

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on

12.09.2018

Delivered on

23.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2415 of 2005

and

CMA.No.2787 of 2005

CMA.NO.2415 of 2005

The Oriental Insurance Company Ltd.,

160, Cherry Road,

Salem □ 1. ... Appellant

-vs-

1. S.Ramesh

2. E.M.K.Rajammal

3. Revathi Selvakumar

4. Kaliasammal (Deceased) ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 21.04.2005 passed in M.C.O.P.No.3952 of 1996 on the file of the Motor Accident Claims Tribunal, Chennai (IV th Judge, Court of Small Causes, Chennai).

For Appellant : Mr.R.Sivakumar in CMA No.2415 of 2005

For Respondents : Mr.G.K.Harihararajan in CMA No.2415 of 2005

: Mr.P.Jagadeeswaran for R2 to R5

CMA.NO.2787 of 2005

S.Ramesh ...Appellant

-vs-

1. The Oriental Insurance Company Ltd.,

160, Cherry Road,

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2. E.M.K.Rajammal

3. Revathi Selvakumar

4. Kaliasammal (Deceased) ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 21.04.2005 passed in M.C.O.P.No.3952 of 1996 on the file of the Motor Accident Claims Tribunal, Chennai (IV th Judge, Court of Small Causes, Chennai) for enhancement of compensation.

For Appellant : Mr.G.K.Harihara Rajan
in CMA No.2787 of 2005

For Respondents : Mr.R.Sivakumar for R1 in CMA No.2787 of 200
: Mr.P.Jagadeeswaran for R2 to R5

J U D G M E N T

R.SUBRAMANIAN, J.

The challenge in these appeals is to the award dated 21.04.2005 made in MCOP No.3952 of 1996 on the file of the Motor Accident Claims Tribunal (IV th Judge, Court of Small Causes), Chennai.

2. The original petition in MCOP.No.3952 of 1996 was filed by the appellant in CMA No. 2787 of 2005 seeking compensation for the injuries suffered by him in a motor accident that occurred on 14.05.1995 when the claimant was actually 16 years of age. According to the claimant, while he was travelling in an Auto-rickshaw bearing registration No.TN-04-B-4657, the lorry bearing registration No.MDM-4669 owned by one E.M.Kandasamy insured with the 2nd respondent Insurance company (Appellant in CMA No.2415 of 2005) driven in a rash and negligent manner crossed the yellow line, came to the extreme right side of the road and dashed against the Auto-rickshaw causing grievous multiple injuries to the petitioner resulting in permanent disability. As a result of the injuries suffered, the petitioner/claimant has been rendered Paraplegic, resulting permanent disability of all kind of movement from chest to foot. Contending that the petitioner who passed SSLC with 90% marks discontinued his education to look after the coffee plantations belonging to the family in Agamalai Vilage. He had also done pooling of other lands and has been cultivating as a leasee. Contending that he was having an annual income of Rs.2,00,000/-, the petitioner sought for a compensation of Rs.1,18,50,000/-. The petitioner claimed a sum of Rs.87,95,925/- towards loss of future income, he had also claimed a sum of Rs.25,00,000/- towards future medical expenses and on various other heads.

3. The claim petition was resisted by the Insurance company contending that the accident was not due to the rash and negligent driving of the lorry. The Insurance company denied the very accident and the existence of the Insurance cover. An additional counter statement was filed, contending that the lorry bearing registration No.MDM-4669 has been falsely implicated in the accident since the Auto in which the injured claimant was travelling was not insured. According to the Insurance company the Auto dashed because of the rash and negligent driving by its driver resulting in the accident and the injuries caused. The Insurance company would also contend that the insured, namely E.M.Kandasamy had died even prior to the date of renewal of the policy and the policy was renewed in the name of a dead person. Therefore, Insurance company is not liable to pay the compensation. The quantum of compensation was also termed as excessive. The Tribunal originally passed an award on 31.03.2004 in and by which it awarded a sum of Rs.44,00,000/- as compensation. While doing so, the Tribunal found that it was the rash and negligent driving of the lorry which contributed to the accident.

4. The Tribunal assessed the disability at 100%, taking note of the fact that the injured claimant has been rendered Paraplegic and depending on others even for his daily routine. Thus, the Tribunal

assessed his annual income at Rs.1,60,000/- and adopted a multiplier of 16 and arrived at the total loss of earning power at Rs.25,60,000/-. The Tribunal awarded various amounts in under other heads like medical expenses, pain and suffering, permanent disability, attender charges and future medical expenses. In all, the Tribunal awarded a sum of Rs.44,00,000/-.

