

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.4.2017

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CIVIL MISCELLANEOUS APPEAL NOS.917 & 918 OF 2014
AND MP.NOS.1 AND 1 OF 2014

The Branch Manager, M/s.United
India Insurance Co.Ltd.,
Tirupur-641601.

...Appellant in
both CMAs

Vs

1.Joseph (a) A.Joseph D'Souza

...R1 in CMA.No.
917 of 2014

2.A.Prasanna

...R1 in CMA.No.
918 of 2014

3.S.R.Palanisamy

...R2 in both CMAs

APPEALS under Section 173 of the Motor Vehicles Act, 1988
against the common judgment and decrees dated 17.12.2012 made in
M.C.O.P.Nos. 517 and 520 of 2011 on the file of the Motor
Accidents Claims Tribunal (Chief Judicial Magistrate),
Krishnagiri.

For Appellant in both CMAs :Sri.T.Ravichandran

For Respondent 1 in both CMAs :Ms.S.Manjula

Respondent-2 in both CMAs :set ex parte before the
Tribunal

COMMON JUDGMENT

(Judgment was delivered by NOOTY.RAMAMOHANA RAO,J

Both these civil miscellaneous appeals are preferred by the
Insurance Company, which has provided the insurance cover to a
tourist bus bearing Regn.No.KA-01-D-8689, aggrieved by the
compensation awarded to the claimants in M.C.O.P.Nos.517 and 520
of 2011 on the file of the Motor Accidents Claims Tribunal
(Chief Judicial Magistrate) Krishnagiri, by its common award
dated 17.12.2012.

2. M.C.O.P.No.520 of 2011 was preferred by A.Prasanna while M.C.O.P.No.517 of 2011 was preferred by Joseph @ A.Joseph D'Souza. The following are uncontrovertible facts :

On 21.8.2010, both Prasanna and Joseph had undertaken a journey from Bangalore to Vellore on their two wheeler bearing Regn.No.KA-51-R-0158. Prasanna was riding the motor cycle and Joseph was his pillion. They were travelling on the stretch between Hosur to Krishnagiri National Highway. When they were about to reach Bandarapalli Bus Stop U Turn, the offending bus bearing Regn.No.KA-01-D-8689 (henceforth referred to as the bus for short) came in the opposite direction wrongly and hit the motor cycle, thus throwing off both the driver and pillion, resulting in multiple-severe injuries to both of them.

3. It is not in dispute that the National Highway between Bangalore to Chennai has two separate halves separated by a median and hence, traffic, on this National Highway, flows in uni direction. The left half of the road allows the traffic from Bangalore to Chennai while the right half of the said road consequently becomes available for the traffic from Chennai to Bangalore. Thus, in the stretch between Hosur to Krishnagiri, on this Highway there could not have been an opposite direction flowing traffic at all. The offending bus, which was travelling from Chennai to Bangalore, entered wrongly the other half of the road and thus caused the resultant accident. The Tribunal, therefore, has rightly held that the driver of the bus is wholly responsible for causing the accident.

4. The learned counsel for the appellant tried to discredit this finding of fact recorded by the Tribunal on the ground that at the time the accident took place, it was around 8.15 AM and the motor cycle was proceeding at a far greater speed than it could be controlled immediately and hence, in spite of the rider of the motor vehicle obviously noticing the bus coming in the opposite direction, he could not control the speed of his motor cycle and hence, it has caused the accident by hitting the bus head on.

5. We are not impressed by the submission of the learned counsel for the appellant for two fold reasons : Firstly, at about 8 AM, one may not expect much of a vehicular traffic on National Highways. But, however, Hosur and the neighbouring Krishnagiri being essentially industrialized areas, located proximately close to Bangalore City, one can easily expect heavy flow of traffic. Therefore, it was completely wrong on the part of the bus driver to have entered the other half of the National Highway, which allows traffic from Bangalore to Chennai to flow in uni direction and then travel in the opposite direction. The offending bus ought to have confined its journey to the other

half of the National Highway where traffic in uni direction is allowed to flow from Chennai to Bangalore.

6. Secondly, it was so obvious that the bus driver needed to enter the other half of the road either to reach Krishnagiri or some other close-by destination. Then, he ought to have entered the bay meant for taking U turn. Instead, he cut the corner and entered the other half of the National Highway wrongly and started travelling in the opposite direction. Therefore, the blame or cause for causing the accident has to be entirely owned by the driver of the bus. For the wrongful act of driving the bus in wrong direction, liability is completely fastenable only on the respondents in the original petitions.

7. For absolute scarcity of material on record for arriving at any other conclusion, it will be difficult for one to appreciate this contention.

