

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.05.2006

CORAM

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

C.M.A.No.535 of 1998

Sahabudeen

.. Claimant/Appellant

1. V.Haridass  
2. R. Selvaraj  
3. The New India Assurance Co.Ltd.,  
Main Road, Mettupalayam 641 301

.. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act to set aside the judgment and decree dated 25.03.97 passed in MCOP No.5/95 on the file of the I Additional District Judge-cum-Chief Judicial Magistrate, Coimbatore and pass the award of Rs.3,50,000/- instead of Rs.1,00,000/- towards the compensation to the petitioner.

For Petitioner : Mr. K.Sudarsanam for  
M/s. Surithi Associates  
For Respondents: Mr. Mohd. Fiary Hussain for R1  
Mr. S. Jayashankar for R3

JUDGMENT

The injured claimant has filed this Civil Miscellaneous Appeal questioning the award of the Motor Accidents Claims Tribunal, I Additional District cum Chief Judicial Magistrate, Coimbatore, (hereinafter referred to as the Tribunal) made in M.A.C.T.O.P.No.5/1995 dated 25.03.1997 in respect of the grievous injuries sustained by him in a motor accident that took place on 23.11.1994. The appellant/claimant herein prayed for a compensation of Rs.3,50,000/-. In support of his claim, he himself was examined as P.W.1 and Dr.Deivangaperumal was examined as P.W.2, besides marking Exs.P1 to P5. On the side of the respondents, no oral and documentary evidence was let in. The Tribunal, after analysing the materials, held that the accident was caused due to the negligence on the part of the driver of the vehicle in question and passed an award for Rs.1,00,000/- with 12% interest from the date of petition till the date of deposit. Aggrieved by the award passed by the Tribunal, the appellant herein has filed this appeal for enhancement of compensation.

2. Before the Tribunal, it was the case of the appellant/claimant that on 23.11.1994 at 11.15 p.m., when he was walking on Vincent Road in Ukkadam, from south to north direction, the first respondent drove the lorry bearing Registration No.TN 37 Z 0295 in a rash and negligent manner and dashed against the injured claimant, causing a fracture in his right leg, besides several other injuries. Immediately, the injured claimant was admitted in the Coimbatore General Hospital, wherein his right leg was amputated and he was also given treatment for other injuries. On complaint, the police registered a case in C.C.No.313 of 1994 against the first respondent, who is the driver of the lorry in question. The second respondent is the owner of the lorry, which is insured with the third respondent, Insurance Company. For the loss sustained by the injured, the appellant/claimant claimed a compensation of Rs.3,50,000/- with interest and costs. At the time of accident, the claimant was aged 27, was hale and healthy and was employed as Coolie, earning Rs.100/- per day.

3. Regarding the involvement of the vehicle in the accident and the cause of negligence, the injured himself was examined as a witness as P.W.1 and the Doctor as P.W.2; the Exhibits, P1-First Information Report, P2-Disability Certificate, P3-X-ray Report, P4-Wound Certificate and P5-Salary Certificate were also marked, based on which the injured made a claim for compensation. The first respondent was called absent and he was set ex parte. The third respondent Insurance Company filed a counter affidavit contending that the application for compensation was made on imaginary grounds so as to seek mercy of the Tribunal. It was denied by the third respondent that the claimant was walking on Vincent Road in Ukkadam, from south to north direction on 23.11.1994 and the lorry bearing Registration No.TN-37/Z-0295 came in that direction in a rash and negligent manner and dashed against the injured. Also, the third respondent questioned the age factor of the injured claimant, his income, the nature of the injury sustained by him and also the disablement caused on account of the accident. In any event, the claim of Rs.3,000/- for loss of earning, Rs.7,000/- for extra nourishment and Rs.10,000/- for medical expenses are all not admitted. Equally, the third respondent Insurance Company questioned the award under the heads of pain and suffering, permanent disability as well as loss of earning and also submitted that the claim made by the injured claimant was excessive, not based on any material evidence and prayed the Tribunal to dismiss the claim petition. No oral and documentary evidence was adduced on the side of the respondents in their defence.