5. The said award questioned by the Insurance company in CMA No.1896 of 2004 and claimant had filed cross objection on 41 of 2004. The appeal in the cross objections were heard by the division bench of this court and by the judgment date of 16.09.2004. The division bench remanded the matter to the Tribunal with certain directions. On the contention of the Insurance company that the policy has been renewed in the name of a dead person and same will absolve the Insurance company from the liability to pay the compensation, the division bench held that the Insurance company cannot be allowed to raise the said contention. While doing so it had observed as follows:

□It is not in dispute that the Insurance Company has issued a policy to the vehicle in question viz., MDM 4669 and on the date of accident, the policy was in currency. No explanation is given in the affidavits filed, how the Insurance company issued such a policy without even verifying as to whether the insurer was alive or not. It cannot be said, the policy was obtained by the non-disclosure of a material fact as per Section 149 (6) of the Motor Vehicles Act, 1988. Sufficient facts are not available to hold that the Policy is void under Section 149 (2) (b) of the Act. Having issued an Insurance policy to the vehicle in question after satisfying the requirements and proceeded with the O.P. And the C.M.A. On the basis that the valid policy was issued in favour of the insurer, at the time of delivering judgment in C.M.A., the petitioner cannot be allowed to come forward with the present applications. Hence, all these petitions are liable to be dismissed.□

6. The Division Bench further found that the finding of the Tribunal that the lorry bearing registration No.MDM-4669 was involved in the accident was correct and the said finding was affirmed. The reasons for the said conclusions are as follows:

□From the above discussion, it is clear that the Tribunal is correct in coming to the conclusion that the lorry MDM-4669 was involved in the accident. Since no argument was advanced regarding the finding given by the Tribunal that the accident took place due to the negligence on the part of the lorry driver, we are not dealing with the same, but we confirm the said finding.□

7. The Division Bench enhanced the award of Rs.25,000/- granted for pain and suffering to Rs.1,00,000/-. It also confirmed the award of Rs.1,00,000/- towards permanent disability. A sum of Rs.25,000/- awarded towards assistance was enhanced to Rs.1,00,000/-. The Division Bench felt that the Tribunal has not assessed the loss of income in the proper perspective. It was concluded that since the income claimed is agricultural income, the Tribunal should have considered the loss of supervisory services of the injured. The Division Bench also found that the loss of supervisory services will not be merely equivalent to the value of services of a farm servant or the Manager employed for the said purpose, it will be more than that because a owner takes extra care to increase the income year by year than a paid servant. After referring to the Division bench of the Gujarat High Court in Dahiben Vs. Chitrabhai Charabai AIR 1982 GUJ 188, The Division Bench set aside the award only with reference to the loss of earning power while confirming the award of Rs.1,60,000/- towards loss of income as computer trainee. Therefore, the order of remand was restricted to reworking of loss of future earning power, medical expenses towards past and future.

8. Pursuant to the same, the Insurance company filed an additional counter statement. PW10 was examined to show the expenses that would be incurred in employing Manager for a coffee estate. The claimant also examined Dr.Nagappan as PW9 to show that he has been continuously incurring medical expenses even after the award was passed earlier by this court. For the purpose of showing

that the Insured had died at the time of the renewal of the policy, the Insurance company had examined PW5 after remand. Upon consideration of the evidence let in, after remand, the Tribunal fixed the loss of agricultural income at Rs.50,000/- per annum. Applying a multiplier of 16, the Tribunal awarded a sum of Rs.8,00,000/- towards loss of income. The Tribunal awarded a sum of Rs.3,44,597/- towards medical expenses incurred. An award of Rs.12,14,245/- was made for the medical expenses incurred after 08.07.1996. The Tribunal awarded a sum of Rs.1,00,000/- for purchase of wheel chair, Rs.1,50,000/- towards future medical expenses, Rs.1,00,000/- towards pain and suffering, Rs.1,00,000/- towards permanent disability, Rs.1,00,000/-towards attender charges, Rs.1,60,000/- towards loss of income. In all, the Tribunal awarded a sum of Rs.30,68,842/-, and the same was rounded off to Rs.30,70,000/- with interest at 9% per annum.