8. Fortunately, there is also no doubt with regard to the injuries sustained by the rider of the two wheeler and his pillion. It appears that both injured persons lost their consciousness for a while and they were shifted to the nearby Government Hospital at Krishnagiri for immediate medical aid and attention. It is only subsequently that the injured were shifted to other private hospitals for better treatment.

9. So far the claimant in M.C.O.P.No.520 of 2011 is concerned namely A.Prasanna, he has produced the discharge summary issued by Hosmat Hospital, Richmond Road, Bangalore marked as Ex.A.3. The diagnosis and the procedure followed by the hospital are recorded therein very clearly, which are to the following effect :

"Diagnosis :

1. Degloving injury medial compartment of right thigh.
2. Segmental fracture shaft right femur (middle 3rd and at middle 3rd lower 3rd junction).
3. Type I compound fracture shaft right tibia with fibular head fracture.
4. Right distal end radius and distal 3rd ulna fracture with pisiform fracture.
5. Pubic symphysis diastases.
6. Fracture right 6th, 7th ribs.

Procedure :

1. Major wound debridement done on 24.8.2010.
2. Reduction and internal fixation with intra medullary inter locking left femur (Yogeshwar 10 X 440 mm) done on 28.8.2010.

3. Open reduction internal fixation with ST plate right ulna done on 28.8.2010.
4. Ligamentotaxis for right distal end radius fracture with external fixator 28.8.2010.
5. Would debridement and major SSC right thigh on 30.8.2010.
6. Open reduction internal fixations with intra medullary inter locking right femur with 10 x 440 mm Yogeshwar nail 13.9.2010.
7. Pins and plaster application for right tibia done on 13.9.2010.

History :

Alleged history of road traffic accident patient on a 2 wheeler was hit by a bus on 21.8.2010 near Krishnagiri - Tamilnadu and sustained injuries to his both thighs, both legs and right wrist and hand. First aid given at Government Hospital, Krishnagiri.

History of loss of conscious present (duration not known).

No history of ENT bleed/convulsion.

On examination :

Moderately built and nourished.

Vitals stable/Afebrile.

Systematic examination - NAD

GCS 15/15, Pupil bilaterally equally reactive.

Local examination :

Right shoulder : Tenderness over right shoulder

Right hand :

- Tenderness over radial styloid process
- Swelling over dorsum of right hand
- Range of movements - painful and restricted
- Finger movements painful
- No distal neurovascular deficits.

Right thigh :

- A sutured lacerated wound over anterior and lateral aspect of distal 3rd of thigh in a inverted U shaped extending upto medial aspect of thigh measuring 15 cm.
- Degloving present.
- Tenderness over supra condylar region right thigh.
- Knee swelling present
- Sutured lacerated wound over antero medial aspect of right leg

- Range of movement - painful and restricted
- No distal neurovascular deficits.

Left thigh :

- Tenderness/abnormal mobility present over distal 3rd left thigh
- Range of movements - painful and restricted
- No distal neurovascular deficits.

Hospital course :

Patient was admitted with the above complaints. He was initially stabilized and shifted to ICU. Patient developed respiratory distress, fat embolism syndrome was suspected and patient was intubated and connected to mechanical ventilator at around 3.30 AM. Following he underwent wound debridement for all the wounds on 24.8.2010. Gradually ARDS resolved over a period of days and was later taken up for above mentioned operation on respective days. Initially left femur was operated with inter locking nail and right right lower limb patient was put on traction and once the SSC was taken up upto 90%, patient was taken for inter locking nailing for right femur and pins and plasters for right tibia. Post operatively uneventful and patient is afebrile wound, is clean SSG taken up 90% and patient discharged with following advice.

Advice on discharge :

- Tab. Widecef 500 mg 1-0-1 X 7 days (after food)
- Tab. Etova P 1-0-1 X 10 days (after food)
- Tab. Pan 40 mg. 1-0-0 X 10 days (before food)
- Tab. Benfage forte 0-1-0 X 1 month (after food)
- Tab. Feotab 0-1-0 X 1 month (after food)
- Tab. Calten 0-1-0 X 3 weeks (after food)
- Dressing on 20.9.2010 and 23.9.2010.
- Suture removal on 27.9.2010 on right thigh
- Both knee ROM
- Right elbow and shoulder mobilization in bed
- Wheel chair mobilization
- Review with Dr.Raghu Nagaraj on 27.9.2010
- Review with Dr.Ninan Thomas on 27.9.2010 with prior appointment."

10. The disability certificate dated 07.8.2012 issued by Dr.D.V.Gandhi - former Senior Civil Surgeon and Orthopaedic Surgeon of the Government Hospital, who was examined as P.W.3, reveals that the claimant Prasanna has suffered 70% permanent disability. The claimant also produced the salary certificate issued by Royal Dyeing works, Hosur Main Road, Bommanahalli, Bangalore marked as Ex.A.6, which reveals that the injured Prasanna was drawing a salary of Rs.19,750/- per month while working as in-charge and mechanic of Royal Dyeing Works.

