

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.1751 of 2015
M.P.No.1 of 2015

M/s.Cholamandalam MS General Insurance Co. Ltd.,
“Dare House”, 2nd Floor,
N.S.C. Bose Road, Chennai. .. Appellant

versus

1. Insane Devaraj,
S/o.Subramani,
(rep., by Guardian/
Next Friend/Wife,
Nirmala Devi)
2. Mr.Mani, S/o.Periyanna Gounder,
M/s.Suriya Apparels,
Suriya Prabha Garden,
No.5, M.P.Nagar Extension,
Kongu Main Road,
Tiruppur 641 602.
3. M/s.Suriya Apparels,
Suriya Prabha Garden,
No.5, M.P.Nagar Extension,
Kongu Main Road,
Tiruppur 641 602. .. Respondents

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.544 of 2010, dated 02.07.2013, on the file of the Motor Accident Claims Tribunal, Additional District Court No.3, Dharapuram.

For Appellant : Mr.M.B.Gopalan

JUDGMENT

(Judgement of the Court was made by **S.MANIKUMAR ,J.)**

Challenge in this appeal, filed by M/s.Cholamandalam MS General Insurance Co. Ltd., is to the judgment and decree in M.C.O.P.No.544 of 2010, dated 02.07.2013, on the file of the Motor Accident Claims Tribunal, Additional District Court No.3, Dharapuram, by which, the Claims Tribunal has awarded compensation of Rs.13,87,960/-, with interest, at the rate of 7.5%, from the date of claim.

2. As per the version of the respondents/claimants, in the Motor Accident Claims Tribunal, filed on behalf of Devaraj, represented by his wife, Nirmala Devi that on 24.05.2010, about

20.50 Hours, when Devaraj, was driving a Maruti Car, bearing Registration No.TSF 8888, from South to North, on Kangeyam to Tiruppur Main Road, with due care and caution, and when he was nearing Sri Raja Rajeshwari School bus stop, a private bus, bearing registration No.TN 39 AJ 1771, coming from the opposite direction, ie., North to South of the said road, driven in a rash and negligent manner, by its driver, came on the right side of the road and dashed against the Maruti Car. Due to the said accident, Devaraj, sustained multiple injuries in the head, face and all over the body. He was immediately taken to Government Hospital, Kangayam and provided First Aid. Thereafter, he was taken to KMC Hospital, Coimbatore and admitted in ICU. He was admitted for more than two months. Though the injured had incurred huge medical expenses and underwent regular check-up and treatment, he became incapacitated. A case in Cr.No.1404 of 2010, under Sections 279 and 337 IPC., has been registered on the file of Kangayam Police Station. For the injuries, extent of disablement, medical expenditure, loss of earning capacity and other heads, Devaraj, through his wife, Niramala Devi, claimed compensation of Rs.25,00,000/-.

3. Opposing the claim, M/s.Cholamandalam MS General Insurance Co. Ltd., in its counter affidavit, has submitted that the accident has occurred, solely due to the rash and negligent driving of the Maruti Car, bearing registration No.TSF 8888. Insurance Company has denied the averments, with regard to the nature of injuries, period of treatment, avocation, loss of income, medical expenditure incurred and for other reasons, stated in the counter affidavit, prayed for dismissal of the claim petition.

4. Before the Claims Tribunal, wife and the guardian of Devaraj/injured, examined herself as PW.1, reiterated the manner of accident. PW.2, is stated to be the other witness. PW.3 is the physiotherapist and PW.4 is the Doctor, who assessed the extent of disability. Ex.P1 - FIR, Ex.P2 - Observation Mahazar, Ex.P3 - Sketch, Ex.P4 - Motor Vehicles Inspector's Report (TN 39 AJ 1771), Ex.P5 - Motor Vehicles Inspector's Report (TSF 8888), Ex.P6 - Charge Sheet, Ex.P7 - Accident Register issued by the Government Hospital, Kangayam, Ex.P8 - Accident Register issued by the KMC Hospital, Coimbatore, Ex.P9 - Wound Certificate, Ex.P10 - Discharge Summary,

Ex.P11 to 14 - Medical Bills, Exs.P15 - X-Rays, Ex.P16 - C.T.Scan, Ex.P17 - Driving Licence, Ex.P18 - Photographs, Ex.P19 - C.T.Scan Report, Ex.P20 - Disability Certificate, have been marked. On behalf of the appellant-Insurance Company, no oral or documentary evidence has been adduced.

5. Before the Claims Tribunal, the respondent/injured has filed Ex.P1 - FIR, Ex.P2 - Observation Mahazar, Ex.P3 - Sketch, Ex.P4 - Motor Vehicles Inspector's Report, pertaining to the private bus, bearing Registration No.TN 39 AJ 1771, insured with the appellant-Insurance Company and Ex.P5 - Motor Vehicles Inspector's Report, pertaining to Maruti Car, bearing Registration No.TSF 8888, to prove the manner of accident. Oral testimony of Pws.1 and 2, is duly corroborated by the abovesaid documents and in the absence of any rebuttal, the Claims Tribunal has arrived at a categorical conclusion that the accident occurred solely due to the negligence of the driver of the private bus, insured with the appellant-Insurance Company.

6. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in **N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354]**, has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

7. In a decision in **Union of India v. Saraswathi Debnath [1995 ACJ 980]**, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the *Motor Vehicles Act*, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is

preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

8. Though the learned counsel for the appellant has contended that the Claims Tribunal, has erred in fixing negligence on the driver of the private bus, bearing registration No.TN 39 AJ 1771, insured with the appellant-Insurance Company, this Court is not inclined to accept the said contention, for the reason that the testimony of the claimant is duly corroborated by PW.2 and the documents, Ex.P1 - FIR, Ex.P2 - Observation Mahazar, Ex.P3 - Sketch and other documents, stated supra. On the contra, there is no rebuttal.

