

Reliance General Insurance Co. Ltd. Vs K. Anbazhagan and Others

Court: Madras High Court

Date of Decision: Sept. 23, 2015

Hon'ble Judges: S. Manikumar and M. Venugopal, JJ.

Bench: Division Bench

Advocate: N. Vijayaraghavan, for the Appellant

Final Decision: Allowed

Judgement

S. Manikumar, J.

The only challenge in this appeal filed by M/s. Reliance General Insurance Co. Ltd., is to the quantum of compensation of Rs. 17,57,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of deposit, awarded to the

respondent/claimant. Hence, there is no need to delve into the aspects of negligence and liability.

2. In the accident, which occurred on 21.01.2010, the respondent/claimant, aged about 24 years and claimed to be a plumber, by avocation,

sustained D11 fracture paraplegia, dislocation of femur and multiple injuries, all over the body. To prove that he has sustained grievous injuries and

took treatment in various hospitals and thus, become an orthopaedically handicapped and paraplegic, he has marked Ex. P2 - Discharge

Summary, issued by the Government General Hospital, Chennai, Exs. P3 & P5 - Discharge Summaries issued by Government Institute of

Rehabilitation Centre, K.K. Nagar, Chennai, Ex. P6 - Rail Concession Certificate, Ex. P7 - Medical Reports, Ex. P8 - Medical Bills, Exs. P9 &

P12 - X-Rays and Ex. P11 - Disability Certificate.

3. Upon perusal of the above documents, the Claims Tribunal has recorded that Ex. P2 - Discharge Summary issued by the Government General

Hospital, Chennai, showed that the respondent/claimant sustained fracture of D11 with paraplegia and treated as inpatient from 21.01.2010 to

24.02.2010. He had underwent a surgery on 09.02.2010 and thereby, Global Stabilisation has been done. Ex. P3 - Discharge Summary issued by

the Government Institute of Rehabilitation Centre, K.K. Nagar, has indicated that thereafter, he was inpatient from 25.02.2010 to 21.07.2010 and

during the said period, BK & AE Slap has been applied. He has continued treatment as outpatient for five days. He was also treated as inpatient at

Sri Ramachandra Hospital, between 10.12.2011 and 31.01.2012. In Ex. P5 - Disability Certificate issued by the Government Institute of

Rehabilitation Centre, K.K. Nagar, the extent of disability of the respondent/claimant has been assessed at 75%, as a case of Traumatic

Paraparesis. Ex. P6 is the Concession Certificate, for the purpose of Rail Concession to Orthopaedically handicapped/paraplegic. Ex. P17 (series)

are the medical bills to the tune of Rs. 17,443/-.

4. P.W. 2, Doctor, who examined the respondent/claimant, with reference to the medical records, has opined that there would be 80% partial

permanent disablement. Added further, he has deposed that due to fracture of D11 Vertebra and dislocation of femur, there was no sensation in left

side body of the respondent/claimant. According to him, during examination, there was less movement. The respondent/claimant was using napkin.

He has opined that even with the help of Walker and assistance of others, the respondent/claimant found it difficult to walk and that he was limping.

5. According to P.W. 2, Doctor, the respondent/claimant would find it difficult to climb staircase, squat and cannot travel alone, either in bus or

train. He cannot do any work, without the help of others. He cannot bend. The thigh bone was malunited. The respondent/claimant was unmarried

at the time of accident and like others, he cannot lead a normal life. Thus, after a detailed physical examination, he has assessed the extent of

disablement at 80% and issued Ex. P11 - Disability Certificate.

6. Though before the Claims Tribunal, the respondent/claimant claimed that he was a plumber and earned Rs. 10,000/- per month, placing reliance

on a decision of this Court in The Branch Manager, Royal Sundaram Alliance Insurance Co. Ltd., v. Minor Mareeswaran, rep., by Guardian,

Karuthupandian reported in 2013 (2) TNMAC 556, the Claims Tribunal fixed the monthly income of the injured as Rs. 7,500/-. In the above

reported case, the deceased was a Mason, by profession. However, the Claims Tribunal has applied the said judgment to the case on hand and

fixed the income of the respondent/claimant as Rs. 7,500/-. Perusal of the judgment, impugned in the appeal, before us, shows that avocation of

the respondent/claimant, as plumber, was not controverted by the appellant-Insurance Company.

