

(2011) 09 MAD CK 0230

Madras High Court

Case No: O.S.A. No"s. 93 and 68 of 2011

Mr.Raju Govind
Dansingani

APPELLANT

Vs

The Tamil Nadu
Electricity Board, 800,
Anna Salai, Chennai - 2
and The
Superintending
Engineer, CEDC West,
Chennai - 40
The
Tamil Nadu Electricity
Board, 800, Anna Salai,
Chennai - 2 and The
Superintending
Engineer, CEDC West,
Chennai - 40 Vs
Mr.Raju Govind
Dansingani

RESPONDENT

Date of Decision: Sept. 30, 2011

Hon'ble Judges: M. Jaichandren, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: S. Rajendra Kumar for M/s. Norton and Grant in in O.S.A. No. 93/2011, for the Appellant; V. Viswanathan for Respondents in O.S.A. No. 93/2011, for the Respondent

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.

O.S.A. No. 93 of 2011 is filed by the claimant/plaintiff in the Suit in C.S. No. 599 of 2007 and O.S.A. No. 68 of 2011 is filed by the defendant/Tamil Nadu Electricity Board in C.S. No. 599 of 2007. Both the appeals arise out of a common judgment in C.S. No. 599 of 2007. Hence, common judgment is passed keeping the status of the parties as given in

O.S.A. No. 93 of 2011, where the plaintiff/claimant is the appellant.

2. The appellant, a B.Com graduate, was working as a Coach on a monthly salary of Rs. 30,000/-in M/s.America Online Member Service India Pvt. Ltd. He was posted at Bangalore. On the date of the accident on 09.09.2005, it is stated that the plaintiff had came down to Chennai from Bangalore to take part in the family celebration on 09.09.2005. At about 10.00 p.m., the appellant herein along with his wife went to his sister"s house residing at 6th Avenue, Anna Nagar, Chennai. After parking their car, they were walking towards the gate of his sister"s house. Suddenly the appellant felt the heavy fall of an electric pole on the left side of his head and shoulder and on its impact, he fell unconscious. Thereafter, he was rushed to Sundaram Medical Foundation Hospital in Anna Nagar. The appellant is stated to have regained consciousness only on 11.9.2005. The medical report of Sundaram Medical Foundation reveals that the appellant was unconscious with amnesia after the incident; he suffered fracture on the surgical neck of left humerus; bleeding from the nose and right ear; abrasion and hematoma behind the right ear; contusion on the left side of the back. The CT Scan of the brain showed extensive subarachnoid air-fracture through sinus and skull fractures and in the skull fracture blood was found in sphenoid sinus. So too blood had passed through the sinus fracture and extensive subarachnoid in his ear. The appellant was transferred to Apollo Speciality Hospital for stereotactic surgery on 14.10.2005 to drain an entrapped left occipital horn. From 15.10.2005 to 23.10.2005, he was given treatment there. On 12.12.2005, the appellant was discharged from the hospital and was directed to continue the treatment as out-patient. It is stated that the appellant had to have a shunt dependent, meaning thereby, a special surgery done to fix the drain near the ear. Admittedly, the appellant was paid a sum of Rs. 50,000/-from the Chief Minister"s Relief Fund as an immediate solatium. The appellant also states that after nearly four months, he reported work. However, he could not discharge his duties on account of the frequent loss of memory. Thus he resigned his job on 8.2.2006. Considering the difficulty in hearing, he was referred to Shreya Hearing Clinic for conducting Audio Metric Tests, which also showed hearing loss in the left ear. Apart from that, appellant is also stated to have undergone Neuro Psychological Assessment Tests on 22.3.2006, which revealed loss of memory, both verbal and visual. The appellant"s visual integration on object assembly and learning and memory for visual stimuli were affected. Thus according to the appellant, he had to tender his resignation on account of the defective hearing as well as frequent memory loss. It is stated that he also suffered from frequent epileptic attack and was admitted into National Institute of Mental Health, Bangalore, where he was advised to undergo Sodium Valporate Test every month to check his serum valporate and phenytoin levels to prevent further seizures. It is stated that the appellant is always under medication.

