

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.10.2018
Delivered on : 30.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1691 of 2016

B.Balamurugan

... Appellant/Petitioner

Vs

1.M.Dhandapani

(Set exparte before the Tribunal)

2.M/s.United India Insurance Co. Ltd.,
No.134, Third Party Claims Cell,
Greams Road,
Chennai - 600 006.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 14.03.2016 passed in M.C.O.P.No.5015 of 2011 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.T.G.Ravichandran

For Respondents: Mr.S.Arun Kumar
for respondent No.2

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.17,17,500/- awarded by the Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.

2. Brief facts are that on 12.7.2010 at about 8.10 P.M., the appellant was riding his two wheeler bearing registration No.TN-22 AV 3844 on the left side of Medavakkam Main Road. While he was nearing Bhavani Mahal, a tipper lorry bearing registration No.TN-10 H 3555 driven by its driver in a rash and negligent manner dashed against the two wheeler. Due to the impact, the appellant sustained grievous injuries. After the accident, the appellant was admitted in Dr. Kamakshi Memorial Hospital, where he had taken treatment from 12.7.2010 to 08.9.2010. Regarding

the accident, a criminal case in Crime No.922 of 2010 by St. Thomas Mount Traffic Investigation Police Station against the driver of the tipper lorry. At the time of accident, the appellant was aged 31 years and was earning Rs.25,000/- by working as House Keeping Executive in Mac Lellan. According to the appellant, at the time of accident, the first respondent's lorry was insured with the second respondent under Policy No.011100/31/09/01/00007673 valid from 06.12.2009 to 05.12.2010. Stating that the accident occurred due to rash and negligent driving of the tipper lorry, the appellant has filed the claim petition claiming compensation of Rs.32.00 lakhs.

3. Resisting the claim petition, the second respondent filed counter stating that the accident has not occurred due to rash and negligent driving of the driver of the tipper lorry and they have not received any information from the first respondent qua accident. The second respondent denied the age, occupation and monthly income of the appellant. It is stated in the counter that the injuries and disability are exaggerated and prayed for dismissal of the claim petition.

4. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.JRR.Thiagarajan was examined as P.W.2. Exs.P1 to P20 were marked. No oral and documentary evidence was adduced on the side of the second respondent.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the first respondent's tipper lorry and the second respondent being the insurer of the tipper lorry is liable to pay the compensation. As far as quantum of compensation is concerned, the Tribunal awarded total compensation of Rs.17,17,500/- payable with interest at the rate of 7.5% per annum from the date of numbering the petition i.e., 28.11.2011 till the date of deposit.

6. It appears that as against the award, admittedly, respondents 1 and 2 have not preferred any appeal. Being dissatisfied with the quantum, the appellant alone has preferred the present appeal. In such circumstances, it is not necessary for this Court to state entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellant by the Tribunal and secondly, none of those findings are under challenge either by the second respondent insurance company or the owner of the offending three-wheeler.

7. The learned counsel for the appellant submitted that the Tribunal erred in taking the disability at 50% and awarded very meagre amount. In fact, P.W.2-Doctor examined the appellant and

issued Ex.P20-disability certificate assessing the disability at 60% and the Tribunal exercised its discretion perversely upon wrong principles, which caused serious prejudice to the appellant. He would submit that the Tribunal failed to calculate the compensation in multiplier method.

8. The learned counsel further submitted that the Tribunal failed to consider the injuries, loss of earning of one year of appellant and passed the award wrongly fixing as 148 days and awarded very meagre amount. The amounts awarded under the heads pain and suffering; extra-nourishment, transport to hospital, damage to clothing, loss of income and attender charges are very low and prayed for enhancement of compensation.

9. Per contra, the learned counsel for the second respondent submitted that upon considering the materials/documents produced before it, the Tribunal awarded reasonable compensation and there is no ground to interfere with the same and thus, prayed for dismissal of the Civil Miscellaneous Appeal.

10. I heard Mr.T.G.Ravichandran, learned counsel for the appellant and Mr.S.Arun Kumar, learned counsel for the 2nd respondent. I perused the entire materials available on record.

11. The only point that arises for consideration in this appeal is whether the compensation of Rs.17,17,500/- awarded by the Tribunal is just and reasonable.

12. In the accident, the appellant had sustained poly trauma, fracture radius right forearm, friction burns right and left upper limbs, central tendon injury right little injury, skin loss extensor, tendon loss left right and little finger, chest contusion with acute lung injury, deep friction burns lower abdomen, right thigh friction burns, skin degloving and muscle necrosis, left popliteal artery injury with unstable knee joint, for which he had taken treatment as inpatient from 12.07.2010 to 08.09.2010 at Dr. Kamakshi Memorial Hospital, Chennai.

13. Ex.P3 is the accident register issued by Dr.Kamakshi Memorial Hospital and Ex.P4 is the wound certificate issued by the same hospital. Ex.P5 is the discharge summary, where from it is seen that the appellant was admitted on 12.7.2010 and discharged on 08.09.2010 after taking treatment. P.W.2-Doctor examined the appellant on 08.5.2014 and assessed the disability at 60% and issued Ex.P20-disability certificate. Stating that the disability assessed by P.W.2-Doctor is on the higher side, the Tribunal has taken the disability at 50% for determination of compensation.