7. Though the respondent/claimant has contended that he suffered 80% disability and therefore, the loss of earning capacity should be estimated on

that basis, taking note of the decisions of the Apex Court in Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka and Others, , Arvind

Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, and Kavita Vs. Deepak and Others, and the medical records, in particular, Ex.

P5 - Disability Certificate issued by the Government Institute of Rehabilitation Centre, assessing the disability for the respondent/claimant at 75%,

decided to compute the loss of earning capacity. Discussion of the Tribunal, with reference to the abovesaid decisions, is reproduced hereunder:

In Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, , Our Hon"ble Apex Court held that, ""The whole idea is to put the

claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim

has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he

had suffered. In some cases for personal injury, the claim could be in respect of life time"s earnings lost because, though he will live, he cannot earn

his living.

In the landmark judgment our Hon"ble Apex Court in the case law reported in Kavita Vs. Deepak and Others, , held ""in determining the quantum

of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award

adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy

amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning

capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for

medical expenses.

Our Hon"ble Apex Court in yet another case of historic importance with humanitarian touch has held in the case law reported in Nizam Institute of

Medical Sciences Vs. Prasanth S. Dhananka and Others, , ""The case of an injured and disabled person is, however, more pitiable and the feeling

of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an

enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their

energy and destroys their equanimity. We can also visualize the anxiety of the complainant and his parents for the future after the latter, as must all

of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there

is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when

he is unable to earn for himself."" Now the position of law is well settled from the landmark judgments of our Hon"ble Apex Court and our Hon"ble

High Court that in cases of permanent disability as a result of injuries the assessment of compensation under the head of loss of future income

would depend upon the effect and impact of the permanent disability to the earning power and earning capacity of the injured person. In the

present case on hand, the petitioner is a Carpenter at the time of accident. As a result of head injury and fracture of zygomatic Arch he is

prevented from carrying on the previous activities. This Tribunal is of the considered opinion that the petitioner's ability to perform the job would

certainly got affected on account of the disability.

8. The Claims Tribunal has taken note of a decision of this Court in Branch Manager, National Insurance Co. Ltd., v. P. Selvam reported in 2013

(1) TNMAC 308, wherein, this Court held that, "If the victim of the accident suffers permanent disability, then efforts should always be made to

award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life

and enjoy amenities which he would have enjoyed but for the disability caused due to the accident." The Tribunal has also considered the decisions

of the Apex Court in Sunil Kumar Vs. Ram Singh Gaud and Others, , Santsingh v. Sukdevsingh and others reported in 2011 (2) TNMAC 679

(SC), Santosh Devi Vs. National Insurance Company Ltd. and Others, , Reshma Kumari and Others Vs. Madan Mohan and Another, and Syed

Sadiq etc. Vs. Divisional Manager, United India Ins. Company, , and added up 50% towards future prospects. Thereafter, after considering a

decision of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Tribunal has computed the loss of

future earning as Rs. 12,50,000/- (Rs. 7,500/- x 12 x 18 x 75%).

9. Upon perusal of the medical records, particularly, Ex. P2 - Discharge Summary, issued by the Government General Hospital, Chennai, Exs. P3

& P5 - Discharge Summaries issued by Government Institute of Rehabilitation Centre, K.K. Nagar, the Claims Tribunal has observed that the

respondent/claimant would not have attended his work, atleast for a period of four months and awarded compensation of Rs. 30,000/- towards

loss of income, during the period of treatment.

10. Considering the fracture of D11 Vertebra and the extent of disablement at 75%, the Claims Tribunal came to the conclusion that the

respondent/claimant has lost his marital prospects and amenities and taking note of the decisions of the Hon"ble Apex Court in Arvind Kumar

Mishra Vs. New India Assurance Co. Ltd. and Another, , Ibrahim Vs. Raju and Others, and Kavita Vs. Deepak and Others, 3, has awarded Rs.

1,00,000/- towards loss of marriage prospects and Rs. 1,00,000/- for loss of amenities.

11. Going through the medical records, the Claims Tribunal has found that the respondent/claimant had underwent several surgeries and become

orthopaedically handicapped. Applying the decision of this Court in New India Assurance Company Ltd., v. E. Ponnurangam reported in 2013 (1)

TNMAC 47, the Claims Tribunal has awarded Rs. 1,00,000/- towards pain and suffering.

