

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2017

C O R A M

The Hon'ble Mr.Justice Nooty. Ramamohana Rao  
and  
The Hon'ble Mr.Justice S.M. Subramaniam

C.M.A.No.2450 of 2013 &  
M.P.No.1 of 2013

The Branch Manager,  
M/s. Royal Sundaram Alliance Insurance Co. Ltd.,  
No.4-A IV Floor Thirumalai Towers,  
No.723 Avinash Road,  
Coimbatore 641 018. ... Appellant/2<sup>nd</sup> Respondent

Vs

1. Pragatheeswaran  
2. S. Sivagami ... Respondents/Petitioner  
& Respondent  
(R2 exparte in Lower Court)

Civil Miscellaneous Appeal filed against the judgment and  
decree, dated 10.10.2012, passed in M.C.O.P. No.813 of 2010, on  
the file of the Motor Accidents Claims Tribunal, First  
Additional District & Sessions Court, Tiruppur.

For Appellant : Ms.C.Harini  
for Mr. M.B. Gopalan

For Respondents : M/s. MA.P.Thangavel-R1  
R2-exparte before Lower Court

WEB COPY  
J U D G M E N T  
S.M.SUBRAMANIAM, J.,

The second respondent in M.C.O.P.No.813 of 2010, on the file  
of the Motor Accidents Claims Tribunal, First Additional  
District & Sessions Court, Tiruppur, is the appellant in the  
above Appeal.

2(a) The first respondent herein suffered multiple serious injuries due to the unfortunate accident occurred on 28.03.2010 at about 19.50 hours on the Avinashi to Covai Road, near Police colony, Karumathampatti, involving the vehicle (Innova Car) bearing Registration No.TN 39 AM 0637, which was coming from West to East in a rash and negligent manner and without following the Traffic Regulations, dashed against the Motor Cycle (Pulsar) driven by the first respondent / claimant bearing Registration No.TN 33 AK 9945. In respect of the injury sustained, the first respondent filed M.C.O.P.No.813 of 2010, claiming the total compensation of Rs.24 lakhs.

(b) The first respondent / claimant was a final year B.Tech student of Coimbatore Institute of Technology, Peelamedu, Coimbatore. The second respondent/owner of the car who caused the accident remained ex-parte before the Motor Accident Claims Tribunal and the appellant / Insurance company contested the Claim Petition. The Tribunal on a consideration of the evidence adduced on either side, held that the accident had occurred only due to the negligence on the part of the Driver of the Car and considering the evidence on record, passed an Award directing the respondents in the Claim Petition, viz. the Insurance Company and the second respondent/driver of the car, either jointly or separately to pay a sum of Rs.16,97,559/- with 7.5% interest to the claimant. Being aggrieved by that, the Insurance Company has filed the above Appeal.

3(i) The learned counsel for the first respondent/claimant submitted that as per Ex.A5, the Discharge Summary issued by the Ganga Medical Centre & Hospital, they have diagnosed the following injuries sustained by the first respondent/claimant:

Diagnosis:

DEP.No.G/742/10

- Polytrauma with head injury (SAH)
- Closed comminuted Shaft Femur Right and  
Closed segmental fracture Tibia right
- Volar Barton Fracture right with Distal Ulna  
Fracture right.
- Distal Radius and Shaft Radius Fracture Left
- Laceration Left Leg.
- Fracture Left Inferior Public Ramus
- Dislocation Left Elbow

and the OPERATION NOTES in the Discharge Summary states that the first respondent/claimant had undergone four separate surgeries on 29.03.2010, 06.04.2010, 10.4.2010 and 19.4.2010, as detailed

below:

OPERATION NOTES:

OP I : 29.03.10: WOUND DEBRIDEMENT AND PSS LEFT LEG  
AND TRANSARTICULAR EXTERNAL FIXATOR  
APPLICATION RIGHT LOWER LIMB.

