

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.273 of 2013

The Branch Manager,
United India Insurance Co., Ltd.,
No.11-A, M.C.Road,
Ambur.

...Appellant/II Respondent

Versus

1.G.Parthiban,
(amended as per order in
I.A.No.1093/09 dt.10.12.09)

...Petitioner

2.M.R.Thiyagarajan
(set exparte before MACT.
Notice may be dispensed with)

...Respondents/I Respondent

Prayer: This Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 59 of 1988 against the judgment and decree dated 19.03.2012 made in MCOP.No.1490/2007 on the file of the MACT (Additional District Judge) at Krishnagiri.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.Mukund R.Pandian for R1
R2-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company as against the award of Rs.11,49,900/-, granted in favour of the claimant, for the injuries sustained by him in the accident, which occurred on 14.01.2007, when he was travelling as a passenger in the bus insured with the appellant. The award is challenged on the question of quantum as well as negligence.

2. Heard Mr.T. Ravichandran, learned counsel for the appellant and Mr.Mukund R. Pandian, learned counsel for the claimant/1st respondent.

3. Mr.T. Ravichandran, learned counsel for the appellant would, firstly, submit that the accident occurred as the claimant tried to get down from the moving bus, consequent to which, he fell down and sustained injuries. Therefore, the bus driver is, in no way, responsible for the accident. Secondly, he would submit that Rs.4000/- determined as the monthly income of a 17 year old boy is on the higher side, in the absence of any proof regarding income. According to him, the amounts awarded under other heads are also on the higher side. Therefore, the award amount has to be reduced.

4. On the other hand, Mr.Mukund R. Pandian, learned counsel for the 1st respondent/claimant would submit that because of the injuries sustained in the accident, the claimant has been fixed with a separate bag for collection of motion and for passing urine. Further, the claimant is unable to do his personal works on his own and he has to depend on others. Under these circumstances, the learned counsel would submit that the amount awarded by the Tribunal is on the lower side and needs to be enhanced.

5. Heard the parties and perused the records carefully.

6. Taking into consideration, the evidence of the claimant that he was seated near the entrance of the bus and as the bus was driven rashly and negligently and at great speed, he was thrown out and the rear wheel of bus ran over him resulting in his sustaining fracture injuries in his hip, left leg and left hand; taking note of filing of FIR, Ex-P1, against the driver of the bus and the absence of rebuttal evidence on the side of the appellant, the Tribunal rightly found that the bus was driven rashly and negligently. The Tribunal also observed that P.W.1's evidence remained uncontroverted as neither the Driver nor the Conductor or any of the passengers was examined. Therefore, the finding rendered by the Tribunal cannot be set aside and it has to be concluded that negligence was rightly attributed to the driver of the bus and the liability to pay the compensation was justifiably fixed on the appellant.

7. As far as quantum is concerned, what is to be seen is the status of the person, who got injured. The claimant was studying in Plus Two, that too, in a well-known and reputed educational institution in Anthiyur. Most parents, across the State, aspire to admit their children in the said school for securing high marks in

Plus Two Examination and the claimant was also admitted in the said school so that he would excel in his studies. Though the Tribunal determined the monthly income at Rs.4000/-, Mr.T. Ravichandran, learned counsel for the appellant relied upon the judgment of the Honourable Apex Court in Sanjay Verma V. Haryana Roadways reported in 2014 3 SCC 210 wherein for an injured, aged about 25 years, a sum of Rs.41,300/- was fixed as annual income. On the other hand, the learned counsel for the claimant would draw the attention of this Court to the judgment rendered by the Honourable Apex Court in V. Mekala V. M.Malathi reported in 2014 2 TN MAC 6 (SC) wherein the monthly income of a 16 year old, 11th standard student, was determined at Rs.18,000/-. However, this Court, following the judgment of the Honourable Apex Court in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), wherein Rs.6500/- was fixed as the monthly income for a vegetable vendor, who sustained injuries in the accident, which took place in 2008, re-determines the monthly income of the claimant, in the case on hand, at Rs.6000/- per month. As per the judgment of the Honourable Apex Court in Sarla Verma's case, (2009 2 TN MAC 1 (SC)), 50% has to be added towards "Future Prospects". Accordingly, the monthly income of the claimant is fixed as (Rs.6000 + 50% (Rs.6000)) = Rs.9000/-.

