

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.09.2018	Delivered on 28.09.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.536 of 2018

CMP Nos.4780 & 15236 of 2018

United India Insurance Co. Ltd.,
178, Dr. Nanjappa Salai,
Coimbatore 641 018. ... Appellant/ 3rd Respondent

-vs-

1. Dhanabalan ... 1st Respondent / petitioner
2. Subramaniyan ... 2nd Respondent / 1st Respondent
3. Venugopal ... 3rd Respondent / 2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 03.02.2017 made in MCOP No.832 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.K.P.Chandrasekaran

J U D G M E N T

R.SUBRAMANIAN, J.

The Insurance Company which suffered an award for a sum of Rs.2,11,64,806/- for the injuries caused to one Dhanabalan in the Motor accident that occurred on 12.01.2014.

2. The case of the claimant before the Tribunal was as follows:

When the claimant was riding a two wheeler bearing Registration No.TN 01 P 1769 at about 12.10 p.m. on 12.01.2014 from Sivagangai to Thirupathur, the driver of the bus bearing Registration No.TN 30 D 4545, drove the vehicle in a rash and negligent manner in the opposite direction and

dashed against the motor cycle, resulting in grievous injuries in his right hand, head, face, right leg and knee. The head injuries suffered by him, resulted in blood clot in the brain. As a result of the crush injuries below the knee in the right leg, his right leg was amputated just below the knee. He would also claim that he had spent a sum of Rs.10,00,000/- for treatment. It is the further case of the claimant that he was working as a Project Engineer in Singapore, earning 35,104 Singapore Dollars per annum. Because of the accident he is unable to do the same job. He would also contend that the disability caused his 100% and seek compensation of Rs.2,50,00,000/-.

3. The claim petition was resisted by the Insurance Company, while the owner and the driver remained ex-parte before the Tribunal. The Insurance Company would deny that there was negligence on the part of the driver of the bus. According to the Insurance Company, the accident occurred due to the rash and negligent driving of the claimant, who was riding a two wheeler. The Insurance Company also denied the nature of injuries as well as the quantum of disability. The nature of the employment and the income claimed were also disputed by the Insurance Company.

4. The Tribunal, which heard the Claim Petition found that the accident had happened due to the rash and negligent driving of the driver of the bus, based on the First Information Report registered against the bus driver in Crime No.5 of 2014 marked as Ex.P1, the Charge Sheet filed in the Criminal Case against the driver of the bus who was the 1st respondent before the Tribunal. The Tribunal also took into account the Rough Sketch marked as Ex.P2 and the fact that the Insurance Company had not let in any evidence, whatsoever to prove its claim of negligence on the part of the claimant and the absence of the negligence on the part of the bus driver.

5. On the quantum, the Tribunal took into account the qualification of the claimant and the fact that he was employed as a Project Engineer with Electromech Technologies Pte Ltd, Singapore, on an annual income of 35,104 Singapore Dollars, which is equivalent to Rs.17,55,300/- Indian rupees at the time of the filing of the Claim Petition. The claimant had produced Ex.P22 the salary slips issued for the months of October, November and December 2013 i.e. the period prior to the accident. The claimant has also produced the Income Tax Return in Form IR8A for the year 2013 and 2014. Based on the above documents, the Tribunal concluded that the annual income of the claimant was Rs.17,13,600/-.

6. As regards the injuries suffered by the claimant, before the Tribunal, the claimant had produced the Wound Certificate as Ex.P6 and the Discharge Summaries as Exs.P7, 8 and 9. From the documents produced, the Tribunal had concluded that the claimant/1st respondent had suffered multiple abrasion over right arm, Laceration over right frontal region, Right Knee, Left Parietal, Left Temporo parietal, Extra axial hemorrhagic, Fracture of left frontal and Parietal of bone, Left temporal bone fracture, Left parietal bone fracture, Right side femur neck fracture, Right side shaft of femur fracture, Communito fracture of upper and lower 1/3rd of right tibia, Right side tibia fracture, Right side fibula fracture & Right side humeros fracture, Right side ulna bone fracture.