OP II:06.04.10: INTERLOCKING NAILING RIGHT FEMUR.  
INTERLOCKING NAILING RIGHT TIBIA

OP III:10.04.10: O.R.I.F.WITH BUTTRESS PLATING RIGHT  
DISTAL RADIUS O.R.I.F. WITH DCP LEFT  
SHAFT OF RADIUS.  
K-WIRE FIXATION OF DISTAL END OF  
RADIUS LEFT SIDE.

OP IV:19.04.10: CLOSED REDUCTION AND CAST APPLICATION  
LEFT ELBOW.

3(ii) Further, the said Hospital issued the 'Wound  
Certificate', which was marked as Ex.A8. For better  
appreciation, the nature of list of injuries sustained by the  
first respondent/claimant, are quoted herein below:

LIST OF INJURIES:

1.Right lower limb:

Swelling, local rise of temperature, tenderness,  
crepitus  
and abnormal mobility right thigh. Deformity, swelling,  
local rise of temperature, tenderness, crepitus and  
abnormal mobility right leg.

2.Right upper limb:

Deformity, swelling, crepitus and tenderness, over  
right  
wrist. Right radial artery pulse felt.

3.Left upper limb:

Swelling, crepitus and tenderness, over right forearm  
mid  
third. Swelling and tenderness over left wrist. Active  
finger  
movements sluggish. Swelling and tenderness over right  
scapular region. 2"x 1" lacerated wound over upper one  
third  
left leg anteriorly.

and the Doctor opined that the injury Nos. 1,2 and 3 are  
grievous in nature.

3(iii) The Doctor who assessed the first respondent, issued a Medical Disability Certificate, which was marked as Ex.P16, fixing 80% as partial permanent disability. The Doctor specifies that the first respondent/claimant cannot perform any job relating to computer operations. The Medical Disability Certificate also explains the seriousness of the injuries caused to the first respondent/claimant on account of the accident.

3(iv) The Doctor who was examined as P.W.2 deposed that the 2cms hight reduction in the left leg caused due to the surgery cannot be rectified and the first respondent/claimant, cannot bend his hip and lift any article of weight. The Doctor further deposed that the first respondent/claimant sustained multiple fractures in both the legs and in the hands.

4.As the learned counsel for the appellant seeks to attack the Award in respect of quantum of compensation awarded by the Claims Tribunal, the present Appeal has to be examined in that perspective only.

5.Ms.C.Harini, the learned counsel for the appellant submitted that the Driver of the vehicle was possessing valid Driving License and that the Insurance Policy of the vehicle was in force at the time and the date of accident, were not disputed by the Appellant. The learned counsel further contended that the first respondent / claimant is a student studying 4<sup>th</sup> year Engineering Course in Coimbatore Institute of Technology and therefore the annual income of Rs.96,000/- fixed by the claims Tribunal is erroneous. It is further submitted that the Tribunal ought not to have fixed such an exorbitant monthly income, in view of the fact the first respondent was a regular student at the time of the accident and therefore he cannot be employed so as to earn any amount and he could not do so. Further, there is no possibility of earning in respect of the regular Engineering College student and therefore the Tribunal has committed an error in fixing the annual income of the first respondent as Rs.96,000/-. Further the learned counsel contended that the multiplier method adopted by the Claims Tribunal for the purpose of fixing the loss of income is also contrary to the established principles laid down by this Court and the Hon'ble Apex Court.

6.In support of the arguments advanced by Ms.Harini, learned counsel for the appellant that the quantum of compensation awarded by the Claims Tribunal is excessive, relies on the following relevant paras of the judgment of the Hon'ble Supreme Court in the case of (Rajesh and others Vs. Rajbir Singh and others) reported in (2013) 2 TN MAC 55 (SC) ;-

" 3. In Nagappa v. Gurudayal Singh and Others, 2003(1) R.C.R.(Civil) 258 , it has been held

by this Court that the main guiding principle for determining the compensation is that it must be just. It has also been held that the award must be reasonable. Some of the relevant parameters in that regard arise for consideration in this case.