8. On a perusal of the records, it is seen that the 1st respondent/claimant, soon after the accident, was admitted in Government Hospital, Krishnagiri and thereafter, in a private hospital at Bargur and from there, he was shifted to Saint John's Medical College Hospital, Bangalore. Ex.P2 is the Discharge Certificate issued by the Government Hospital, Krishnagiri, wherein the injuries sustained in the left shaft femur and pelvic portion have been noted down. Ex-P3 is the wound certificate issued by Saint John's Medical College Hospital, Bangalore, wherein it is noted that the claimant had suffered fracture injury on his left forearm, left acetabulum and left femur. He was admitted in the said hospital on 14.01.2007 and discharged on 15.03.2007, for nearly two months. Again, he was admitted for neurological diagnosis in the said hospital on 15.03.2007, wherein he underwent surgery for colostomy and hernial urethral injury on 21.03.2007 and was discharged on 22.05.2007. Exs-P6 and P7 are scan reports; Ex-P8 is the Physiotherapist Record; Ex-P9 is the Ultra Sound Doppler Examination Report and Ex-P10 is the Radiology Investigation report.

9. P.W.2, Doctor Sridhar, Assistant Professor, Associate Department of General Surgery and Laproscopy, attached to Saint John's Medical College Hospital, Bangalore, spoke about the damages and treatment relating to colostomy and perineum region. He deposed that permanent colostomy is an opening in the anterior abdominal wall

through which, the claimant has to pass motion throughout his life and that he must collect faecal matter in a separate bag to be disposed of every day. He gave Ex.P18, Disability Certificate assessing the disability at 30%. P.W.3 Doctor Mohan, Head of the Department of Genetic Department attached to Saint John's Medical College Hospital, Bangalore, was examined and he spoke about the disability pertaining to urinary tract injury. He deposed that the claimant requires further operation for reconstruction of his urinary tract. P.W.4, Doctor D.V.Gandhi, spoke about the disability regarding the fracture and injury on the right femur and left hand. In this context, it would be appropriate to extract paragraphs 11 & 11(i) of the award passed by the Tribunal, wherein, the injuries sustained by the claimant and the treatment taken have been very elaborately described, relying upon the evidence of treating doctors:

"11. P.W.2 Doctor Sridhar, Assistant Professor, Associate Department of General Surgery and Laproscopy attached to Saint Johns Medical college hospital, Bangalore has been examined to speak about the damages and treatment relating to colostomy and perineum region. P.W.3 Doctor Mohan, Head of the Department of Genetic Department attached to Saint Johns Medical college, Hospital, Bangalore has been examined to speak about disability pertaining to urinary tract injury. P.W.3 doctor D.V.Gandhi has been examined to speak about the disability regarding the fracture injury on the right femur and left hand. P.W.2 and P.W.3 have been examined in their hospital itself by an Advocate-Commissioner. P.W.2 was the Doctor, who gave treatment to the injured claimant. He would depose that permanent colostomy is an opening in the anterior abdominal wall through which, he has to pass motion through out his life; he must collect faecal matter in a separate bag and will be disposed. According to him, colostomy operation of anterior abdominal tract through which he has to pass motion for his life. Through bags only, the motion will be collected. In the cross examination, he has stated it is not correct to state that the injuries can be rectified by way of modern treatment. He had given disability certificate Ex.P.18 assessing the disability at 30%. P.W.3 had issued Ex.P.19 disability certificate assessing the disability at 30%. He would state that P.W.1 requires further operation for reconstruction of his urinary track. He would depose that presently he is having a tube inserted into the bladder through his abdominal wall as a temporary measure for his urinary tract until reconstruction is completed. He will requires continuous treatment by self-insertion of catheter tube for many years. This may have the disability which

cannot be cured. From the evidence of P.W.2 and P.W.3 and other case records it is evident that the urinal tract injury and injury on rectum has been caused on account of the injuries sustained in the accident. P.W.4 Dr.D.V.Gandhi, has also examined P.W.1 and issued disability certificate Ex.P20 assessing the disability at 40%.

11(i) Further, P.W.1 has produced Ex.P.21,P.22,P.23 to show that he has been taking treatment for the injuries till day. Ex.P1 is the discharge summary issued by Sri Ramachandra Medical Centre, Chennai wherein he was admitted on 30.1.2012 and discharged on 3.2.2012 for treatment pertaining to perennial injury. P.W.2 and 3 are from a reputed hospital in Bangalore and they will not give disability certificate just for asking by their patients. Further, the disability assessed by P.W.4 may vary to an extent of 10 degree and the disability can be taken as 30%. This court also noticed P.W.1 in the open court, carrying a bag tied to his body for collecting urine."