3. The sum and substance of the appellant"s case is that the accident is one caused by the negligence of the respondents; that while providing for underground cable, the respondents had failed to remove the post, which was standing without any stay wire.

Thus the respondents were also negligent in observing necessary precaution for securing the post from falling. In the circumstances, the accident had occurred purely on account of the negligent conduct of the respondents" Department wherein the appellant had serious injuries resulting in permanent disability, thereby affecting his income earning capacity to have a quality living. Alleging negligence, the appellant herein filed a Suit seeking compensation under various heads and quantified the compensation payable by the respondents at Rs. 85,90,000/-.

4. The quantification made by the appellant thus rested on the monthly income that the appellant would have earned at Rs. 30,000/-. Adopting multiplier 17 as applicable to the appellant's case as per the Motor Vehicles Act, the compensation on account of the personal injury suffered came to Rs. 91,80,000/-. However, the appellant restricted the same to Rs. 75,00,000/-. The appellant further referred to the nature of his disability, that he had to be attended all the time by a personal attendant, for whom he had been paying a monthly salary of Rs. 2,500/-. Hence, he quantified the compensation as follows:

a.	Medical expenses incurred	Rs. 8,40,000/-
b.	Future medical expenses	Rs. 5,00,000/-
c.	Pain and suffering and mental agony	Rs. 2,00,000/-
d.	Loss of amenities and permanent disability	Rs. 1,00,000/-
e.	Expenses for employing personal attendant	Rs. 2,00,000/-
f.	Loss of consortium	Rs. 1,00,000/-
g.	Permanent Loss of Income on account of 100% loss of earning capacity	Rs. 75,00,000/-
	Total	Rs. 94,40,000/-

5. The claim of the appellant was resisted by the respondents herein stating that even though they had completed the conversion work on 06.09.2005, on account of holidays on 07.9.2005, 09.09.2005 and 10.9.2005, the respondents had programmed to shift the dead lines and posts during the third week of September, 2005, i.e., from 12.9.2005. Due to heavy rains with gale winds, accompanied by lightning and thunder, the E.B. Post might have fallen on the appellant/plaintiff on 10.9.2005 at 22 houRs. Thus the respondents took shelter under the theory of Act of God and an act beyond the control of the Board, which resulted in the accident causing injury to the appellant. It is further

pointed out that since the appellant was paid a sum of Rs. 50,000/- as ex-gratia from the Chief Minister's Relief Fund, the question of further claim as against the Board, did not arise. Apart from disputing the claim made for compensation at Rs. 85,90,000/- as arbitrary and exorbitant, the Board further pointed out that the appellant was already compensated by his employer at Rs. 5.00 lakhs. Since the appellant is already employed, he was not entitled to a huge claim.

6. In the course of the trial before the learned single Judge, both sides let in evidence and marked documents. Following are the issues raised by the learned single Judge:

(i) Whether the defendants are guilty of negligence?

(ii) Whether the defendants are liable to pay damages by way of tortious liability?

(iii) Whether the defendants are entitled to set up a plea of "vix majore"?

(iv) Whether the plaintiff is entitled to any compensation on account of the suffering undergone by him and if so, to what extent?

(v) Whether the plaintiff is entitled to any other relief?"

7. On the question of negligence pleaded by the appellant, learned single Judge pointed out to the evidence on the side of the appellant that the accident took place on 10.9.1995 at 10.00 p.m. and held that there was rain on that day. However, there was nothing on record that any cyclone or storm had crossed the city on that day, due to which several electric poles were uprooted and the present electric pole, which caused injuries to the appellant, was one among them. In the absence of any such material or plea, learned single Judge held that the respondents had not taken any care and caution in maintaining the degree of safety that it did not cause any injury to the passer-by. Recording the evidence of D.W.1, learned single Judge pointed out that the workers of the Tamil Nadu Electricity Board had almost completed the laying of cables in order to transmit electricity to its customers in that area, however, the electric wires passing through the poles and the electric poles were left unremoved. Thus learned single Judge pointed out that the respondents were negligent in maintaining the electric pole properly and left the electric pole precariously, to result in the accident. Thus issues Nos.1 to 3 were held against the respondents.