7. The expression 'just compensation' has been explained in Sarla Verma's case (supra), holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just. 'Just Compensation' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. After surveying almost all the previous decisions, the Court almost standardised the norms for the assessment of damages in Motor Accident Claims.

15. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of L 2,500/- to L 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of L 5,000/-

to L 10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.

7. Countering the said submissions, Mr. MA. P. Thangavel, learned counsel appearing for the first respondent/claimant submits that the driver, who was driving the Car bearing Registration No. TN 39 AM 0637 was coming from West to East in a rash and negligent manner and without following the Traffic Regulations. The said car dashed with the two wheeler driven by the first respondent / claimant bearing Registration No. TN 33 AK 9945. Due to the accident the first respondent / claimant sustained grievous injuries viz. right thigh fracture, right leg fracture, right hand wrist fracture, left hand wrist fracture, left leg fracture apart from injuries all over the body. The learned counsel further submitted that an FIR was registered in crime No. 356 of 2010 (Ex.A1) by the Police Station at Karumathampatti, which corroborates the date and time of the accident.

8. The learned counsel also opposed the arguments advanced by the learned counsel for the appellant by stating that as per Ex.A10, the first respondent/claimant secured 469 / 500 marks in S.S.L.C. and so also in Plus Two (H.S.C.), he secured

1093/1200 marks (Ex.A11) and he was pursuing his final year Engineering Course at Coimbatore Institute of Technology, Peelamedu, Coimbatore.

9. We have considered the aforesaid submissions made on either side and perused the materials available on record.

10. At the outset it has to be pointed out that before the Tribunal, the Driver/owner of the vehicle remained exparte and he has not filed any counter statement questioning the correctness of the averment contained in the Claim Petition. It is also admitted that the Tribunal has passed the award against both the respondents viz. the Insurance Company/appellant herein and the second respondent/driver of the car, either jointly or separately to pay a sum of Rs.16,97,559/- with 7.5% interest to the claimant.

11. On a reading of the F.I.R., and considering the other materials as record, it is clear that a Car (Innova), which was coming from west to east, was driven in a rash and negligent manner and dashed with the first respondent/claimant's vehicle and the first respondent/claimant was thrown out from the two wheeler and sustained multiple grievous injuries causing disability. The multiple fractures sustained in both the hands and in both the legs, would reveal the telltale impact and the seriousness of the injuries caused on account of the accident occurred, on the life of the first respondent/claimant. Further, Dr. Dhanasekar, who was examined as P.W.2, deposed that one of the major bones in the left leg of the first respondent had not grown upon reunion in comparison to right leg and considerable reduction of weight in his body, the first respondent was unable to walk without the help of others and he cannot lift any weight using his hands.

12. With regard to the fixation of just compensation, we get guided by the following judgments :-

(i) In Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd. Reported in AIR (1955) S.C. 755, the Hon'ble Apex Court held as follows:-

" In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. "

(ii) In Common Cause, A Registered vs Union Of India, reported in (1999) 6 SC.C. 667, the Hon'ble Supreme Court held as follows:-

"The object of an award of damages is to give the plaintiff compensation for

damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups : pecuniary and non- pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In Re: The Medianna (1900) A.C. 1300, Lord Halsbury L.C. observed as under:

"How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident...But nevertheless the law recognises that as a topic upon which damages may be given."

13. In yet another decision in Divisional Controller, Ksrtc vs Mahadeva Shetty And Anr reported in (2003) 7 S.C.C. 197, at para No.17, the Hon'ble Supreme Court held as under :-

"Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit

of the person in whose favour it is awarded.  
"

Further, in paragraph No.15 of the said judgment, it is held as follows:-

"15.....Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary. If it is not so it cannot be just."

