

T. Rajamoni (D) Thr. Lrs vs The Manager Oriental Insurance Co. Ltd on 24 January, 2025

Author: Hrishikesh Roy

Bench: Hrishikesh Roy

NON-REPORTED

2025 INSC 107

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. _____ OF 2025
(@ S.L.P.(C) Nos. 20702-03 of 2021)

T. RAJAMONI S/O THASON
DEAD THROUGH LRS.

... APPELLANT

VERSUS

THE MANAGER, ORIENTAL
INSURANCE COMPANY
LIMITED AND OTHERS

... RESPONDENT

JUDGMENT

S.V.N. BHATTI, J.

1. Leave granted.

2. The appeals arise from the common order dated 30.06.2021 in CMA (MD) Nos. 979 of 2014 and 305 of 2015 (“Impugned Order”) on the file of the Madurai Bench of Madras High Court that were filed by Oriental Insurance Company Limited questioning the award of compensation of Rs.21,35,000/- (Indian Rupees twenty-one lakh thirty-five thousand) and by the claimant for enhanced compensation. For convenience, the parties are referred to as per their status in CMA (MD) No. 305 of 2015. The first appellant died on 14.01.2024, and appellants nos.1.1 to 1.4, as legal representatives of the first appellant, are prosecuting the appeal(s).

3. The case of the appellant is that on 10.10.2011, he and his wife were returning from the market and, as pedestrians, were walking on the left side of the road towards the southern direction from Mekkamandapam to 11:28:07 IST Reason:

Azhahiamandapam. The first respondent, Paul Raj, was driving an autorickshaw bearing No. TN 74 E 2622 and, from behind, the first respondent hit the first appellant in a rash and negligent way. The accident resulted in grievous injuries to the first appellant. The second respondent, Vijila. P, is the owner of the vehicle, and

the third respondent, the Manager of Oriental Insurance Company Limited, is the insurer. The first appellant filed MCOP No. 34 of 2013 before the Motor Accidents Claim Tribunal (Special Court for Forest Offence Cases), Nagercoil ("the Tribunal"), under Section 166(a) of the Motor Vehicles Act, claiming compensation of Rs.25,00,000/- (Indian Rupees twenty-five lakh) under various heads from the respondents. The findings on the accident and the rash and negligent driving by the auto driver are accepted by the insurer. The appeals are filed questioning the reduction of compensation awarded by the Tribunal and for the award of the claimed compensation. Therefore, the averments and the evidence on the admitted position are not adverted to as part of the narrative of the case. At the time of the accident, the first appellant is stated to have been working as a Mason under PW-3. Dr. Thomas Baby was examined as PW-2. The claimant exhibited P-1 to P-25. No oral or documentary evidence is placed on record by the Insurance Company. The Tribunal awarded a sum of Rs.21,35,000/- (Rupees Twenty-One Lakh Thirty-Five Thousand) with interest @7.5% per annum. The insurer, filed CMA (MD) No. 979 of 2014 before the Madurai Bench of Madras High Court. The High Court has taken note of the oral evidence of PW-2 and the extent of disability the first appellant suffered in the accident and has noted that the first appellant failed to establish that he has loss of memory and is suffering from defective hearing, etc. The High Court, through the impugned Judgment, redetermined the compensation. For a quick grasp of the scope of the appeals, the compensation awarded by the Tribunal and the High Court is stated as follows:

Heads	MACT	HC
Annual Income- 1,62,000 (Mason)	(13,500x12) (Rs.450 daily)	2,10,000/- (3000x70)
Future Prospects Nil		Nil
Multiplier (Age 24.3 44)	Lakhs (1,62,000x15)	Nil
Disability Loss- (70%)		70%
Annual Loss of 17.01 Lakhs (24.3 Dependency lakhs x 70%)		2,10,000/-
For two grievous 20,000/- injuries		20,000/-
Pain and 25,000/- Suffering		50,000/-
Medical Bills 1,47,267/-		1,47,267/-
Earning loss as 6750/- an in-patient days)	(450x15 days)	6750/- (450x15 days)
Attendant 1,32,000/- Charges		1,32,000/-
Loss of Amenities 1,00,000/- & Expectation		1,00,000/-
Transport 3,000/- Charges		3,000/-
Total =	Rs.21,35,000/- (7.5%)	Rs.6,69,017/-

4. The High Court, as part of its consideration of the quantum of compensation, held that the multiplier to arrive at a loss of future income cannot be applied to the case on hand. The finding recorded is that it would be appropriate to award Rs.3,000/- per percentage and thus awarded Rs.2,10,000/- towards loss of income since the claimant suffered 70% disability. The High Court enhanced the compensation under the “pain and suffering” head from Rs.25,000/- to Rs.50,000/- and retained the compensation granted under other heads.