8. As far as the nature of injury suffered is concerned, the appellant was examined as P.W.1 and the doctor who treated the appellant was examined as P.W.2. A perusal of P.W.2's evidence shows that at the time when the appellant was brought to the hospital, he was in an unconscious state with a fracture on the neck of left humerus, apart from bleeding from his nose and right ear; abrasion and hematoma behind the right ear; contusion on the left side of his back and immediate loss of consciousness with amnesia for the incident. Thereafter, immediately C.T. Scan was taken and it was found that sinus bones and skull were fractured and the brain was shown extensive subarachnoid

air-fracture through sinus; skull fractures. Taking note of the nature of treatment at Sundaram Medical Foundation and thereafter at Apollo Speciality Hospital since 14.10.2005, P.W.2 had stated that after the treatment, his neurological status was marginally better and medicines were given and for the treatment of the level of alertness and ability to obey the command, have slowly improved. On 9. 11.2005, a surgery was carried out for draining the brain fluid by fixing a tube permanently in his body and he continued the treatment till 24.12.2005. The discharge summary, marked as Ex.A.9 and the expenditure incurred, marked as Exs.P.10, P.11, P.13 to P.17, P.25, P.28 and P.33 would reveal the nature of injury suffered, nature of treatment given and the expenses incurred by the appellant. Thus going by the documents, learned single Judge allowed the claim of the appellant on the expenses incurred towards treatment at Rs. 8,40,000/-. Considering the nature of injury suffered, a sum of Rs. 1,00,000/-was granted towards pain and suffering as sought for by the appellant. As regards the future medical treatment, for which the appellant claimed Rs. 5,00,000/-, the evidence shows that there was no documents produced by the appellant herein on that aspect even for understanding the nature of treatment to be undergone and the probable expenditure to be incurred thereon. He only referred to the treatment that he had at Apollo Hospital, Bangalore on 15.11.2007 and the test that he had taken on account of his frequent seizure, which are marked as Exs.P.24 and P.39. Taking note of these documents, a sum of Rs. 2,00,000/-was granted for future medical treatment. As regards the personal attendant, the claim of the appellant at Rs. 2,00,000/-was granted. The appellant appeared before the Court at the time of argument and the physical condition of the appellant was noted by the learned single Judge that the appellant had difficulty in moving as well as sitting in a place without the help of an attendant. The evidence of the doctor also showed that the appellant could not attend to his personal needs without an assistant. In the light of the above said aspect, the relief was granted at Rs. 2,00,000/-.

9. As regards loss of consortium, as against a claim of Rs. 1,00,000/-, learned single Judge granted a sum of Rs. 75,00,000/-. As to the compensation payable on the injury suffered leading to a disability, which compelled him to resign his job, the appellant marked pay slips in Ex.A.4 series and income tax return filed in Ex.A.5. The pay slip for the month of August, 2005 was produced and was marked as Ex.A.7, which showed the appellant's gross salary at Rs. 43,393/-and net salary at Rs. 33,671/-. Taking note of the evidence of the doctor/P.W.2 and the physical condition of the appellant and his total disability due to the injury suffered, compensation payable was worked out, taking the salary at Rs. 43,393/-. However, deducting a sum of Rs. 20,000/-, it being the salary received by the appellant after the accident, as admitted by him, the permanent disability was worked out, taking the salary of Rs. 23,393/-per month. Applying multiplier 17 as relatable to the age of the appellant at 35 years, permanent loss of income was arrived at Rs. 47,72,172/-. For loss of amenities and inconvenience, a sum of Rs. 1,00,000/-was granted to the appellant herein. Thus while granting the above-said relief, learned single Judge accepted the plea of the Board as regards the payment of Rs. 50,000/-made by the Government of Tamil Nadu and Rs. 5,00,000/-by the employer to ultimately arrive at a