14.At this juncture, it is pertinent to note that as evidenced by Ex.A20, in the Consolidated Grade Sheet for the period of study 2006-2010, it was mentioned that the first respondent/claimant earned CGPA of 8.41 with first class Distinction. Though the first respondent / claimant was a final year Engineering student, he was pursuing a part time computer job and was actually earning. That apart the first respondent/claimant, as evidenced by Ex.A-13, had participated in the Campus selections and as a studious student, there was every likelihood that he would have been selected by any one of the Companies and would have been employed immediately on completion of the Engineering Course. That apart on a perusal of the +2 mark sheet (marked as Exhibit A11), it is very clear that the petitioner secured fairly good marks and it is needless to state that since he being a meritorious student, got admission in the reputed Institution like Coimbatore Institute of Technology, Peelamedu, Coimbatore. Therefore, we have no hesitation in recording that the first respondent/claimant was a meritorious student and the presumption that he would have easily secured job after completion of the Engineering Course. Further, the Tribunal found that the friend of the first respondent / claimant got employment, soon after completion of his course and was earning Rs.5,50,000/- per year. The statement so made is to be considered pragmatically, in view of the fact that the the first respondent is also an equally meritorious student. Such being the conduct and career of the first respondent, this Court has to show due diligence, while fixing the quantum of compensation.

15.The Tribunal in its findings has stated that the first respondent was unable to perform even his regular works using his right and left hands and he is not in a position to lift anything to worth for writing or even for drinking of water, wearing of shirts and buttoning it, cleaning of body etc. At the outset the first respondent / claimant is unable to carry out his day to day activities using his right and left hands. The Doctor who examined the first respondent claimant opined that due to the multiple fractures, there is a shortage of height in his left leg, which caused permanent disability and the injuries sustained by the first respondent are grievous in nature.

16.The Tribunal while assessing various disabilities, came to a conclusion that 70% of disability is to be taken for the purpose of awarding compensation. Though the Doctor assessed 81% as partial permanent disability, the Tribunal has reduced the same from 81% to 70% and therefore, we do not find any error in fixing the percentage of disability caused to the first respondent / claimant on account of the accident met by him.

17. Though that first respondent/claimant attempted to prove that he was employed as a Part Time Computer Operator, we are not inclined to consider the same, in view of the fact, the first respondent is a regular Engineering College student of the Coimbatore Institute of Technology and the normal presumption is that a regular Engineering College student will not and cannot be in a position to pursue a part time job. In the absence of any believable evidence, we are unable to come to a conclusion that the first respondent has employed as part time computer operator. But, we are able to appreciate the fact that the first respondent who is a meritorious student of Engineering College about to complete his course in few months and further attended campus interviews conducted by various Companies and his friends got employed subsequently after the completion of the course, require merit consideration.

18. Considering the above factors, we are able to appreciate the findings of the Tribunal that the fixation of annual income of the first respondent as Rs.96,000/- is not excessive and there is no prima facie error on such fixation of annual income. In respect of the disability also the Tribunal reduced disability as assessed by the Doctor from 81% to that of 70% and therefore we are not inclined to modify the disability percentage fixed by the Tribunal. Further, considering the fact that the first respondent was 21 years of age at the date and time of the accident, we are not inclined to interfere with the findings of the Tribunal regarding the adoption of multiplier 17.

19.Hence the amount of compensation granted in all respects is in accordance with the well established procedures laid down by the Courts. Hence, we safely conclude that the total compensation of Rs.16,97,559/- awarded by the Claims Tribunal is a just compensation in all respects and no further interference is required by the hands of this Court and consequently the grounds of Appeal raised by the appellant, deserves no merit consideration.

20.In the result, CMA No.2450 of 2013 is dismissed and the award passed by the Motor Accident Claim in MCOP No.813 of 2010 dated 10.10.2012 is confirmed. No costs.

-s/d-  
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The I Additional District and Sessions Judge,  
Motor Accident Claims Tribunal, Tiruppur.

+1 CC to Mr. Ma.Pa. Thangavel, Advocate sr 15887

+1 CC to Mr. M. B. Gopalan, Advocate sr 15657

C.M.A.No.2450 of 2013

SR (CO)  
sp/6/4

सत्यमेव जयते

WEB COPY