

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.12.2014

Delivered on: 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.3268 of 2014

Thangamayan rep. by his next friend
and guardian wife Selvi. ... Appellant/Petitioner

Vs.

1.M.Parthasarathi

2.The Managing Director,
TNSTC, having office at
No.37,Mettupalayam Road,
Coimbatore. ... Respondents/Respondents.

3.Bajaj Alliance General Insurance
Company Limited,
Office at 11/6-A, People's Park,
II Floor, Govt.Arts College Road,
Coimbatore.

(1st Respondent is set exparte before
the Tribunal and the 3rd Resondent
is exonerated from the award. Hence,
notice may be dispensed with for the
Respondents 1 and 3.) ... Respondents.

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicle Act 1988 against the judgment and decree dated
29.08.2013 made in M.C.O.P.No.469 of 2009 on the file of MACT/Sub
Court at Dharapuram.

For Appellant : Mr.Ma.P.Thangavel
For R - 1 : Exparte
R -2 : Mr.V.Udayakumar

JUDGMENT

When the claimant was driving the car along with his family
members, the happiness did not last for a long time, when the car was
hit by the bus belonging to the transport corporation driven rash and
negligent on 28.03.2009. The claimants suffered innumerable
injuries, including brain injuries. He was admitted in three

hospitals and operated three times and no treatment could make him to move as usual. He is bedridden. Therefore, claiming compensation on behalf of the injured, the wife filed the claim petition. On enquiry, the tribunal found that the bus was driven rash and negligently and fastened the liability on the corporation and awarded a sum of Rs.6,48,290/-. Aggrieved over the quantum only, the claimant is before this Court.

2. There is no appeal by the Transport Corporation. Hence, it is deemed that the negligence aspect is not challenged or the finding given by the Tribunal with regard to the negligence has been accepted by the Transport Corporation. The only question is as to whether the Tribunal awarded just compensation, taking into consideration the disability sustained by the claimant and the resultant loss of earning power.

3. It was contended by the claimant that he was running Auto mobiles services business along with his friends and earning about Rs.10,000/- per month. In the absence of any evidence regarding income, the Tribunal only took disability as a yardstick and awarded a sum of Rs.1,60,000/- as compensation.

4. Mr.Ma.P.Thangavel, learned counsel appearing for the appellant would submit that the status of the injured warrants application of multiplier and not awarding of compensation to the injuries. That apart, he would submit that for medical expenses also lesser amount has been awarded.

5. The learned counsel for the respondent would support the award of the Tribunal.

6. It is seen from the records that the claimant suffered brain injury and he was admitted in three hospitals and underwent three surgeries including brain surgery. After the accident, he was admitted in the KG hospital on 28.03.2009. At the time of admission, he was unconscious and the operative procedure called "Percutaneous Tracheostomy" was done. After the procedure, he was discharged, when he regained conscious. However, he was unable to communicate. The relevant portion of Discharge summary dated 24.04.2009 issued by KG hospital is as follows:

"CONDITION AT DISCHARGE: Obeys request.
Conscious, not communicating. Left hemiplegia present.
Right third nerve palsy. Traumatic optic neuropathy.
Patient able to take oral liquids."

7. A perusal of the CT scan report dated 28.03.2009 would speak volumes about the nature of injuries sustained by the claimant and the impression portion of the report is extracted as follows:

"IMPRESSION:

- Left fronto-temporal subdural hematoma with right frontal and left temporal hemorrhagic contusions.
- Right frontal epidural hematoma with pneumocephalus.
- Subarachnoid hemorrhage.
- Multiple fractures as mentioned above."

8. Again he was admitted in Lakshmana Hospital, Madurai on 06.08.2012 and discharged on 22.08.2012 after having undergone a surgery on 07.08.2012. An Anterior cranial fossa repair with cranioplasty was proposed to be done. However, he developed respiratory distress with profound tachycardia. Therefore, with ventilatory support, the victim was shifted to Government Rajaji Hospital, Madurai. There also he underwent a surgery. Again the victim was admitted in Lakshmana Hospital, Madurai on 16.08.2012 and after management CSF rhinorrhea was stopped.

9. Ex.P26 Disability Certificate gives the details of the disability sustained by the victim. The doctor deposed as follows:

"Since the petitioner had a right frontal craniotomy defect with persistent bilateral CSF rhinorrhea, inspite of conservative treatment for CSF rhinorrhea, petitioner was admitted at Lakshmana Hospital, Madurai, I operated the petitioner for the same, anterior cranial fossa repair with cranioplasty was done on 07.08.2012. The petitioner was discharged on 22.08.2012. After that the petitioner is receiving treatment as outpatient.

I examined the petitioner Thangamayan on 08.04.2013, regarding permanent disability and I certify that according to the central government employees welfare act, the petitioner is severally disabled and the percentage of disability is 80% (Eighty percentage)."

10. A close reading of all the medical records would undoubtedly prove that the claimant continuous to be bedridden and he is unable to do his daily routine works and he needs help of others. Even food is administered by his wife and passing of motion and urine are not felt by him. With this status and the condition of the victim, this Court is unable to understand as to how the Tribunal awarded only Rs.1,60,000/- for 80% disability. Though 80% disability was spoken to by the doctors, the functional disability is 100%. He lost the earning capacity. When the victim is unable to move about, one can easily, understand that he cannot do any work. Therefore, the multiplier method has to be adopted for determining the loss of income.