The Tribunal, based on medical evidence, concluded that the claimant sustained 90% disability. As per the evidence of P.W.1 and P.W.3, though the claimant suffered 90% disability, he lost 100% earning capacity, as he is dependent on others even for doing his day to-day personal works. Considering the said aspect, this Court deems it fit to adopt multiplier method to calculate "Loss of Income due to disability". Since the claimant was aged about 17 years, at the time of accident, the appropriate multiplier to be adopted is 18. Taking 100% loss of earning capacity, the loss of earning is calculated as follows:

Loss of Income due to disability	:	(Rs.9000/- x12 x 18)
	:	Rs.19,44,000/-.

10. A person may intend to remain as a bachelor, as per his own wish. But if he is forced to remain as a bachelor, against his wish, it amounts to violation of basic human rights. Unlike any normal person, the claimant has been deprived of marital prospects and the pleasures on account of the injuries sustained by him in the accident in question. Given the status, namely, collection of motion through a separate bag and passing of urine through tube inserted into the bladder through his abdominal wall, no lady would come forward to marry him and his prospect of getting married is completely lost. Therefore, a sum of Rs.2,00,000/- is given towards "Loss of Marital Prospects". Relying upon the judgement of V.Mekala vs. M.Malathi & another reported in 2014 (2) TN MAC 6 (SC), towards "Loss of amenities", a sum of Rs.1,00,000/- is granted. Since the claimant is dependent on others, even to do his own work, a sum of Rs.1,00,000/- is awarded towards "Attendant Charges". Towards "Pain and

suffering", a sum of Rs.2,00,000/- is awarded, as the claimant suffered multiple fractures and was operated upon and the suffering continues throughout his life. The sum of Rs.1,48,900/- awarded by the Tribunal towards "Medical Expenses", as per Exs.P-12, P-13 and P-24 is confirmed. The sum of Rs.15,000/- awarded towards "Transportation Expenses" is too low, as the claimant has to go to Bangalore for treatment regularly and therefore, the same is enhanced to Rs.75,000/-. Likewise, the sum of Rs.10,000/- awarded towards "Extra Nourishment" is too low and the same is enhanced to Rs.75,000/-. For "Future Medical Expenses", the sum of Rs.25,000/- awarded by the Tribunal is low and the same is enhanced to Rs.1,00,000/-. Totally, this court awards a sum of Rs.29,42,900/- rounded off to Rs.29,50,000/- as compensation. The rate of interest awarded by the Tribunal at 6% per annum is confirmed.

11. Even though the Insurance company has filed this appeal against the award of Rs.11,49,900/-, considering the pathetic position of the claimant, who is present before this Court, that he is having a separate bag for collection of motion, even after eight years, re-appreciating the evidence on record in proper perspective, applying the latest law, and invoking Order XLI Rule 33 CPC, in an endeavour to award just and reasonable compensation, has enhanced the compensation payable to the claimant. Further, an appeal is a continuation of original proceedings and this court has got power and jurisdiction to re-appreciate the evidence and enhance the compensation, even in the absence of appeal or cross appeal by the claimant, as held by the Hon'ble Supreme Court, in the judgment in National Insurance Company Limited V. Swaran Singh and others reported in (2004) 3 SCC 297, wherein three judges' Bench of the Apex court held that this Court has got jurisdiction to enhance the award amount. Moreover, the provisions of Motor Vehicles Act are beneficial in nature which aim at consoling, comforting and compensating the victims of road accidents. Hence, this Court, with a view to award just and adequate compensation, suo motu, enhances the award of Rs.11,49,900/- granted by the Tribunal to the tune of Rs. 29,50,000/-.

12. The appellant is directed to deposit the entire amount, as per the modified award passed by this Court, after deducting the amount, if any, already deposited, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw only a sum of Rs.10,00,000/- (Rupees Ten lakhs only). The balance compensation amount is directed to be deposited in interest bearing fixed deposit in any one of the Nationalised Banks at least for a period of 10 years and the claimant is permitted to withdraw the

interest accruing on such deposit once in three months. The claimant shall pay additional court-fee for the enhanced amount.

13. In the result, the Civil Miscellaneous Appeal stands dismissed and the award passed by the Tribunal, to the tune of Rs.11,49,900/- is enhanced to Rs.29,50,000/-. No costs. M.P.No.1 of 2013 and M.P.No.1 of 2014 are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vk/nv

To

The MACT (Addl. Dist. Court),
Krishnagiri.

Copy to

The Section Officer,
V.R.Section,
High Court,
Madras.

1 CC to Mr.Mukund R Pandian, Advocate SR.No. 34509

C.M.A.No.273 of 2013

JSV (CO)
PSI (31.07.2015)

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