4. The Tribunal, after proper enquiry and analysis of all the oral and documentary evidence, passed an award fixing the compensation of Rs.1,00,000/- with 12% interest from the date of petition till the date of deposit.

5. Heard Mr.K.Sudarsanam for M/s.Surithi Associates, learned counsel for the appellant herein and Mr.S.Jayashankar, learned counsel for the third respondent Insurance Company.

6. Mr.K.Sudarsanam, learned counsel appearing for the appellant/claimant has contended that the Tribunal, having found that the negligence was on the part of the driver of the lorry, should have awarded the compensation of Rs.3,50,000/- instead of Rs.1,00,000/- to the claimant. The learned counsel also contended that the Tribunal has not properly considered the evidence of the lorry driver let in on the side of the claimant as well as the oral and documentary evidence let in by him as well as by the doctor concerned. It is further contended that the Tribunal has not taken note of the age of the injured at the time of the accident and also not considered the future earning capacity of the claimant because the disablement is of a permanent nature, after the leg of the injured was amputated. It is also brought to the notice of this Court that the Tribunal had erred in considering the claim of compensation towards pain and suffering, permanent disability and loss of earning capacity. The learned counsel also questioned the conclusion of the Tribunal to fix the income of the injured as Rs.50/- per day and contended that the Tribunal had not appreciated the mental agony of a young boy who has lost one leg and his Urethra having been highly damaged.

7. Per contra, Mr. S. Jayashankar, learned counsel for the third respondent Insurance Company submitted that the Tribunal has properly assessed the claim for compensation based on the oral and documentary evidence and fixed the compensation at Rs.1,00,000/- with 12% interest as the injured claimant was a Coolie and he was earning Rs.50/- per day. He further submitted that the Tribunal, having taken note of the overall aspect of the nature of injury, the age factor and the earning capacity of the injured claimant, had fixed the compensation properly and there is no reason to interfere with the same and he prayed this Court to dismiss the appeal.

8. The learned counsel for the appellant cited a judgment reported in 2005 (1) CTC 38 (United India Company Ltd. Vs. Veluchamy and another), wherein paragraphs 4,5 and 6 read as follows:

"4. In the light of the submissions made, the following points arise for consideration:

i) Whether the Tribunal is justified in applying the multiplier method while ascertaining compensation in the case of injury/permanent disablement sustained due to the accident?

ii) Whether the Tribunal is justified in fixing the monthly income of the injured claimant at the rate of Rs.7,000/- per month?

5. Before considering the above points, it would be useful to refer certain salient features in regard to determination of compensation relating to grievous injuries,

permanent disability, etc. Second Schedule appended to the Motor Vehicles Act, 1988 speaks about compensation, for third party Fatal Accidents/Injury Cases Claims. We are concerned with disability in non-fatal accident cases. The following details furnished in Clause 5 of the II Schedule are relevant.

**"5. Disability in non-fatal accident:**

The following compensation shall be payable in cases of disability to the victim arising out of non-fatal accidents.

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

Plus either of the following:

- a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or
- b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

As per sub-clauses (a) and (b) of Clause 5, in case of permanent total disablement or partial disablement, the Court can arrive at an amount payable by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation. The proper multiplier to be applied has been prescribed in Clause 1 of II Schedule (vide Table). The percentage of loss of earning capacity in respect of permanent total disablement or permanent-partial disablement arising of injuries has to be arrived at as per Schedule I under Workmen's Compensation Act, 1923.

6. The Courts and the Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on the part of the Tribunals and Courts that the

possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownerships are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to the gravity of injuries. Deprivation sustained as a consequence of bodily injuries may bring with it three consequences, namely, (i) loss of earnings and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself and (iii) loss of diminution in full pleasures and joys of living. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Tribunals and Courts should make an honest and serious attempt to award damages so far as money can compensate the loss. Loss of curing and earning should adequately be compensated. Therefore, while considering deprivation, the Tribunals and Courts should have due regard to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. In awarding damages in personal injury cases, the compensation awarded by the Court should be substantial, it should not be merely token damages."