11. He was admitted in KG hospital for 27 days between 28.03.2009 to 24.04.2009, 16 days in Madurai Laxmana Hospital from 06.08.2012 to 22.08.2012 and totally 45 days, the victim was hospitalized as proved by Exs.P10 and P13. Though the claimant sought a sum of Rs.10,000/- per month, since the multiplier method was not adopted, the said amount was considered only for awarding compensation during the period of treatment.

12. The accident occurred on 28.03.2009. The Honourable Supreme Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 determined Rs.6,500/- as the monthly income for a vegetable vendor, who sustained injury in the accident occurred on 14.02.2008 and added 50% towards future prospects, making it as Rs.9,750/-, whereas in this case, the accident occurred on 28.03.2009 and the claimant is stated to have been doing a business viz., auto mobile business. Not accepting a sum of Rs.10,000/- as the monthly income, this Court follows the aforesaid judgment of the Honourable Supreme Court and determines the monthly income at Rs.6,500/-.

13. The claimant is aged about 39. As per the judgment of the Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, 50% is added as future prospects. $\text{Rs.6,500} + 3,250 = 9,750$ is determined as loss of income. Though 80% disability is sustained by the victim, considering the vegetative status of the claimant, the functional disability is 100% and therefore, 100% loss of income should be taken into consideration.

14. The claimant is aged about 39 years and as per the second schedule, multiplier to be applied is 16. However, following the Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, 15 multiplier is applied and the loss of income is calculated as follows:
 $9750 \times 12 \times 15 = 17,55,000/-$.

15. As stated above, the claimant has virtually become vegetable and bedridden and the motion and urine are cleaned by his wife. That apart he was hospitalized for more than 45 days and he should be under continuous treatment as the brain is affected by the injuries as proved by the medical records, a sum of Rs.3,00,000/- is awarded as future medical expenses apart from the medical expenses awarded by the Tribunal to the extent of Rs.3,98,290/-.

16. The vegetable state of the claimant would denote loss of amenities. The Honourable Supreme Court in Kavita Vs. Deepak and others reported in 2012 (2) TN MAC 362 awarded Rs.3 Lakhs for loss of amenities for a lady who became vegetable and continuous to be in vegetative state with 80% disability. Therefore, following the aforesaid judgment, for loss of amenities Rs.3,00,000/- is awarded.

17. As stated above, the victim sustained brain injuries and other injuries leading to vegetable state of living and he had undergone three surgeries and has been continuously undergoing physiotherapy. Therefore, a sum of Rs.75,000/- awarded by the Tribunal towards pain and suffering is very meager and the same is enhanced to Rs.2 Lakhs.

18. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is too low and hence, the same is enhanced to Rs.50,000/-. No amount has been awarded towards attendant's charges. With the help of attender only, he can lead rest of his life and therefore, a sum of Rs.3 lakh is awarded towards attendant charges.

19. Rs.5,000/- awarded towards transportation is too low. As stated above, he was already shifted to three hospitals and he has to continue the physiotherapy and therefore, a sum of Rs.1,00,000/- is awarded towards transportation.

20. The tribunal mechanically calculated the award amount instead of understanding the grievous nature of injuries sustained by the claimant and status of the claimant. The Tribunal should have appreciated the position of the claimant, who was not present before the Tribunal, as he is unable to appear before the Tribunal as he is bedridden and only his wife deposed before the tribunal. Therefore, the application of multiplier method has been resorted to. In view of application of multiplier method for calculating the loss of income Rs.1,60,000/- awarded as permanent disability is deleted. Totally, this Court awards a sum of Rs.34,03,290/- as compensation. The rate of interest 7.5% awarded by the Tribunal remains unaltered.

21. In view of the above modification, this Civil Miscellaneous Appeal is allowed and the award of Rs.6,48,290/- is hereby enhanced to Rs.34,03,290- along with interest at 7.5% p.a. No costs.

22. The 2nd respondent is directed to deposit the entire amount along with interest and costs, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order, failing which, the Chairman-cum-Managing Director and Financial Advisor cum Chief Accountant Officer shall appear before this Court on 20.09.2015. On such deposit being made, the appellant/claimant is permitted to withdraw the same, after adjusting the amount if any already withdrawn, with accrued interest within a period of one week thereafter. The appellant/claimant is directed to pay the additional Court fee for the enhanced amount.

Post the case on 20.09.2015 for compliance.

vsm

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Dharapuram.
 2. The Section officer,
VR Section, High Court,
Madras.
 3. The Chairman cum Managing Director,
TNSTC, No.37, Mettupalayam Road,
Coimbatore.
 4. The Financial Advisor cum Chief Accountant Officer,
TNSTC, No.37, Mettupalayam Road,
Coimbatore.
- + 1 cc to Mr.Ma.P.Thangavel, Advocate SR 36408

skv(co)
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judgment in
C.M.A.NO.3268 of 2014

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