12. Having regard to the pitiable condition of the respondent/claimant, being orthopaedically handicapped/paraplegic that he was unable to attend

the natural calls, without the help of others and limping without walkers and taking note of the decision of the Apex Court in Ibrahim Vs. Raju and

Others, , the Claims Tribunal has awarded Rs. 1,00,000/- towards future medical expenses.

13. That apart, the Claims Tribunal, upon perusal of Ex. P10 - Nutrition Bills and Ex. P17 - Medical Bills, awarded Rs. 34,545/- and Rs.

17,443/- towards Extra Nourishment and Medical Bills. Besides, the Claims Tribunal has awarded Rs. 10,000/- towards transportation and Rs.

50,000/- towards attendant charges. Altogether, the Claims Tribunal has awarded Rs. 17,56,988/- with interest, at the rate of 7.5% per annum.

14. Though Mr. N. Vijayaraghavan, learned counsel for the appellant-Insurance Company vehemently contended that the Claims Tribunal has

grossly erred in awarding an exorbitant compensation of Rs. 17,56,988/-, without assessing the nature of injuries and the extent of disablement and

exaggeratedly spoken to, by P.W. 2, Doctor and further contended that the Claims Tribunal has grossly erred in awarding huge compensation

under different heads, which is unjust and unreasonable, and nothing but a windfall to the respondent/claimant and for the abovesaid reasons,

sought for reduction of compensation and also contended that the Claims Tribunal had given a undue weightage to the testimony of P.W. 2,

Doctor, this Court is not inclined to accept the said contentions, for the reasons that after going through the oral and documentary evidence, the

Claims Tribunal has meticulously and with due care and caution, assessed the evidence, both oral and documentary and applied the judgments of

this Court and Hon"ble Apex Court to the facts of the case and taken into consideration all the relevant factors, that are to be taken into

consideration by the Tribunals/Courts and in particular, by giving due credence and weightage to Ex. P5 - Disability Certificate issued by the

Government Institute of Rehabilitation Centre, K.K. Nagar, while assessing the disability of the respondent/claimant at 75%, as a case of

Traumatic Paraparesis and then proceeded to compute the loss of earning capacity.

15. Perusal of the award shows that though the respondent/claimant had suffered a higher percentage of disability and thus, lost his future earning

capacity, the Claims Tribunal has not awarded separate compensation under the head, disablement, duly assessed by the Government Institute of

Rehabilitation Centre, K.K. Nagar, Chennai. The Apex Court in a decision made in B. Kothandapani Vs. Tamil Nadu State Transport

Corporation Ltd., , held that an injured is entitled to claim compensation under both heads, disability and loss of earning capacity.

16. Though P.W. 2, Doctor, who examined the respondent/claimant, with reference to the medical records has assessed the disablement at 80%,

the Claims Tribunal has independently considered the medical records, viz., Ex. P2 - Discharge Summary, issued by the Government General

Hospital, Chennai and Exs. P3 & P5 - Discharge Summaries issued by Government Institute of Rehabilitation Centre, K.K. Nagar, Chennai and

thus, determined only 75% partial permanent disablement, for assessing the loss of future earning capacity.

17. The Tribunal, after perusal of Ex. P7 - Medical Reports, Ex. P8 - Medical Bills and Exs. P9 & P12 - X-Rays, has also recorded that the

respondent/claimant has become orthopaedically handicapped/paraplegic and was walking with the help of walker and limbing, and unable to

attend nature calls, without the help of others. At the time of accident, the respondent/claimant was aged 24 years. He has lost his future earning

capacity and become paraplegic, lost his marriage prospects and amenities, etc.

18. Quantum of compensation awarded under various heads, challenged in this appeal, cannot be said to be grossly excessive or windfall to a 24

year young man, who has to live with the abovesaid disablement for rest of his life time. There are no merits in this appeal, warranting interference.

19. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with

accrued interest and costs, to the credit of M.C.O.P. No. 4492 of 2010, on the file of the Motor Accidents Claims Tribunal (V Court of Small

Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the

respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected

Miscellaneous Petition is also closed.