9. The learned counsel also relied upon the decision of the Supreme Court reported in 1995 ACJ 366 (SC) (R.D.Hattangadi Vs.Pest Control (India) Private Ltd., wherein the Apex Court, speaking about the heads of compensation, held that:

"Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimants; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

10. In the light of the rival submissions made by the learned counsel on either side, let me now look into the reasoning and findings given by the Tribunal in respect of the quantum determined, are proper and justifiable or not.

11. It is seen from the evidence of the injured claimant, who himself got examined as P.W.1, that on 23.11.1994 at 11.15 p.m., while he was walking on Vincent Road in Ukkadam, the lorry bearing Registration No.TN-37/Z- 0295, driven by the first respondent in a rash and negligent manner, dashed against him, in which he sustained grievous injuries and was admitted in the Coimbatore General Hospital and there, his right leg was amputated and further treatment was given for other injuries. Dr. Deivangaperumal was examined as P.W.2. He had deposed that he is a doctor in Coimbatore Medical College Hospital and working as Orthopaedic Surgeon and Reader in that Department. He examined the injured person on 24.12.1996 and found that his right leg below the thigh was amputated for about 9 inches. He has also assessed the disability at 75% and issued a certificate, which was marked as Ex.P.2 and the X-ray was marked as Ex.P.3. In the disability certificate, the particulars of the injuries have been detailed and it is stated that the injured claimant is walking with the help of a wooden stick and therefore, it is seen that because of the amputation of the leg, he has sustained 75% of disability, but the Tribunal disbelieved the same. In order to establish the involvement of the vehicle in the accident, the First Information Report was marked as Ex.P.1, a copy which has been certified from the records of C.C. No.313 of 1994 and to prove the percentage of the disability, the Wound Certificate was marked as Ex.P.4, X-ray as Ex.P.3 and disability certificate as Ex.P.2, besides marking the salary certificate dated 04.11.1996 as Ex.P.5. On the other hand, there was no oral and documentary evidence to disbelieve the involvement of the vehicle in the accident and the cause for negligence. The Tribunal, after analysing the oral and documentary evidence and the circumstances in which the accident took place, has concluded that the negligence is on the part of the driver of the lorry belonging to the second respondent which is insured with the third respondent and therefore, for the negligence caused by the first respondent, the second and third respondent, being vicariously and statutorily liable, have to pay the compensation to the injured claimant. In the absence of any appeal by the second and third respondents, I am not inclined to discuss the finding arrived at by the Tribunal on the question of negligence as against the driver of the lorry, since the Tribunal has properly assessed the evidence and fixed the negligence on the part of the driver of the lorry and there is no reason to disbelieve the same and therefore, the finding in respect of negligence as arrived by the Tribunal is proper and the same is confirmed.

11. The next question arising for consideration is the quantum fixed by the Tribunal based on the oral and documentary evidence adduced and whether the disability of the injured claimant as certified by the doctor

is proper and whether the injured claimant is entitled for enhancement of compensation. The compensation awarded by the Tribunal for the loss of earning was Rs.1,500/- as against the claim made for Rs.3,000/-. Also, a sum of Rs.2,000/- was awarded towards extra nourishment as against the claim of Rs.7,000/-, towards medical expenses, Rs.1,500/- was awarded, towards pain and suffering, a claim for Rs.50,000/- was made, but the Tribunal has considered just Rs.10,000/-, towards permanent disability, Rs.35,000/- was awarded by the Tribunal as against a claim for Rs.1,00,000/-, towards the loss of earning power, the Tribunal has considered Rs.50,000/- as against the claim of Rs.2,00,000/-. As per the evidence deposed, at the time of accident, the age of the injured claimant was 27, which is not in dispute in the absence of any contra evidence on the side of the respondents. Based on Ex.P.5, a Certificate was issued by the Secretary of the Loading and Unloading Sangam, wherein he has stated that the injured claimant was earning Rs.100/- to Rs.120/- per day. The author of the document was not examined by the Tribunal. The Tribunal has taken the earning of the injured as Rs.50/- per day, though the earning was said to be Rs.100/- to Rs.120/- per day as per Ex.P.5. The Tribunal, after giving credence to the oral and documentary evidence adduced on the side of the claimant and in the absence of any contra or conflicting evidence on the side of the respondents, awarded the compensation under the above heads, which is not in accordance with the procedure contemplated while determining the assessing the quantum of compensation.

