due to disability Rs. 2,25,000.00 Permanent disability Rs. 80,000.00 Simple injuries(1000 x 2) Rs. 2,000.00 Pain and sufferings

Rs. 35,000.00 Medical expenses & Transport charges Extra nourishment Rs. Rs. 20,628.50 3,000.00

Total... Rs. 3,65,628.50/

(Rounded off to Rs. 3,66,000/-\_

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

3. The learned Counsel appearing for the Appellant-Insurance company questioning the quantum of the award passed 3 by the Tribunal,

vehemently contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. He also submitted that the

Tribunal ought not to have adopted the multiplier method for determining the loss of income in the case of injury and the Tribunal is wrong in

awarding further sum of Rs. 2,000/-towards simple injuries and Rs. 2000/-towards grievous injuries and hence, the same have to be set aside.

Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. The learned Counsel appearing for the first Respondent/ claimant submitted that the Tribunal has considered all the relevant materials and

evidence on record and awarded a just, fair and reasonable compensation, which is based on valid evidence. Hence the order of the Tribunal is in

accordance with law and the same has to be confirmed.

5. Heard the learned Counsel on either side and perused the materials available on record. On the side of the claimant, P. Ws.1 to 3 were

examined and documents Exs.P1 to P23 were marked. On the side of the Appellant-Insurance company RW1, one Ravi, Assistant, United India

Insurance Company Limited, Mettur Branch, was examined and Ex.R1, the copy of the Insurance policy was marked to support their claim.

P.W.1 is the claimant. PW2 is the Doctor Chandrasekaran. Ex.P3 is Dr. Kalaimani, Superintendent, Government Headquarters Hospital, Mettur.

Ex.P1 is the copy of the Accident Register. Ex.P2 is the certified copy of the First Information Report. Ex.P3 is the certified copy of the wound

certificate. Ex.P4 is the certified copy of the Motor Vehicle Inspector's Report Ex.P5 is the certified copy of the charge sheet. Ex.P6 is the

medical certificate. Ex.P7 is the medical bills. Ex.P8 is the X-rays. Ex.P9 is the scans. Ex.P10 is the certificate. Ex.P11 is the paper publication.

Ex.P12 is the copy of the receipt for payment of income tax. Ex.P13 is the disability certificate. Ex.P14 is the medical certificate. Exs.P15 and P16

are the driving licence. Ex.P17 is the copy of the R.C. Book. Ex.P18 is the copy of the Insurance company. Ex.P19 is the copy of the Insurance

policy. Ex.P20 is the discharge certificate. Ex.P21 is the certificate. Ex.P22 is the accident register. Ex.P-23 is the Income tax return form. After

considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident occurred due to rash and negligent

driving of the driver of the tanker lorry and the finding is based on valid materials and evidence and the same is confirmed.

6. At the time of accident, the claimant was aged about 45 years. He is a Contractor and he claimed that he was earning Rs. 5000/-per month.

PW1, the claimant, deposed in his evidence that the accident occurred due to rash and negligent driving of the driver of the tanker lorry, and he

was also charged sheeted by Karumalai Koodal Police Station in Crime No. 30 of 2004. He further stated that due to the accident he had

sustained following injuries:

1. Contusion of above 10 cm x 6 cm on right temporo zygomatic region;
2. Peri Orbital oedema right BCH or right eye near lab outer wall;
3. Swelling present on right maxilla region with blood clot seen in right nostril;
4. Cut wound 5 cm x 1 cm left lower jaw;
5. Diffuse contusion on right thigh; and
6. Abrasion 3 cm x 3 cm on right knee.

Immediately after the accident, he was admitted in S.K.S. Hospital and took treatment from 27.2.2004 to 01.03.2004 and later at J.S.H Hospital,

Salem from 08.03.2004 to 11.03.2004, where he undergone jaw surgery and due to the same he was unable to take food for a month and he is

unable stand or walk without belt. PW2, the doctor, who examined the claimant, has issued Ex.P13 disability certificate, determining the disability

at 80%, which includes 20% for pain and suffering. PW3-Doctor Kalaimani deposed that Ex.P8 X-rays shows that the claimant sustained jaw

fracture and due to which, he was unable to open his mouth and has assessed the disability at 30% and issued Ex.P14 disability certificate.