7. P.W.2, the Doctor who was examined on the side of the claimant had assessed the disability on the basis of the Medical Reports at 65%. The Tribunal accepted the assessment on the disability at 65% made by P.W.2, considering the nature of the employment, which would require considerable travel for installation and servicing of electrical equipments and the nature of the job would also require the claimant stand for a long time during the installation process. The amputation of the right leg below the knee, according to the Tribunal would definitely prevent him from doing the same work as he was doing earlier. The Tribunal also concluded that in view of the nature of the disability and the finding that the disability would impact the earning power of the claimant, the Tribunal had applied the multiplier method and worked out the compensation as follows.

8. Taking the Tribunal income at 17,13,600/- adding 30% towards future prospects and adopting a multiplier of 14, the Tribunal arrived at the future loss of earning power at Rs.2,02,71,888/-. The Tribunal also held that inasmuch as the income drawn by the claimant at Singapore was not taxable it did not deduct any Income Tax also. Apart from the loss of earning power, the Tribunal awarded a sum of Rs.7,67,918 for medical expenses, Rs.1,00,000/- for pain and suffering, Rs.10,000/- each for extra nourishment and transportation and Rs.5,000/- towards damage to clothing and other articles. In all the Tribunal awarded a sum of Rs.2,11,64,806/- as compensation. Since the existence of the Insurance cover was admitted, the Tribunal directed the Insurance Company to pay the compensation.

9. Aggrieved the Insurance Company is on appeal.

10. We have heard Mr.S.Arunkumar, learned counsel appearing for appellant Insurance Company and Mr.K.P.Chandrasekaran, learned counsel appearing for the 1st respondent. Respondents 2 and 3 who are the driver and the owner of the bus had remained ex-parte before the Tribunal and hence notice to them is dispensed with in this appeal.

11. Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company would make an attempt to challenge the finding of the Tribunal on the question of negligence. We do not think that we should entertain any challenge to the finding of the Tribunal on the ground of the negligence, particularly in view of the fact that the Insurance Company had not chosen to examine the driver of the bus or its owner to show absence of negligence on the part of the driver of the bus or negligence on the part of the claimant, who was admittedly riding the two wheeler at the time of the accident. From the Documents produced, namely FIR, the Charge Sheet and the Rough Sketch, it is clear that the accident had occurred only due to the negligence of the driver of the bus. We, therefore, do not see any reason to interfere with the finding of the Tribunal on the question of negligence.

12. On the quantum, Mr.S.Arun Kumar, would contend that the Tribunal erred in taking the entire income of the injured claimant to calculate the loss of earning power, particularly when he is a non resident Indian. Mr.S.Arun Kumar would rely upon the judgment of the Hon'ble Supreme Court in United India Insurance Co Ltd v. Patricia Mahajan and others, reported in 2002 ACJ 1441, wherein, the Hon'ble Supreme Court held that while awarding the compensation the person who earned in foreign currency the economic situation should be taken into account and the Court can made suitable modification in the multiplier suggested as well as in the exchange rate. Mr.S.Arun Kumar, would invite our attention to the following observation of the Hon'ble Supreme Court in order to buttress his submission that a lesser multiplier can be adopted.

"18. The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation. But in cases where the amount of compensation may go

much higher than the amount required for providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases amount of multiplicand becomes relevant. The intention is not to over compensate."

It is also the contention of Mr. S.Arun Kumar that the exchange rate from dollar to rupees would also depend on the exchange rate that prevailed at the time of the filing of the Claim Petition.

13. We have considered the rival submissions.

14. In order to determine the just and reasonable compensation payable in a case of injury as a first step, we will have to ascertain the percentage of disability. Though, the claimant would contend that he had suffered at total disability of 100%, the Tribunal has accepted the evidence of P.W.2 and fixed the disability at 65%. Considering the nature of the injury namely amputation of the right leg below the knee as well as the nature of the job of the claimant/1st respondent, we find that the fixation of the percentage of disability by the Tribunal cannot be held to be on the higher side or unreasonable.

15. Mr.K.P.Chandrasekaran, learned counsel appearing for the claimant would contend that he has been terminated from service after the accident. He would also rely upon a termination order said to have been passed during the pendency of this appeal, but the perusal of the same would show that the first respondent claimant was offered an alternative job, as an Office Assistant, at a lesser salary in the same Company, namely, M/s. Electromech Technologies Pte Ltd, but the claimant himself had requested the Company to relieve him of that job also, since he is unable to work. Though, the order is termed as the termination of the employment, it is seen from the contents that it is a voluntary resignation which has been accepted. We will have to fix the loss of earning power, it is not in dispute that the Employer had offered the claimant a job in a lower category. Though, the claimant had accepted the same initially and subsequently, he had chosen to claim that he is unable to do the said work and hence, he was removed from the job.