9. As regards the claim of the Insurance company that it is not liable to pay the compensation since, the policy was renewed after the death of the owner of the vehicle. The Tribunal concluded that the Insurance company is liable to pay the compensation and it has no right to recover the same from the owner of the vehicle.

10. Aggrieved by the said award, both the Insurance company as well as the claimant have come forward with these appeals. While, CMA No.2415 of 2005 has been filed by the Insurance company, CMA No.2787 of 2005 has been filed by the injured claimant.

11. We have heard Mr.R.Sivakumar learned counsel appearing for the appellant Insurance company and Mr.G.K.Harihararajan appearing for the Claimant/Appellant in CMA No.2787 of 2005 and Mr.P.Jagadeeswaran appearing for the respondents 2 to 5, namely, legal heirs of the owner of the lorry in both the appeals.

12. Mr.R.Sivakumar learned counsel appearing for the Insurance company would contend that the Tribunal was not right in granting a sum of Rs.8,00,000/- towards loss of earning power. He would further contend that the Tribunal erred in awarding a sum of Rs.1,00,000/-towards wheel-chair, and a sum of Rs.1,50,000/- towards future medical expenses. He would also contend that the Tribunal erred in holding that the Insurance company would be liable to pay the entire compensation, despite the fact that the policy was renewed after the death of the insured.

13. Per contra, Mr.G.K.Harihararajan learned counsel appearing for the claimant/appellant in CMA No.2787 of 2005 would contend that the award of the Tribunal requires modification on the ground that the Tribunal had not taken into account the fact that the claimant would require assistance of an attender throughout his life time, since he has been rendered paraplegic and motionless below the chest. Mr.G.K.Harihararajan would also contend that the Tribunal was not right in assessing the loss of agricultural income at a sum of Rs.8,00,000/-. He would fault the Tribunal for awarding only a sum of Rs.1,50,000/- for future medical expenses. Highlighting the nature of injuries and the fact that the claimant has spent a sum of Rs.12,14,245/- after the filing of the petition till the date of the award of the Tribunal namely 21.04.2005. Mr.G.K.Harihararajan would submit that the Tribunal should have awarded a substantial amount towards future medical expenses.

14. Mr.P.Jagadeeswaran learned counsel for the legal representatives of the owner of the lorry would contend that the Insurance company having renewed the policy is liable to pay the compensation.

15. We have considered the rival submissions. From the submissions of the learned counsel appearing for the either side the following questions arise for determination in these appeals.

i) Whether, the Tribunal was right in concluding that the Insurance company is liable to pay the compensation and it is entitled to a right of recovery?

iii) Whether, the Tribunal was right in granting only a sum of Rs.1,00,000/- towards purchase of wheel chair and Rs.1,50,000/- towards future medical expenses and Rs.8,00,000/- towards loss of agricultural income?

Question No.1: The fact that the policy was renewed is admitted by the Insurance company but the Insurance company would plead that the insured had died on the date of renewal of policy and therefore, there is no valid contract between the insured and the Insurance company. In 1997 ACJ pg 547 a Division Bench of Punjab and Haryana High Court had held that if the policy has been renewed even in the name of dead person, the Insurance company would be liable to pay the compensation, unless, it is shown that there was a violation of the provisions of Section 149 (6) of the Motor Vehicles Act or the policy could be said to be invalid in view of 149 (2B) of Motor Vehicles Act, the Insurance company cannot avoid its liability.

16. Though Mr.Sivakumar would contend that the Insurance company cannot be held liable, inasmuch as the policy has been issued in the name of a dead person, he is unable to point out any reservation made by the Insurance company, while issuing the said policy, regarding its liability. He would only invite our attention to the judgment of the Division Bench of the Kerela High Court reported in George P.Varghese and another Vs. G.Daniel and others in AIR 1998 Kerela 120 in support of his submissions.

17. We find the facts of the said case are totally different. The accident took place in the morning and the policy was renewed in the evening. Therefore, the Division Bench of Kerela High Court held that the Insurance cannot be made liable to pay the compensation. We therefore, see no reason to interfere with the conclusion of the Tribunal on the question of the liability of the Insurance company.