9. It is the well settled law that proceedings before the Claims Tribunal are being summary in nature and it is suffice to

consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal, regarding negligence cannot be termed as perverse or it is a case of no evidence. The finding regarding negligence is confirmed.

10. On the quantum of compensation, it is the claim of the respondent that as a coconut paruppu merchant, he earned Rs.10,000/- per month. PW.1 has deposed that in the accident, which occurred on 24.05.2010, the respondent/injured sustained multiple injuries and he was immediately taken to Government Hospital, Kangayam and provided First Aid and thereafter, hospitalised in KMC Hospital, Coimbatore, between 24.05.2010 and 28.07.2010. According to her, though there were several surgeries in the head and face and that the respondent/injured was unable to walk. He was treated as Outpatient for several days. He was under continuous physiotherapy. To prove the nature of injuries, treatment and medical expenses incurred, the respondent/injured has marked

Ex.P7 - Accident Register issued by Government Hospital, Kangayam, Ex.P8 - Accident Register issued by KMC Hospital, Coimbatore, Ex.P9 - Wound Certificate, Ex.P10 - Discharge Summary, Ex.P11 to 14 - Medical Bills, Exs.P15 - X-Rays, Ex.P16 - C.T.Scan, Ex.P17 - Driving Licence, Ex.P18 - Photographs and Ex.P19 - C.T.Scan Report.

11. PW.4, Doctor, who assessed the extent of disablement, in his testimony, has stated that the respondent/injured had sustained head injury. There was damage in the brain. On the right side of the head, parital bone was broken. On the back left turn side of the head, occipital bone was broken. Three other bones were also broken. In the face, there was a fracture. On 28.07.2010, the respondent/injured has been discharged from the hospital and again, treated as outpatient. Upon physical examination of the respondent, PW.4, Doctor has opined that the right hand and legs were weak, due to the severity of the head injury. The respondent has lost his functional disability in the limbs. Thus, PW.4, Doctor, has assessed the extent of permanent disablement at 67% and issued and Ex.P20 - Disability Certificate.

12. Upon perusal of Ex.P7 - Accident Register issued by the Government Hospital, Kangayam, Ex.P8 - Accident Register issued by the KMC Hospital, Coimbatore, Ex.P9 - Wound Certificate, the Tribunal has noticed that the injuries were grievous. Upon perusal of Ex.P10 - Discharge Summary, the Tribunal has also recorded that the injured was hospitalised between 24.05.2010 and 28.10.2010. The Tribunal has also recorded that the respondent/claimant sustained fractures.

13. Though the respondent/claimant, through his guardian, before the accident, has contended that as coconut paruppu merchant, he earned Rs.10,000/- per month, no document has been filed to substantiate the same. However, having regard to his age, coupled with the fact that he had a driving licence, the Claims Tribunal, has determined the monthly income as Rs.4,000/- and taking note of the extent of disablement 67%, as assessed by PW.4, Doctor, proposed to apply multiplier method, for arriving at the loss of future earning of the respondent and accordingly, awarded of Rs.5,46,720/- ($\text{Rs.4,000} \times 12 \times 17 \times 67/100$).

14. The question is, as to whether, the Claims Tribunal has committed any error in applying the multiplier method, for the purpose of arriving at the loss of future earning. Reference can be made to a decision in **Rajkumar v. Ajay Kumar** reported in **2011 (1) SCC 343**, wherein, the Hon'ble Supreme Court considered the correlation between the physical disability suffered by the injured and the loss of earning capacity, resulting from it. At Paragraphs 10, 11 and 13, the Hon'ble Apex Court observed as follows:

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced

show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* - 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* - 2010 (8) SCALE 567).

.....

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

15. Though Mr.M.B.Gopalan, learned counsel for the appellant-Insurance Company, submitted that the Claims Tribunal has erred in adopting multiplier method, for arriving at the loss of

earning capacity, when there is no substantial evidence, regarding functional disability, which affected the loss of earning capacity of the respondent/injured, having regard to the nature of injuries, situs, particularly, the head and other parts of the body, and taking note of the assessment made by PW.4, Doctor, this Court is not inclined to accept the said contentions.

16. Insofar as medical expenses is concerned, the Claims Tribunal, on the basis of the medical bills, has awarded Rs.8,05,740/- Transport costs of Rs.5,000/- has been awarded. Compensation awarded under the head, pain and suffering is Rs.25,000/-. For nutrition, the Tribunal has awarded Rs.5000/-. Rs.500/- is awarded towards damage to clothes. Altogether, the Claims Tribunal has awarded Rs.13,87,960/-. Considering the nature of injuries, period of treatment, extent of disablement as assessed by PW.4, Doctor, the quantum of compensation, awarded under the abovesaid heads, cannot be said to be grossly excessively and on the contra, under some heads, it is low.

17. In the light of the decisions and discussion, application of the multiplier method cannot be said to be erroneous. Going through the award, it is also to be seen that the Claims Tribunal has not awarded loss of amenities, loss of income during the period of treatment. At any rate, the quantum of compensation, cannot be said to be on the higher side, warranting interference.

18. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, if not already deposited, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.544 of 2010, on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram, within a period of four weeks from the date of receipt of 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.

(S.M.K, J.) (M.V., J.)
05.08.2015

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S. MANIKUMAR, J.
AND
M.VENUGOPAL, J.

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To

The Motor Accidents Claims Tribunal,
Additional District Court No.3, Dharapuram.

C.M.A.No.1751 of 2015

05.08.2015