16. The accident had occurred on 12.01.2014, from the Income Tax assessments that are available the annual income of the claimant for the year 2013 is about 37,273 dollars. From the notice of assessment dated 08.05.2013, it is seen that the annual income is 37,273 dollars, the Tribunal has however, taken the annual income at 35,000 Singapore dollars and adopting a conversion rate of Rs.48.96 as arrived at the annual income in Indian Rupees at Rs.17,13,600/-. Adding 30% towards future prospects and applying a multiplier of 14, the Tribunal has assessed the total loss of earning power at Rs.2,02,71,888/-. It is this calculation of loss of earning power, which is attacked by Mr.S.Arun Kumar as being on the higher side.

17. Mr.S.Arun Kumar would also contend that the claimant had been offered an employment as an Office Assistant by the very same employer and therefore, to that extent the loss of earning power should have been reduced by the Tribunal. Even though the termination order issued on 24.03.2018 states that the employer had offered an alternative employment on a lesser salary to the injured claimant nothing has been brought about in evidence to show the amount of salary that was paid to him, so as to enable us to take into account the same in order to calculate the actual loss of earning power. Though, the passport of the claimant has been produced, there is nothing to show that he had visited Singapore after the accident in the Passport entries. All the entries in the Passport are prior to the date of the accident. The fixation of the income by the Tribunal at 35,000 Singapore dollars per annum cannot be faulted as it is borne out by reliable documentary evidence. The percentage of disability assessed at 65% also appears to be just and reasonable.

18. The only question that remains to be answered is the quantum of compensation and the adoption of a proper multiplier, inasmuch as the injured claimant was earning in Singapore Dollars. As already pointed out the Hon'ble Supreme Court while considering the grant of compensation to a Doctor, who was running a Hospital in United State of America, had observed that while deciding the just and fair compensation, particularly to persons, who are employed abroad and whose income when converted into Indian Rupees is substantially high, the Court can always take into account the cost of the same amenities comforts and facilities in India and can apply a lesser multiplier. The Hon'ble Supreme Court in the said case upheld the application of a lesser multiplier of 10, in case of a Doctor who was aged about 47 years.

19. We are, therefore, of the considered opinion that the just compensation can be worked out by applying a lesser multiplier in the case on hand, in order to ensure that the compensation does not become a lottery. As already pointed out that the claimant was aged about 44 years and the multiplier suggested by the Hon'ble Supreme Court in *Sarla Verma v. Delhi Transport Corporation*, reported in 2009 INSC 756, is 14. If the said multiplier with 30% increase in the salary for future prospects as per the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and other*, reported in 2017 (2) TNMAC 609 (SC), are mechanically applied to the case on hand, the result will be the exaggerated compensation of Rs.2,02,71,888/- awarded by the Tribunal. In *Patricia Mahajan's* case, for a death person aged about 47-48 years, the Hon'ble Supreme Court had applied the multiplier of 10.

20. The case on hand is a case of injury and there is at least some evidence to show that the employer had offered an alternative job at a lesser salary to the claimant, that the same will demonstrate that the claimant has not suffered a 100% disability, he can still work and earn a decent living. We are therefore of the considered opinion that the multiplier in the case on hand would be 10. The Tribunal has added 30% towards future prospects which we find in conformity with the judgment of the Hon'ble Supreme Court in *Pranay Sethi*, cited supra. We therefore rework the compensation on the loss of earning power as follows:

Monthly income as assessed by the Tribunal	Rs.1,42,800/-
Add 30% towards future prospects	Rs. 42,840/-
Total	Rs.1,85,640/-
Annual Income	Rs.1,85,640/- x 12 = Rs.22,27,680/-

