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C.M.A.No.3424 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2023

PRONOUNCED ON : 28.04.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.3424 of 2014

The Branch Manager,
Royal Sundaram Alliance Insurance Co., Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai 14.
respondent

... Appellant/2nd

vs.

1.Surya alias Umapathy

..1st respondent/claimant

2.The Proprietor,

M/s.Mintraa Company,
No.10, Second Cross Street,
G.Z.322043,
Tiruninravur Koodapakkam,
Tiruvarur Taluk & District.

(R2 set exparte before the Tribunal) ... 2nd Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.149 of 2012 dated 28.08.2014 on the file of the Motor Accident Claims



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Tribunal, Subordinate Judge, Tiruvarur.

For Appellants : Mr. M.Krishnamoorthy

For R1 : Mr.M.Prabhavathi
for Mr.M.Thamizhavel

JUDGMENT

Challenging the award passed by the the Motor Accident Claims Tribunal, Subordinate Judge, Tiruvarur, in M.C.O.P.No.149 of 2012 dated 28.08.2014, the 2nd respondent/Insurance Company has preferred this Civil Miscellaneous Appeal for reduction of compensation .

2. Claim petition is filed under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.25,00,000/-, for the injuries sustained by the claimant in the road accident that occurred on 02.06.2012.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.21,69,091/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the claimant for the injuries suffered by him on account of the accident. Aggrieved by the same, the present Civil Miscellaneous Appeal has been



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filed by the appellant/2nd respondent.

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4. The learned counsel for the appellant/second respondent would vehemently contend that the compensation awarded is exorbitant. The disability assessment taken by the Tribunal is on the higher side. The Tribunal erred in awarding excessive amount of Rs,11,55,864/- towards loss of earning power by applying multiplier method. It was further stressed upon that the Tribunal has fixed the monthly income at Rs.8,500/- is also incorrect. A sum of Rs.8,15,227/- awarded towards medical expenses, which is excessive. Hence, he prays for reduction of the compensation and to grant reasonable amount of compensation.

4. Counteracting to the above said arguments, the learned counsel for the respondent/claimant would strenuously argue that the claimant on account of the accident suffered fracture of right femur closed fracture of right patella and fracture of both bones right leg. He was a driver by profession and due to the above said fractures, plate has been fixed in the right femur and for the problem in the below knee, the claimant undergone two surgeries and he is not in a position to drive a car as he drove before. Thereby, he suffers loss of income through out his life. It was further argued by the learned counsel for the respondent/claimant



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that the Tribunal has assessed the disability and fixed the annual income at R.8,500/- and multiplier method was invoked as he has suffered loss of income owing to the injuries sustained during the accident.

5. The learned counsel for the first respondent/claimant would further contend that based on the medical expenses incurred by the claimant during the treatment period, the Tribunal has awarded a sum of Rs.8,00,000/- towards medical expenses as per the medical bills. It was also stressed that on account of fractures sustained by the claimant he has to lead his remaining life with the difficulties. The award passed by the Tribunal was reasonable one and hence prays for dismissal of the appeal.

6. Heard the rival submissions of learned counsels for both sides and also perused the materials available on record.

8. Taking into account of the available records namely copy of the Driving Licence of the claimant, his age was fixed at 35. From the evidence of the claimant and as per the evidence of P.W.2, Dr.Ramachandran coupled with the medical records namely Ex.P.2-Accident Register, Ex.P.4 – Medical Legal Opinion, given by Tanjore



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Medical College, Ex.P.5 – Discharge Summary issued by Arun Medical

Centre, Tiruvarur (3 Nos.), Ex.P.17 – Discharge summary, it is

discernible that the claimant sustained injuries on account of accident occurred on 02.06.2012, he sustained fracture Type 3 bone fracture – middle 3rd right femur, closed fracture of right patella, Type 3 – bone fracture over upper 3rd right tibia – open comminuted fracture, **interior pubic right leg**. As per Ex.P4 – Medico Legal Opinion and copy of the discharge summary issued by the Tanjore Medical College, he was inpatient from 02.06.2012 to 08.06.2012 in Tanjore Medical College. On the same day, he got admitted at Tiruvarur Arun Medical Centre and got discharged on 04.07.2012, almost for 26 days admitted as inpatient. He appears to have undergone surgery by interlocking nail over the right femur as per Ex.P.4. After 23 days, on 27.07.2012 again he was admitted in the same hospital and got discharged on 19.08.2012 almost for 23 days, he was again under treatment. Thereafter in the same hospital, he was given treatment from 23.08.2012 to 16.09.2012 as inpatient vide Ex.p.5 – Discharge summary referred supra.