11. Though one Mr.Mohammed Haris of Royal Dyeing Works has been examined as P.W.6, however, the Tribunal was not willing to subscribe to the idea that the injured Prasanna was paid Rs.19,750/- per month as his wages by Royal Dyeing Works. The reasons assigned by the Tribunal were two fold :

(i) The salary certificate does not disclose any deductions made therefrom including compulsory contributions to provident fund and Employees State Insurance Corporation and

(ii) It does not disclose any break-up of Rs.19,750/-. Hence, the Tribunal has approximated the earnings of the injured Prasanna to be not more than Rs.10,000/- per month.

12. We are in agreement with the reasoning assigned by the Tribunal in this regard. In the absence of any other credible material to vouch for receipt of Rs.19,750/- by the injured Prasanna every month as his wages, it is fair and reasonable for one to assume that a mechanic and that too, in charge of dyeing works, can reasonably earn Rs.10,000/- per month. Even with regard to the disability assessed and certified by the orthopaedic surgeon, who has been examined as P.W.3, though nothing much has been elicited in the cross examination of the said witness with regard to any possible reduction of the percentage of disability sustained by the injured Prasanna, nonetheless, the Tribunal has taken the disability percentage as 60%. In cases of this nature, though the claimant appeared before the Tribunal and he was also examined as P.W.2, but nonetheless a conservative approach sometimes is more appropriate to be adopted, as the Tribunal would have had an opportunity to make a rough estimate from the gait of P.W.2. Therefore, we also approve the percentage of disability assessed by the Tribunal as 60%, being fair and reasonable estimate of the disability percentage.

13. The Tribunal has also adopted the lesser of the multipliers between 18 and 17 and following the principle enunciated by the Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation [reported in 2009 (6) SCC 121], has adopted only 17 as the multiplier. Even in that respect, we approve the reasoning assigned by the Tribunal and though the

injured Prasanna was 23 year old, adopting 17 as the multiplier instead of 18 is only in the fitness of things.

14. For all the aforementioned reasons, we find that the award passed by the Tribunal does not warrant or call for any interference at our hands. Accordingly, CMA.No.918 of 2014 stands dismissed. No costs. Consequently, the connected MP is also dismissed.

15. In so far as M.C.O.P.No.517 of 2011 preferred by the pillion rider - Joseph (a) A.Joseph D'Souza is concerned, the discharge summary issued by Sanjay Gandhi Institute of Trauma and Orthopaedics, Government of Karnataka Autonomous Institute dated 8.9.2010 and marked as Ex.A.14, has clearly revealed as to how grievously he was injured in the road accident. He was operated upon and treated by Dr.Sivakumar, Head of Orthopaedics Unit No.3 of the said hospital. But, because of the nature of grievous injuries suffered including fractures to the femur bone, the ribs and the disk, he has been diagnosed to have suffered from 60% permanent disability by the orthopaedic surgeon examined as P.W.3. The Tribunal, in the instant case, has taken the disability percentage as 55% only.

16. In the instant case, the claimant - Joseph produced a salary certificate marked as Ex.A.21. It was issued by Allsec Technologies for the month of July 2010. It clearly disclosed that Joseph was earning gross earnings to the tune of Rs.5,500/- and after making deductions of Rs.240/- towards provident fund and Rs.97/- towards Employees' State Insurance, his net pay was only Rs.5,163/-.

17. While there may not be much difficulty for one to place reliance upon Ex.A.21 - the salary certificate of Joseph, but Sri.T.Ravichandran, learned counsel for the appellant has pointed out that the injured Joseph D'Souza was only a student pursuing B.B.M.course at S.V.R.College of Commerce and Management Studies situated at H.S.R.Layout, Bangalore, issued the study certificate on 29.9.2010, signed by its Principal, vouching that he was a student of that college doing B.B.M.course during the years 2007-2010. This study certificate has been marked as Ex.A.12.

18. The learned counsel for the appellant has raised an objection that a full time student pursuing B.B.M. course could not also have been employed in a call centre as is vouched by Ex.A.21 and that therefore, Ex.A.21 shall be completely discredited from being taken into consideration.

19. Though the contention canvassed by the learned counsel for the appellant cannot be brushed aside lightly, but we have to necessarily consider the ground realities. If a student is pursuing a full time professional course such as BE/B.Tech/MBBS/BDS/B.Sc. Agri/B.V.Sc./B.Arch or any post graduate courses in any university, college from any reputed institutions of high learning, one has to necessarily pursue the academic courses on a full time basis. There cannot be a part time approach. Hence, part time employment, elsewhere, than picking up academic/research support work, on campus, vouched for by the Institute/Teacher/Researcher, cannot be allowed.