14. With regard to the disability suffered by the appellant,

the Tribunal held that the injuries are not scheduled injuries and there is no bone injury on his leg and thigh. It was further held that the grievous injury has been caused on his wrist and restricted 50 degrees of movements from upwards to downwards. The injuries and disabilities of the petitioner will not prevent or restrict the appellant from doing his House Keeping Executive job in future and he may do his Executive job without facing any great difficulty. Therefore, the nature of injuries and disabilities caused thereon will not reduce his earning capacity and therefore, need not apply multiplier method in this case.

15. On the other hand, by relying upon Exs.P9, P10, P11, P12, P18 and P20, the learned counsel for the appellant submitted that this is the fit case to apply multiplier method, as due to injuries sustained by the appellant, he was relieved from the job.

16. In his evidence, P.W.1 deposed that he was working as House Keeping Executive and was earning Rs.15,000/- per month. Ex.P9 is the salary slip issued by Maclellan Integrated Service India Private Limited, where from it is seen that at the time of accident, the appellant was drawing the monthly salary of Rs.13,500/-. Ex.P10 is the service certificate issued by Maclellan Integrated Service India Private Limited. Ex.P11 is the relieving order issued by the same company. Working of the appellant as House Keeping Executive in Maclellan Integrated Service India Private Limited and the salary of Rs.13,500/- drawing by him at the time of accident have not been seriously disputed by the second respondent. But the Tribunal held that nobody from the company was examined by the appellant to prove the monthly income. However taking note of the qualification acquired by the appellant, the Tribunal has taken the monthly income of the injured at Rs.13,500/-.

17. As stated supra, in the accident, the appellant had sustained poly trauma, fracture radius right forearm, friction burns right and left upper limbs, central tendon injury right little injury, skin loss extensor, tendon loss left right and little finger, chest contusion with acute lung injury, deep friction burns lower abdomen, right thigh friction burns, skin degloving and muscle necrosis, left popliteal artery injury with unstable knee joint. The medical records produced by the appellant would further reveal that from 12.07.2010 to 08.09.2010, he had taken treatment as inpatient in Dr.Kamakshi Memorial Hospital, Chennai.

18. The following are reveal from Ex.P20-disability certificate issued by P.W.2-Doctor:

"a. On 13.07.2010 right popliteal artery exploration with vein patch repair and for compartment.

b. Orthopedic surgery done on 13.07.2010 wound debridement right hand and fracture right hand and fracture of fixation with 3k wires under GA.

c. Plastic surgery done on 13.07.2010 right hand wound debridement and little finger central tendon repair. Left hand wound debridement and K wire stabilization of ring and little fingers and others wound were debrided.

d. On 28.07.2010 Barton's fracture of right wrist K wire fixation.

e. On 10.08.2010 ORIF with plating and radial styloid fixation with K wire.

f. On 10.08.2010 plastic surgery.

g. Chest wall flap for left ring and little finger.

h. SSF for left hand and dorsum. Forearm abdomen, right thigh and right leg."

19. It is also seen from Ex.P20-disability certificate that P.W.2-Doctor assessed the disability on three types as under:

"a. Malunited fracture @ radius K wire fixed plate fixed wrist flexion 50*, restricted difficulty to work - 30% disability.

b. Right and left friction burns hands muscles power 3/5 difficulty to work using both hand - 10 disability.

c. Leg popliteal artery graft done. For rusture painful leftknee flexion 80* only possible cannot walk normal. Unstable knee right thigh, leg muscles power 3/5 walks limping - 20% disability."

20. In the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298, the accident resulted 70% permanent disablement. The Hon'ble Supreme Court held the functional disability to be 70%. The loss of earning capacity was computed according to the multiplier method. The Hon'ble Supreme Court held as under:-

"The basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is

hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

21. In the case of Raj Kumar v. Ajay Kumar and another, reported in 2011 (1) SCC 343, Hon'ble Supreme Court held as under :

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Disabilities Act' for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor

accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%."

22. The aforesaid observation made by Hon'ble Apex Court in the case of Raj Kumar (supra), was reiterated in the case of Govind Yadav v. New India Insurance Company Ltd., reported in 2012 (1) TAC 1 (SC), by observing as under :

"14. The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have

earned. The heads under which compensation is awarded in personal injury cases are the following:
Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

15. In our view, the principles of law laid down in *Arvind Kumar Mishra v. New India Assurance Company Ltd.* (supra) and *Raj Kumar v. Ajay Kumar* (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

23. It cannot be disputed that because of the accident the appellant who was aged 31 years has not only suffered fractures but will also be finding difficulty in walking. No amount of compensation can restore a physical frame of the appellant.

Similarly, no amount of compensation can be said to be sufficient for such a loss but still a methodology is required to be applied for determination of compensation in such cases and there cannot be any rigid test which should be applied in all situation.