12. The learned counsel for the appellant has also relied upon paragraphs 9 and 10 of 2005 (1) CTC 38 (United India Company Ltd. Vs. Veluchamy and another) cited supra, which read as follows:

" 9. ...In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money in so far as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed the loss of amenities of life and infliction of pain and suffering: the loss of the good things of life, joys of life and the positive infliction of pain and distress.

10. In estimating the financial or pecuniary loss, the Court must first form an opinion from the evidence and the probabilities in the case, of the nature and extent of the loss. While estimating the loss of earnings, the Court must first decide what the claimant would have earned if the accident had not happened, allowing for any future increase or decrease in the rate of earnings. It is also necessary for the Court to decide how long the loss will continue, whether there is incapacity for life or for a shorter period. The Court should also make an estimate of the amount, if any, which the claimant could still earn in future, notwithstanding disabilities sustained by him in the accident. Further, in a case where the claimant claims medical and nursing expenses, the Court must find as a fact what expenses have already been incurred and must estimate from the evidence the expenses which will be incurred in future. Future promotions, increment, revisions of pay are in the domain of many imponderables and the Court should bear them in mind while assessing future loss of income. While estimating future loss of income, the Court can take into account the future prospects of the injured or the deceased of earning more income by way of promotions or otherwise."

13. It is well a settled proposition that while determining the compensation or while estimating the financial or pecuniary loss to the claimant, the Court must first form an opinion from the evidence and the probabilities in the case, as to the nature and extent of the loss. While estimating the loss of earning, the Court must first decide what the claimant would have earned if the accident had not happened, allowing for any future increase or decrease in the rate of earnings. It is also necessary for the Court to decide how long the loss will continue, whether there is incapacity for life or for a shorter period. The Court should also make an estimate of the amount, if any, which the claimant could still earn in future, notwithstanding disabilities sustained by him in the accident. It is also the principle in a case of permanent disability, that in an accident, if the man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes, has lost all his earning capacity he possessed before and he is required to be compensated on the basis of total loss.

14. In the instant case, it is seen from Exhibits P.2, P.3 and P.4 that the injured claimant has lost his leg which has been amputated and the disability was assessed at 75%. Though the Tribunal has taken a view that the disability was not due to the accident alone and therefore, awarded a just compensation of Rs.35,000/- for permanent disability as against the claim of Rs.1,00,000/-. The Tribunal, after analysing all the aspects relating to the injuries, has arrived at a proper conclusion that

there was amputation of the right leg and continuous suffering by the injured claimant and the same has been confirmed by the deposition of P.W.2, the doctor, an expert in the Orthopaedic and also the Reader of the Department. To disbelieve the evidence of P.W.2 as well as Exs.P.2 to P.4, no contra or conflicting evidence has been adduced on the side of the respondents. Therefore, in such circumstances, the Tribunal ought to have considered the claim made by the injured for the permanent disability of 75%. Instead, the Tribunal has awarded only Rs.35,000/-. The injury sustained by the claimant is one such in nature as defined in Schedule I under the Workmen's Compensation Act, 1923. As this is a case of permanent total disablement or partial disablement, the Court can arrive at an amount payable by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation. The proper multiplier to be applied has been prescribed in Clause 1 of II Schedule. The percentage of loss of earning capacity in respect of permanent total disablement or permanent partial disablement arising of injuries has to be arrived at as per Schedule I under the Workmen's Compensation Act, 1923.