18. As regards the loss of earning power, the Tribunal has rejected the evidence of PW10, who was examined to show the amount of expenses that would be incurred by an agriculturist to engage a Manager in a Coffee estate, on the ground that he has not worked in a coffee estate. The Tribunal had arrived at the annual income of the claimant from the coffee estate at Rs.2,06,465/- based on Exs: P11, P12, P13 and P14. The Tribunal after deducting a sum of Rs.50,000/- towards expenses that would have been incurred for cultivation, arrived at the annual profit at Rs.1,56,465/- and the same has been rounded off to Rs.1,57,000/-. The Tribunal, however, calculated the deminution in income because of the claimant being forced to appoint a Manager or Supervisor to oversee the cultivation at Rs.50,000/- viz, 1/3rd of the total income. Mr.R.Sivakumar learned counsel appearing for the Insurance company would contend that the Tribunal while fixing Rs.50,000/ has not deducted the input cost. This contention of the learned counsel over looks the fact that the Tribunal had arrived at the total income at Rs.2,06,465/- after deducting the Rs.50,000/- input costs, the Tribunal has arrived at the net income at Rs.1,56,465/- which has been rounded off to Rs.1,57,000/-. We, therefore, see no merit in the argument of Mr.Sivakumar regarding absence of the deduction towards input cost.

19. Mr.Harihararajan learned counsel appearing for the claimant/appellant in CMA No.2787 of 2005 would vehemently contend that the Tribunal has not complied with the specific directions of the Division Bench contained in the remand order. He would point out that the Division bench while making the order had categorically observed that the cost of supervision as well as the estimated loss due to absence of personal supervision by the owner should be decided by the Tribunal.

20. We find some force in the submissions of the learned counsel in this regard. There is documentary evidence to show that the income from the coffee estate during the year 1996 was Rs.2,06,465/-. Deducting the input cost, the Tribunal has fixed the income at Rs.1,50,000/-. The probable loss should be worked out, taking the income to be Rs.1,50,000/-. From the evidence of

PW10 it is seen that getting a Supervisor or a Manager for an estate located in hill areas is very difficult. The fact that absence of personal supervision by the owner of the estate would definitely lead to deminution of yield and income cannot be ignored. PW10, in his evidence has deposed that a Manager gets a pay of Rs.7,000/- per month with six months salary as bonus and accomodation etc. The extent of land owned by the family of the injured claimant is 3.75 acres. Definitely a owner of a coffee plantation measuring about 3.75 acres cannot engage a Manager paying him at least Rs.84,000/- per annum salary. The finding of the Tribunal is that the income from the estate is only Rs.2,06,465/-. At the same time, we cannot brush aside the evidence of PW10 and conclude that there would have been no expenses towards supervisory charges. Even a unskilled agricultural coolie would have earned not less than Rs.4,000/- per month during the relevant period. Therefore, employing a supervisor to look after the plantation in 3.75 acres of land will at least cost Rs.48,000/- per year. Apart from this, as rightly pointed by the Division Bench, the care taken may not be the same as a owner would do, therefore, there should be some loss on that account also.

21. We are of the considered opinion that there would be at least 30% diminution in the income from the lands, if the cultivation is not supervised by the owner. The total income has been determined as Rs.1,50,000/- out of this, the loss to the claimant would be the Managerial remuneration which has been fixed at Rs.48,000/- + 30% diminution in income which would be about Rs.45,000/-. Thus, the total loss of earning would be $(48,000 + 45,000) = \text{Rs.}93,000/-$ per annum. In view of the decision of the Hon'ble Supreme Court in National Insurance Company Vs. Pranay Sethi reported in 2018 (1) LW 331 we must add a certain amount to the income towards future prospects. The percentage suggested by the Supreme Court in respect of self-employed persons who are less than 40 years is 40%. If we are to add 40% to the income, the same 40% should be added to the loss also. Therefore, the actual loss of income for the purposes of ascertaining the loss of earning power would be $\text{Rs.}93,000 + 40\% = \text{Rs.}1,37,200/-$ per annum. The multiplier for a person aged 16 years as per the judgment in Sarala Varma Vs. Delhi Transport Corporation is 18. Thus calculated the loss of earning power would be $\text{Rs.}1,30,200 \times 18 = \text{Rs.}23,43,600/-$. The Tribunal has awarded a sum of Rs.3,44,597/- towards medical expenses incurred upto 08.07.1996, and a sum of Rs.12,14,245/- as medical expenses incurred after 08.07.96. Both these awards have been made based on valid documentary evidence. We do not see any reason to interfere with the said awards.