compensation at Rs. 57,37,172/- as relatable to the injury suffered, leading to loss of earning capacity. Learned single Judge pointed out that in the course of evidence, that P.W.1 had stated in his cross examination that he was prepared to accept Rs. 50,00,000/- as against a sum of Rs. 75,00,000/-. In the circumstances, even though the compensation was arrived at on account of the loss of earning capacity at Rs. 57,37,172/-, the same was restricted to Rs. 50,00,000/-. Accordingly, the Suit was decreed for Rs. 50,00,000/- payable at 9% from the date of the plaint till the date of realisation. Aggrieved by this, the plaintiff as well as the defendants are before this Court.

10. Considering the nature of injury suffered and the fact that in the year 2007 the appellant had resigned the job given on compassionate ground with a salary of Rs. 20,000/-, this Court felt that for the proper appraisal of the injury suffered and its impact on his future earning capacity, he be referred to a Medical Board. Accordingly, by order dated 20.9.2011, this Court directed the appellant herein to present himself before the Head of the Neurology and Orthopaedic Departments of Rajiv Gandhi Government General Hospital, Chennai. Accordingly, the appellant presented himself for medical examination on 28.09.2011 before the Ortho Surgeon and Neurologist of Rajiv Gandhi Government General Hospital, Chennai. We have also received the report from the Medical Board of Rajiv Gandhi Government General Hospital, Chennai dated 28.09.2011.

11. The Medical Report of the Orthopaedic Surgeon dated 28.9.2011 reads as follows:

Alleged History of sustained injury left shoulder on December 2005 and head injury by fall of a heavy object and sustained injury left shoulder.

Diagnosis: Fracture surgical neck of left humerus. Treated conservatively.

At present clinically fracture united. Movements of left shoulder - good. Orthopaedic Handicap is 10% (Ten percent only).

The Medical Report of the Neurologist dated 28.9.2011 reads as follows:

suffers from post Traumatic Brain injury resulting initially Meningo encephalitis which may be due to fracture of left Temporal Bone. This led to obstructive Hydrocephalus and was Treated with Ventriculo Peritoneal shunt. At present DT has moderate dysfunction of orbito frontal and Temporal lobe dysfunction Bilaterally (cognitive function impairment c Motor dysfunction and intractable epilepsy with drug induced (Phenytoin + Sodium Valproate + Levipil) Tremor. The physical and mental disability is around 70%. This has resulted in negative impact in his future earning capacity.

12. A reading of the said report shows that the physical and mental disability is around 70%, which has resulted in a negative impact in his future earning capacity too. Going by the severity of the injury suffered, as spoken to in the latest report, and the fact that subsequent to the filing of the suit in the year 2007, the appellant had resigned his job on account of the physical and mental fitness of the appellant herein, we have no hesitation

in accepting the plea of the appellant that the appellant had suffered a permanent disability of 70% having severe impact on his earning capacity.

13. Learned counsel appearing for the appellant pointed out that the grievance of the appellant herein is as regards the quantum fixed by the learned Judge under the head of loss of earning capacity as well as the relief granted under the head of future medical expenses. He also pointed out that even though the doctors had quantified the percentage of loss of earning capacity at 70%, as of today, he has difficulty in attending to any job. As pointed out by the learned single Judge, he cannot conduct himself on his own without the help of a personal assistant. In the circumstances, the disability has to be viewed at 100%. He further pointed out that at the time of accident, he was aged 35 years, earning not less than Rs. 35,000/-. He had special knowledge in computer and he was a graduate in commerce. Thus taking note of these facts, in fairness to the claim of the appellant, compensation may be fixed at 100% taking the monthly earnings as given before this Court in Ex.A.4 series.