20. But, however, the prospects of students pursuing graduation courses particularly, which do not have any science subjects where there will be additional laboratory or record work to be performed by them also, taking to part time employment cannot be discounted, as it is not uncommon. It is all the more so if a student is pursuing a graduation course of B.B.M. (Bachelor of Business Management) and that too, in an affiliated college, but not a university college of business administration. One can take to part time employment, while pursuing such courses, as that can help them gain hands- on experience. Further, students hailing from lower strata of the society and middle classes prefer to work on part time basis once they are nearing the age of 20. They realize as to how much of struggle that their parents, if not the entire family, will have to put to enable them to pursue the otherwise expensive courses.

21. Therefore, with a view to supplement the family income, it is not surprising to note, that such students take to part time employment. It is all the more so where young students will be encouraged to take part time employment during night shifts, which are not preferred by married women and men generally. Therefore, the employers prefer unmarried youngsters to take to part time employment to allow to industrial work during night shifts. This is almost a routine feature in Business Procurement Organizations (BPOs), Call Centres and Hospitality industries such as hotels, restaurants, resorts, etc.

22. Hence, we consider it appropriate to place reliance upon the salary certificate - Ex.A.21. Additionally, we also feel secure in placing reliance upon the said certificate because it contains 'provident fund number' of the individual and it also reflected his monthly contribution thereto of Rs.240/-. Ex.A.21 also reflected the monthly contribution of the individual to Employees State Insurance Corporation. Therefore, if the appellant - Insurance Company has any doubt with regard to the genuineness of the claim of part time employment of the injured Joseph, they could have got this fact verified very easily from

the Employees Provident Fund Organization or the Employees State Insurance Corporation. Since no such steps have been taken by the appellant, we find that Ex.A.21 can still be relied upon notwithstanding the fact that the study certificate has been marked as Ex.A.12. It is noteworthy that the course has ended sometime during April/ May 2010, whereas the accident took place in August 2010, by then, the injured Joseph could have picked up employment on regular basis itself.

23. However, the learned counsel for the appellant is right in pointing out that as per Ex.A.21, the claimant was only earning a net pay of Rs.5,163/- per month whereas the Tribunal has, placing reliance upon the evidence of P.W.4 and P.W.5, arrived at the monthly income of the injured Joseph as Rs.8,000/- per month.

24. There appears to be an error in this regard. The Tribunal ought to have taken the monthly earnings of the injured Joseph D'Souza only as Rs.5,163/- as reflected by Ex.A.21. Therefore, the Tribunal has committed an error in treating the monthly earnings of the injured Joseph as Rs.8,000/- at the time of the accident. To this extent, the award of the Tribunal requires to be modified and the monthly earnings of Joseph at the time of accident, which is the relevant factor, must be taken only as Rs.5,163/-.

25. However, no provision has been made by the Tribunal to compensate the injured Joseph towards future prospects. He is a young person of 22 years and completed the graduation course of B.B.M. He certainly would have had bright prospects of making a decent living and also decent earnings. In Sarla Verma's case, the Supreme Court, in paragraph 24, clearly pointed out that persons of young age deserve to be compensated by awarding 50% of their present annual earnings towards future prospects, if they have a permanent job.

26. Though, in the instant case, the individual is only at the beginning of his career, we apply the principle enunciated in Sarla Verma's case to the present case and provide compensation towards future prospects. 50% of his current earnings per month of Rs.5,163/- comes to Rs.2,581/-.

27. Accordingly, the award of the Tribunal in M.C.O.P.No.517 of 2011 stands modified. In all other aspects, we find the approach and reasoning of the Tribunal as correct and acceptable. Hence, we have no hesitation to confirm the award of the Tribunal subject to the extent of modification made by us supra. C.M.A.No.917 of 2014 is accordingly disposed of. No costs. Consequently, the above MP is closed.

28. It is seen that during the pendency of the appeals, the respective claimants have been permitted initially to withdraw a sum of Rs.5 lakhs. The claimants are also permitted later on to withdraw the balance amount lying to the credit of the respective original petitions, before the Tribunal. In so far as M.C.O.P.No.517 of 2011, a decree in terms of our judgment now may be drawn and in the event of any excess amount has been deposited by the Insurance Company during the pendency of C.M.A.No.917 of 2014, the additional amount deposited by the Insurance Company shall be refunded to it by the Tribunal under proper acknowledgement.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate),
Krishnagiri.

+2cc to M/S.S.Manjula, Advocate Sr. 21110 & 21111

+2cc to Mr.T.Ravichandran, Advocate Sr. 21107

CMA.NoS.917 & 918 of 2014
and MP.Nos.1 and 1 of 2014

RJ(CO)
VR(28/8/2017)

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