Considering the oral and documentary evidence, the Tribunal has fixed the annual income at Rs. 15,000/-and considering the age of the claimant as

45 years, has adopted the multiplier of "13" and awarded a sum of Rs. 2,25,000/-(Rs. 15,000 x 13) towards loss of income due to disability and

further sum of Rs. 80,000/-towards permanent disability. Normally the Courts award Rs. 1,000/-to Rs. 2000/-per percentage of disability. In the

present case, there was a fracture in his jaw and due to which, the claimant was unable to take food and due to other injuries he is unable to do his

work as before. Considering the injury sustained by the claimant, it would be reasonable to award Rs. 2000/-per percentage of disability. If Rs.

2000/-is awarded per percentage, for 80% disability the award works out to Rs. 1,60,000/-towards permanent disability as against Rs. 80,000/-

awarded by the Tribunal. The learned Counsel appearing for the Appellant-Insurance company submitted that when the Tribunal awarded

compensation towards permanent disability, it ought not to have awarded further sum of Rs. 2,25,000/-towards loss of income due to disability. A

Full Bench of this Court in the case of Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, , held that whenever compensation

towards permanent disability is awarded, further amount towards loss of income should not be awarded. Applying the principle enunciated in the

above Full Bench decision of this Court, the award of the Tribunal in respect of loss of earning at Rs. 2,25,000/-is not in accordance with law and

is, therefore, set aside. The Tribunal has further awarded a sum of Rs. 2,000/-towards two simple injuries(each Rs. 1000/-) and Rs. 2,000/-,

which is also unwarranted and the same is set aside. The Tribunal awarded Rs. 35,000/-towards pain and suffering. Considering the fracture

sustained in his jaw and the claimant took treatment in two hospitals, the amount awarded by the Tribunal under this head is very reasonable and

the same is confirmed. The Tribunal has awarded a sum of Rs. 20,628.50 towards medical expenses and transport charges. It is an actual

expenditure incurred by the claimant. Hence, the amount awarded by the Tribunal under this head is very reasonable and the same is confirmed.

The Tribunal has awarded a sum of Rs. 3,000/-towards extra nourishment, which is very low. The claimant took treatment from 27.02.2004 to

01.03.2004 and 08.03.2004 to 11.03.2004 in two hospitals. Considering the same, it would be reasonable to award Rs. 10,000/-towards extra

nourishment as against Rs. 3,000/-awarded by the Tribunal. The Tribunal has not awarded any amount towards loss of income during treatment

period. Considering the period of treatment, it would be reasonable to award Rs. 15,000/-under this head. The Tribunal has not awarded any

mount towards loss of amenities and attendant charges. After taking into consideration the nature of injuries sustained, it would be reasonable to

award a sum of Rs. 15000/-towards loss of amenities and Rs. 4,000/-towards attendant charges. The Tribunal has awarded interest at 7.5% p.a

from the date of petition. The accident had occurred on 24.07.2004. Keeping in view the prevailing rate of interest at the relevant time and the

date of award, the rate of interest awarded by the Tribunal is confirmed. The details of modified compensation as per the above discussion are as

5 under:

Permanent disability Rs. 1,60,000.00

Pain and sufferings Rs. 35,000.00

Medical expenses & Transport

charges Rs. 20,628.50

Extra nourishment Rs. 10,000.00

Loss of income during treatment

period Rs. 15,000.00

Loss of amenities Rs. 15,000.00

Attendant charges Rs. 4,000.00

Total... Rs. 2,59,628.50/

(Rounded off to Rs. 2,60,000/-)

Therefore, the claimant is entitled to the modified compensation of Rs. 2,60,000/-with interest at 7.5% per annum from the date of petition as

against the compensation of Rs. 3,66,000/-awarded by the Tribunal.

7. The learned Counsel appearing for the Appellant-Insurance company has submitted that already the entire award amount has been deposited

and the claimant was also permitted to withdraw 50% of the deposited amount. In such circumstance, the claimant is permitted to withdraw the

modified award amount of Rs. 2,60,000/-with interest at 7.5% p.a. from the date of petition, less the amount already withdrawn, on making

proper application. The Appellant-Insurance company is also permitted to withdraw the balance amount on making proper application.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is

closed.