24. In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he/she had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act.

25. As stated supra, since the appellant had sustained fractures on his hand and right leg and plastic surgeries were performed, the Tribunal erred in awarding compensation for the injuries by taking Rs.3,000/- per percentage of disability and it ought to have adopted multiplier method. It is the say of the appellant that due to injuries sustained in the right leg, he is unable to walk normally.

26. While determining the quantum of compensation payable to victims of accident, who are disabled either permanently or temporarily, it would be appropriate to adopt multiplier method for loss of future earnings on account of disability. This is a fit case to apply multiplier method instead of granting Rs.3,000/- for per percentage of disability.

27. In United India Insurance Co., Ltd., Tiruchengode v. Veluchamy and another, reported in 2005 (1) CTC 38, a Division Bench of this Court, in Paragraph (11) has laid down the principles governing assessment of damages in personal injury cases.

"11. The following principles emerge from the above discussion:

(a) In all case of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely

and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying "multiplier method" as provided under Second Schedule to the Motor Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

In personal injury cases for ascertaining compensation for permanent disability and loss of earning power, Court could adopt multiplier method.

28. This Court feels that objective of the Motor Vehicles Act laying down a structured formula and utilizing the multiplier method is to bring about uniformity in the compensation amounts awarded by Courts. Thus, awarding of Rs.1,50,000/- towards 50% disability by the Tribunal is on the lower side and since this Court is inclined to award compensation by adopting the multiplier method, awarding of compensation under the head disability is unwarranted and therefore, Rs.1,50,000/- awarded by the Tribunal towards disability is deleted.

29. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. 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 the 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, guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness.

30. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning capacity and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

31. As stated supra, the Tribunal has taken the monthly income of the appellant at Rs.13,500/- while determining the compensation. Since the appellant had established his monthly earnings of Rs.13,500/- per month at the time of accident, the same is maintained.

32. Though P.W.2-Doctor assessed the disability at 60%, finding that 60% disability slightly on the higher side, the Tribunal has taken the disability at 50%. The second respondent has not seriously disputed the 50% disability taken by the Tribunal while determining the compensation. Considering the nature of injuries sustained by the appellant in the accident, there is no reason to discard the disability taken by the Tribunal. At the time of accident, the appellant was aged 31 years. As per the pronouncements of the Hon'ble Supreme Court and this Court, for the age group 31 - 35, the proper multiplier to be adopted is "16". Taking the monthly income of the appellant at Rs.13,500/- and also the disability at 50%, it would be appropriate to award a sum of Rs.12,96,000/- ($\text{Rs.13500} \times 12 \times 16 \times 50/100 = \text{Rs.12,96,000}$) towards the loss of earning power.

33. The Tribunal awarded Rs.13,31,261/- towards medical expenses. Ex.P6 is the medical bills for Rs.7,36,950/- and Ex.P7 is the another set of medical bills for Rs.4,14,311/-. Ex.P8 is the medical bills for Rs.1,80,000/-. Though the second respondent disputed Ex.P6-medical bills, negating the objection, the Tribunal held that if it is doubtful that whether the amount stated in Ex.P6 has been paid or not, it is duty of the second respondent to take necessary steps to examine the concerned authority for issuing such bills. Since no such steps have been taken by the second respondent, the Tribunal was right in awarding Rs.13,31,261/- towards medical expenses and this Court maintaining the said amount towards medical expenses.

34. Coming to pecuniary loss, the Tribunal awarded Rs.66,600/- for loss of income; Rs.12,528/- for attender charges; Rs.25,000/- for transport to hospital; Rs.30,000/- for extra-nourishment and Rs.2,000/- for damages to clothes. Since amounts awarded under the aforesaid heads are reasonable, the same are maintained.

35. As far as non-pecuniary loss is concerned, the Tribunal awarded Rs.40,000/- for pain and suffering; Rs.10,000/- for damages for mental and physical shock; Rs.50,000/- for disfigurement. Since the amounts awarded towards non-pecuniary loss, supra, are reasonable, the same are maintained.

36. In view of the above discussion, the total compensation of Rs.17,17,500/- awarded by the Tribunal is enhanced to Rs.28,73,500/-.

37. In the result,

(a) The Civil Miscellaneous Appeal is partly allowed with proportionate cost enhancing the award amount of Rs.17,17,500/- awarded by the Tribunal to Rs.28,73,500/-.

(b) The second respondent is directed to pay enhanced compensation of Rs.28,73,500/- with interest at the rate of 7.5% per annum from the date of numbering the claim petition i.e., 28.11.2011 till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment before the Tribunal.

(c) On such deposit, the appellant is permitted to withdraw the entire amount along with accrued interest on filing proper application before the Tribunal.

(d) Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vs
To

The Motor Accident Claims Tribunal,
III Court of Small Causes,
Chennai.

+1 CC to Mr.T.G. Ravichandran, Advocate sr 7462.

+1 CC to Mr.S.Arunkumar, Advocate sr 8413.

C.M.A.No.1691 of 2016

RSI (CO)
SP(0/04/2019)