5. Hence, the appeals.

6. We have heard Mr. T.R.B. Sivakumar and Ms. Ankita Chaudhary, learned Counsel for the parties.

7. The learned Counsel for the appellants argues that the first appellant suffered serious head injuries in the accident dated 10.10.2011, viz.,

(i) Temporal Bone Fracture, (ii) Parietal Bone Fracture, and (iii) Clavicle (Collarbone) Fracture. Further, considering the nature of the self-employment of the first appellant as a Mason, the determination of loss of income of the first appellant is illegal and erroneous. The grievous injuries are not disputed;

however, percentage of disability is contested by the insurer. The High Court fell in a serious error by not following the Constitution Bench Judgment in *National Insurance Company Limited v. Pranay Sethi and others*¹. The evidence of PW-2 remains unchallenged, coupled with the discharge summary exhibited by the appellant. The appellant would not have resumed the demanding job of a mason after the accident. Even assuming that the multiplier is not applicable, awarding Rs.3,000/- per percentage is not commensurate to the loss of income suffered by the first appellant. There is no basis for arriving at Rs.3,000/- pay loss of income. The consideration is contrary to other findings accepted by the High Court. In effect, the loss of future income is arrived at Rs.100/- per day. He prays for restoring the loss of dependency awarded by the Tribunal.

8. Ms. Ankita Chaudhary, learned Counsel appearing for the respondents, contends that assuming that PW-2, the Doctor who treated the first appellant, has been examined, the disability suffered by the first appellant on account of the accident is not established by placing on record the disability certificate 1 (2017) 16 SCC 680 issued by a competent authority. The age of the first appellant is inconsistent and the award of future income loss by the Tribunal towards 70% disability is unsustainable.

9. We have perused the record and taken note of the submissions of the Counsel appearing for the parties. The only point for decision is whether the appellant is entitled to compensation towards loss of income or not, and if so, to what extent. We keep in our perspective the view of this Court in *National Insurance Company Limited (supra)* and *New India Assurance Company Limited v. Urmila*

Shukla and others² .

10. At the outset, we would like to observe that the High Court, in paragraph 8 of the impugned order, noted that the Counsel appearing for the appellant filed a Memo dated 28.06.2021 withdrawing from the brief. This warrants an observation on the Counsel appearing for the first appellant. In the given circumstances, it cannot be observed that the High Court was wrong in any way for noting the Memo filed by the Counsel appearing for the first appellant. The circumstances not noted by the impugned Judgment is that the element of prejudice suffered by the first appellant for want of proper representation on his behalf cannot be lost sight of by this Court. In other words, the appeals have been disposed of without due representation on behalf of the first appellant. One of the options available to us is to remit the matters to the High Court for fresh disposal. As noted above, the first appellant is no more, and it is a matter of determination that the award of Rs.2,10,000/- towards loss of income to the first appellant is commensurate to the admitted disability suffered by the first appellant. (2021) 20 SCC 800

11. We have perused the evidence of PW-2, and we take note of the fact that PW-2 is not the signatory of the disability certificate relied on by the first appellant. The facts established from the series of exhibits filed by the first appellant are that the first appellant admittedly suffered serious head injuries, viz., underwent more than one operation. From the nature of the head injuries, it cannot be held that the first appellant would have returned to complete normalcy and is entitled to loss of income only at Rs.100/- per day. The observation of the Tribunal, which had the advantage of appreciating the witnesses, including the claimant, noted that the appellant continued to suffer from disability such as memory loss, defective speech, etc. The Tribunal concluded that the first appellant was earning Rs.450/- per day, then applied the multiplier for 70% disability loss. This approach, having regard to the view taken in National Insurance Company Limited (supra), needs interference. To that extent, the High Court may be right in not applying multiplier in an abstract manner. Simultaneously, determining Rs.3,000/- per percentage as a loss of future income is unsustainable. There is no discussion for arriving at Rs.3,000/- per percentage. The first appellant established his avocation as a mason. The employability of a person with serious head injuries is a circumstance which ought to have been kept in the perspective for determining the loss of income of the first appellant. By taking note of the admitted circumstances, the age of the first appellant, even assuming as 50 years, as contended by the Insurance Company, the compensation for loss of income and also loss for future earnings can be determined at Rs.7,50,000/-. We are of the view that a reasonable lumpsum compensation towards the admissible heads i.e., 'loss of earning capacity' has been considered and awarded. We also take note of the fact that the first appellant died during the pendency of civil appeals, and the notional calculation of loss of income as per the principles laid down in the cases referred above are applied accordingly. Thus, the total compensation, is redetermined as follows:

Heads	Compensation
Loss of Annual Income-(Mason)	7,50,000/-
For two grievous injuries	20,000/-
Pain and Suffering	50,000/-
Medical Bills	1,47,267/-
Earning loss as an in-patient	6750/-
Attendant Charges	1,32,000/-

Loss of Amenities & Expectation	1,00,000/-
Transport Charges	3,000/-
Total	12,09,017/-

12. Thus, the compensation works out to Rs. 12,09,017/- (Rupees Twelve Lakh Nine Thousand Seventeen) with interest @ 7.5% per annum from the date of the claim petition till the date of payment. The compensation already paid shall be given due credit.

13. The third respondent, the insurer, is directed to deposit the balance compensation with interest within six weeks from the date of receipt of this Judgment before the Motor Accidents Claim Tribunal (Special Court for Forest Offence Cases), Nagercoil.

14. The Civil Appeals are allowed in part. There is no order as to costs.

.....J [K.V. VISWANATHAN]J [S.V.N. BHATTI] New Delhi;

January 24, 2025