14. Per contra, learned counsel appearing for the respondents/Electricity Board, however submits that when the Government had already compensated him, apart from the appellant's employer, there being no evidence to support the loss of earning capacity and the appellant was employed even after the accident, the question of further compensation, as such, does not arise. Consequently, learned counsel appearing for the respondents seeks setting aside of the compensation granted.

15. The latest report of the Medical Board dated 28.09.2011 thus reveals that in respect of the injury suffered on 09.09.2005, the physical condition of the appellant herein is that the appellant has to carry on his life with a shunt fixed for draining the fluid and the disability is at 70%. A reading of the report shows the disability fixed is not just a physical disability but includes mental disability too. Thus taking note of the physical and mental condition as observed, that the disability is of a permanent one, we feel that there is justification in the appellant's plea that the compensation to be granted to the appellant needs to be just and fair.

16. As far as the earning capacity of the appellant is concerned, it is no doubt true that the monthly income as on the date of the accident was Rs. 43,393/-. The appellant does not deny, as a matter of fact, that his net salary was Rs. 33,671/-. There is no evidence as of today as regards the deduction therein on the gross salary of Rs. 43,393/-. Leaving that aside for a moment, if we look at the contention of the respondents as regards the appellant receiving a salary of Rs. 20,000/- post accident, it is seen from the letter written by the appellant that as early as 2007, he resigned his job on account of the difficulties faced, mentally and physically, in attending to his normal duties. The respondents could not deny, as a matter of fact that as of today, the appellant is not gainfully employed and that the appellant suffer from physical and mental disability of 70%. In the circumstances, the question arise is as to what could be the fair and reasonable compensation payable to the appellant herein for the 70% permanent disability.

17. It is seen from the evidence of P.W.1/appellant herein that in the course of his cross examination, he admitted that he was prepared to accept Rs. 50.00 lakhs as against the claim made in the suit towards his compensation under the head "loss of income earning capacity". Given the fact that the appellant has no dispute on the medical bills incurred and the future medical expenses is only a probability, so too other heads, we feel, retaining the other heads as such, the loss of income earning capacity on account of 70% disability, hence, needs to be arrived at, keeping his monthly salary at Rs. 25,000/-. Noting his age as 35 at the time of accident, the proper multiplier herein being 17, we feel that it is a fit case where the multiplier has to be adopted for working out the compensation as against the percentage of disability adopted as the basis for granting the compensation on the permanent disability alone. Considering the nature of injury suffered at 70%, which is near total disability as of today, the compensation thus works out to Rs. 25,000/- x 12 x 17 = Rs. 51,00,000/-, restricted to Rs. 50,00,000/-.

18. As regards the claim of the respondents that a sum of Rs. 50,000/- paid by the Government of Tamil Nadu and a sum of Rs. 5,00,000/- paid by the employer should be deducted from the compensation, we do not think that those payments could get into the reckoning of the compensation.

19. We agree with the learned counsel appearing for the appellant's contention placing reliance on the decision of the Apex Court reported in [Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another](#), that when compensation payable under the Motor Vehicles Act is a statutory one, the payment otherwise made either by the employer, or for that matter, under any other scheme of the Government, cannot be taken into consideration for working out the relief.

20. In the above circumstances, we hold that the appellant would be entitled to the compensation as follows:

	Rs.
For Loss of earning capacity :	50,00,000/-
Medical expenses :	8,40,000/-
Future Medical expenses :	2,00,000/-
Pain and suffering :	1,00,000/-
Loss of Amenities :	1,00,000/-
Expenses for employing personal attendance :	2,00,000/-
Loss of consortium :	75,000/-
Total	65,15,000/-

21. The appellant is entitled to interest as ordered by the learned single Judge on the above-said amount from the date of the plaint till the date of realisation. The

respondents/Electricity Board are directed to pay the compensation as ordered above within a period of 12 weeks from the date of receipt of a copy of the order.

22. In the light of the above, O.S.A. No. 93 of 2011 is allowed in part and O.S.A. No. 68 of 2011 is dismissed. No costs.