15. So, in the instant case, this would have been the proper proposition which has to be taken note of, but the Tribunal has not taken into consideration all these aspects and awarded the compensation of Rs.1,00,000/-, though the claim was made for Rs.3,50,000/-. In this case, for the age group of 27 years, the proper multiplier would be 18 as per Schedule II of Section 163A of the Motor Vehicles Act. But, in view of various rulings of the Hon'ble Supreme Court, this Court feels that the proper multiplier would be only 17 and not 18. If the income of the injured claimant is taken as Rs.50/- per day, his monthly income would be Rs.1,500/- and if 1/3<sup>rd</sup> of the income is deducted for his personal expenses, then his annual income is to be calculated at Rs.12,000/-, and applying 17 years multiplier, the compensation payable would be Rs.2,04,000/-. In respect of pain and suffering, the compensation fixed by the Tribunal is found to be reasonable and the same is confirmed. In other aspects, the quantum of compensation awarded by the Tribunal is confirmed except applying the multiplier method as stated above.

16. In view of the fact that the injured has sustained disability to the extent of 75% as seen from Ex.P.4 as well as the evidence adduced by P.W.2 and taking note of the legal position in respect of the amputation of an injured, having applied a multiplier of 17 to this case for the compensation which has to be arrived at as per Schedule I under the Workmen's Compensation Act, 1923, the award of compensation is enhanced from Rs.1,00,000/- to Rs.2,04,000/-. For the award of the Tribunal for Rs.1,00,000/-, the rate of interest prevailing at that time, i.e., 12% per annum, has to be continued, which is not altered and for the enhanced compensation, the rate of interest will be 7.5% per annum. Thus, the Award of the Tribunal is modified to this extent.

17. The Civil Miscellaneous Appeal is allowed in part. No costs.

ap

Sd/  
Asst.Registrar

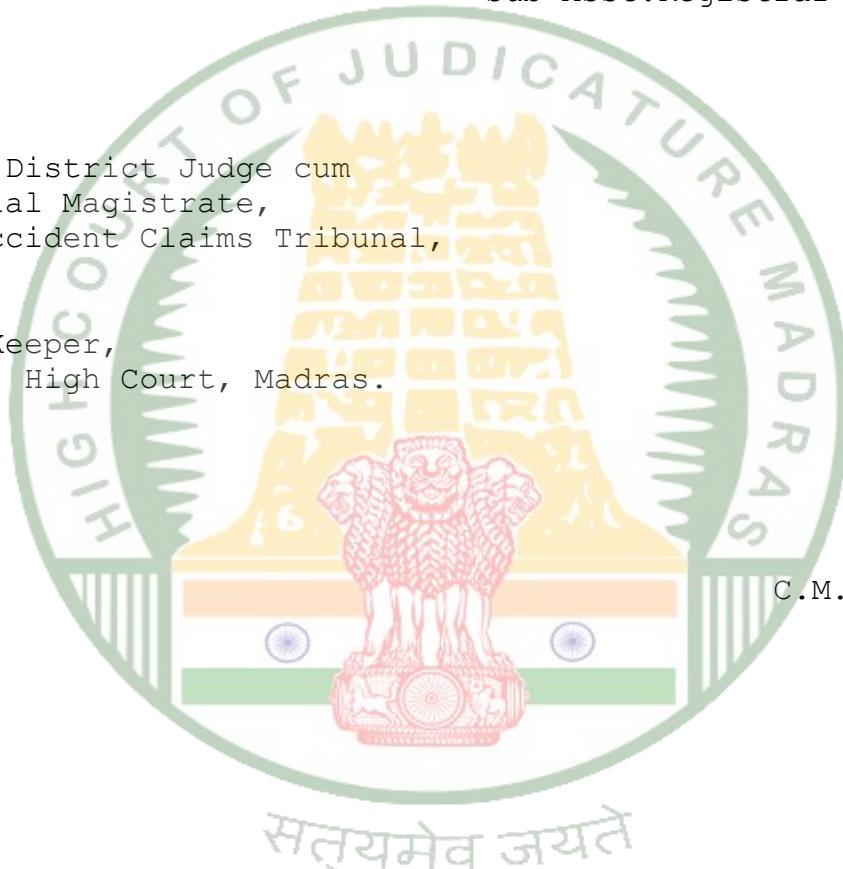
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Sub Asst.Registrar

To

1. The I Addl. District Judge cum Chief Judicial Magistrate, The Motor Accident Claims Tribunal, Coimbatore.
2. The Record Keeper, V.R.Section, High Court, Madras.

RA(CO)  
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