21. Since the annual income is taken at Rs.22,27,680/- if the claimant had earned the same in India, he would have paid an Income Tax of at least 30%, whatever money that he transfers to his account in India would be taxable, therefore, we are of the considered opinion that at least 20% should be deducted towards income tax. No doubt true, the Tribunal has relied upon the judgment of the Hon'ble Supreme Court in *Vimal Kanwar v. Kishor Dan and others*, reported in 2013 (7) SCC 476. That was a case where the income in India was below the taxable limits in India. Therefore, we do not think that the Tribunal was right in not deducting any amount towards Income Tax. Deducting 20% towards Income Tax, the net income of the claimant would be Rs.17,82,144/-. The disability is assessed at 65%,

therefore, the loss of earning power would be

$$\text{Rs.17,82,144/-} \times 65/100 \times 10 = \text{Rs.1,15,83,936/-}$$

22. Therefore, the total loss of earning power would be Rs.1,15,83,936/-. The other amounts awarded by the Tribunal towards Medical expenses, pain and suffering, Transportation, etc., are just and reasonable. Therefore, we do not propose to alter or reduce the said amounts, thus worked out the total compensation payable would be Rs.1,24,76,854/-.

Accordingly, the modified award is as follows:

S.No.	Heads	Amount
1.	Future loss of Income	Rs. 1,15,83,936/-
2.	Medical Bills	Rs. 7,67,918/-
3.	Pain and Suffering	Rs. 1,00,000/-
4.	Transportation to Hospital	Rs. 10,000/-
5.	Extra Nourishment	Rs. 10,000/-
6.	Damage to clothing	Rs. 5,000/-
	TOTAL	Rs.1,24,76,854/-

The same is rounded off to Rs.1,25,00,000/-. The appeal is partly allowed.

23. The appellant Insurance Company is directed to deposit the modified award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment along with interest at 7.5% as directed by the Tribunal. On such deposit, the 1st respondent claimant is permitted to withdraw the entire amount. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

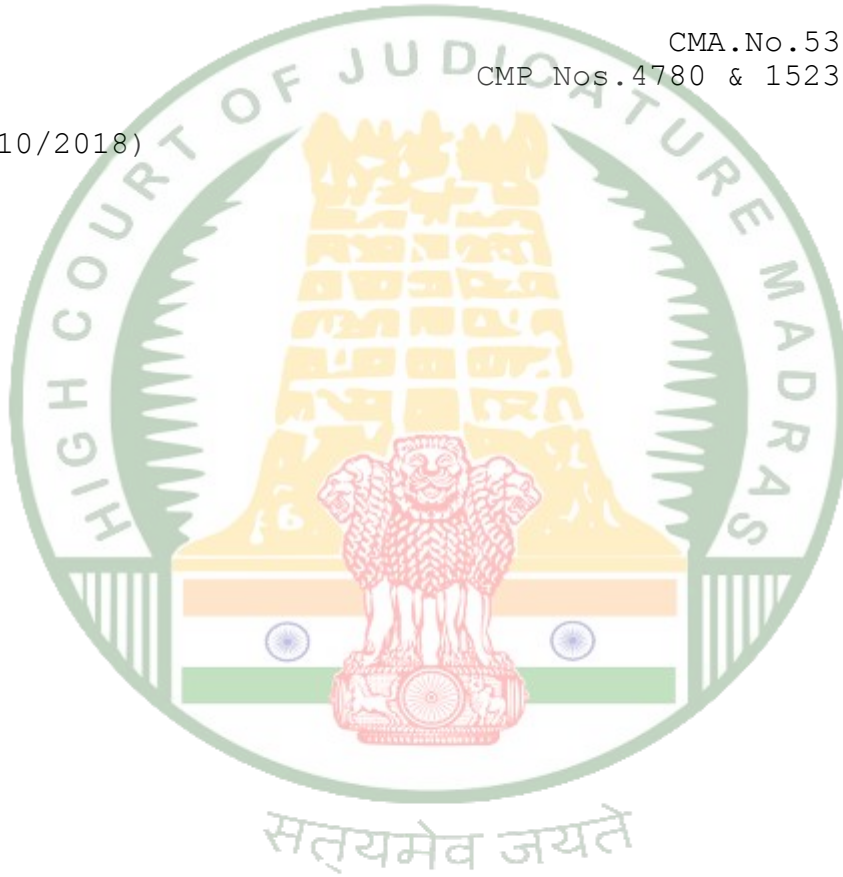
To
The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Coimbatore.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.S.Arun kumar, Advocate SR.No. 67571

CMA.No.536 of 2018
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ASK(23/10/2018)



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