22. The Tribunal has awarded a sum of Rs.1,00,000/- for purchase of a wheel chair, it is an admitted fact that the injured claimant cannot move without the help of the wheel chair. Ex.P7, shows that a wheel chair has been purchased. The veracity of the said document has not been challenged by the Insurance company. The Tribunal, however, rejected the document on the ground that nobody relating to the document has been examined. The document is issued by the manufacturer of the motorised wheel chair. In the absence of cross-examination on the validity of the document or in the absence of any plea by the Insurance company disputing the document, we do not think that the Tribunal was right in awarding only a sum of Rs.1,00,000/- for purchase of a motorised wheel chair. We, therefore, award a sum of Rs.3,10,000/-, as evidenced by Ex.P7, towards the cost of the wheel chair. The Tribunal has awarded a sum of Rs.1,50,000/- towards future medical expenses. There is a documentary evidence is available to show that the injured claimant has so far to spent nearly Rs.12,14,245/- after the filing of the claim petition till the date of the award for about a period of 10 years. Therefore, the Tribunal was not justified in awarding a sum of Rs.1,50,000/- only towards future medical expenses. The claimant had made a claim for Rs.3,00,000/- for future medical expenses. We also take into account the fact that the claimant has been rendered paraplegic and he cannot do his daily activities without assistance of another person. We are therefore of the considered opinion that provision should be made for the cost of such assistance. Considering the nature of the injuries and the effect of the injuries, the claimant would require assistance till his life time. We are, therefore, of the considered opinion that a certain amount of money should be awarded towards assistance/attender charges. While, considering the scope of such award, the Hon'ble Supreme Court in Nizam Institute of Medical Sciences Vs. Prasanth S.Dhananka and others

reported in 2010 ACJ 38 has awarded sum of Rs.7,20,000/- towards attender charges. Though, the claimant has claimed only Rs.3,00,000/- towards future medical expenses, we find that the cost of attender charges should also form part of the future medical expenses. At today's cost of living a person will need at least Rs.4,000/- to have a round the clock attender. As pointed out by the Hon'ble Supreme Court, the claimant is aged about 38 years today, even, taking the life of expectancy at 65 years, he would require an attender for another 27 years. The Hon'ble Supreme Court has fixed a sum of Rs.2,000/- per month for an attender and awarded a total sum of Rs.7,20,000/- towards attender charges for a period of 30 years. Considering the age of the claimant at the time of the accident and the age of the claimant as of today that is 16 and 38 respectively. We are of the opinion that a sum of Rs.2,000/- per month for a period of at least 25 years from now should be capitalized as a part of future medical expenses. It works out to Rs.6,00,000/- (Rs.2,000 x 12 x 25). We, therefore, award a sum of Rs.10,00,000/- towards future treatment and attender charges, considering the expenses incurred by him from 08.07.1996, the date of claim petition till date of judgment of the Tribunal i.e.,21.04.2005. The other awards granted by the Tribunal have already been confirmed by the Division Bench of this Court.

23. Thus, the appeal in CMA No.2415 of 2005 is dismissed with costs and the appeal in CMA No.2787 of 2005 is partly allowed with proportionate costs. The compensation worked out is as follows:

Pain and Suffering - Rs.1,00,000/-
Permanent Disability - Rs.1,00,000/-
Attender charges during treatment - Rs.1,00,000/-
Loss of income - Rs.1,60,000/-
Medical expenses upto 08.07.1996 - Rs.3,44,597/-
Medical expenses after 08.07,1996 - Rs.12,14,245/-
Loss of earning power - Rs.23,43,600/-
Cost of wheel chair - Rs.3,10,000/-
Future medical expenses and
attender charges in future - Rs.10,00,000/-

Total Rs.56,72,442/-

Thus, the same is rounded off to Rs.56,75,000/-

24. The Tribunal has granted interest at 9% per annum to the said compensation. The Hon'ble Supreme Court has suggested an interest rate of 7.5% per annum. We do not, propose, to reduce the interest rate because the accident happened in the year 1996 when interest rates were very high. Therefore, we sustain the interest granted at 9% per annum.

25. The Insurance company is directed to deposit the balance award amount as per the aforesaid modified award within a period of 6 weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the amounts deposited by the Insurance company. The claimant would be entitled to proportionate cost in CMA No.2787 of 2005. The claimant shall pay the balance court fee since he had paid court fee only for Rs.32,62,750/-.

(K.K.SASIDHARAN, J.) (R.SUBRAMANIAN, J.)

23.10.2018

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