9. In this regard, Dr..Ramachandran, who was examined as P.W.2, has deposed as follows:-



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நான் அவரை பரிசோதித்து அவரது வலது கால் தொடையில் பியூமர் என்ற எலும்பானது 3ம் வகை (Type III B) உடைந்து வெளியே நீட்டிக் கொண்டிருந்ததற்கு ஆணி வைத்து பொருத்தியும், அவருக்கு வலது காலில் 3ம் வகை (Type III B) டிபியா என்ற எலும்பு உடைந்து அதற்கு பிளேட் மற்றும் ஸ்குரு வைத்து அறுவை சிகிச்சை செய்தும் மேலும் அவருக்கு கவுட்டி எலும்பு என்பியூரியர் பிபிக் கிராமியர் என்ற எலும்பு சுக்கு நூறாக உடைந்தும் சிகிச்சை செய்யப்பட்டிருந்தது. தற்சமயம் வலது கால் முற்றிலும் உட்புறமாக வளைந்தும் வெளிப்புறமாக ஆணி மற்றும் வளையம் வைத்து பொருத்தப்பட்டுள்ளது. அவருக்கு வலது தொடையிலும் வலது காலிலும் தசைகள் முற்றிலும் சுருங்கி காணப்பட்டது. வலது இடுப்பு மூட்டு இருகியுள்ளது. அசைவதும் முற்றிலும் பாதிக்கப்பட்டுள்ளது. வலது டிபியா என்ற எலும்பில் 6 செ.மீ. அளவு எலும்பு இல்லாமல் வெற்றிடமாக உள்ளது. தற்சமயம் நோயாளி படுத்த படுக்கையாக உள்ளார். அவருக்கு ஆணி வைத்து பொருத்தப்பட்ட இடங்களிலிருந்து சீழ் வெளியே வருகிறது. அவரது வலது காலானது 3 செ.மீ. அங்குலம் குட்டையாக உள்ளது.

10. It is clear from the evidence of P.W.2 that the claimant unfortunately on account of the accident had suffered fracture over right thigh, right patella tibia and fracture of both bone right leg. It is also pertinent to note that he suffers from shortening of right leg about 3 cms. Therefore, taking into account of the injuries sustained by the respondent/claimant, as mentioned supra, he would not be in a position to work as he did before. Due to the shortening of leg definitely he would find it difficult to walk, and lifting of weight etc,. A driver has to



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use both the legs while driving, one for applying brake and another leg would be kept on the clutch . As the nails and rings have been fixed externally over the leg, it would be extremely difficult to do any sort of work by the claimant.

11. It is relevant to discuss about the details found in clause 5 of the II schedule appended to the Motor Vehicles Act, 1988, reads as under:-

- (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.

12. As per sub-clauses (a) (b) of Clause 5, if a person suffers from permanent total disablement or partial disablement, the Court may 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.



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13. The Hon'ble Supreme Court in Sarla Varma's case has set at rest with regard to proper multiplier to be applied. The amount of damages varies according to gravity of injuries sustained which results in loss of earnings and earning capacity, expenses incurred to pay others for what otherwise he could not do for himself and loss of diminution in full pleasures and joys of living. It is almost tough task to quantify in terms of money to equate with human sufferings and personal deprivation.

14. As per the Judgment reported in ***United India Insurance Company, Ltd. Branch Officer vs. Veluchamy and Ors. and in Dr.K.G.Poovaiah vs. G.M.Karanataka State Road Transport Corporation***, (2001) 9 SC 167, the Hon'ble Supreme Court has held that in the case of fracture of right zygoma with injuries at spine and right knee, after noting the same as permanent disability and after allowing loss of earning capacity at Rs.5,000/- per month multiplying with multiplier of 10 . In that case, the injured claimant is a Medical practitioner, aged about 36 years.



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15. It is relevant to extract the observations made by the Hon'ble Supreme Court in ***Hardeo Kaur and Others vs. Rajasthan State Transport Corporation and another*** (1992) 2 SCC 567 , wherein it has been held that as to the determination of the quantum of compensation , the Court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale .

16. It is also relevant to refer to the observation made by the Hon'ble Supreme Court in ***Yadav Kumar vs. The Divisional Manager, National Insurance Co., Ltd., and Another***, reported in AIR 2010 SC 3741, wherein it has been held that *in the case of the appellant has sustained a fracture of distal end of left radius with fracture of left ulnar styloid process and fracture distal end of right radius with mild diastosis and soft tissues swelling around wrist joint. The doctor has assessed the disability at 33% in respect of the right upper limb and 20% in respect of the whole body, which prevents the appellant from doing painter work in view of multiple injuries sustained by him.*



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17. In that case , the Hon'ble Supreme Court while granting the compensation revised the award amount towards loss of future earning, and has held that “ It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The evidence of P.W.2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome and the Hon'ble Supreme Court has granted compensation by invoking the multiplier method.

18. It is vividly clear that by going through the evidence of P.W.2, Dr.Ramachandran, that due to fracture as mentioned supra, sustained by the claimant as a matter of fact, he would not be able to drive the vehicle, as he done before. The option left to him is to seek for some other job. For doing non-technical job, the claimant with the above said issues would certainly find it extremely different in walking, climbing upstairs , standing and sitting and driving two wheeler etc.,



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19. Taking into consideration of the evidence of P.W.1 and P.W.2 coupled with the medicals records i.e Ex.P.2 Accident Register, Ex.P.5 - Medico Legal Opinion and copy of the discharge summary issued by the Tanjore Medical College, Ex.P.17 - Discharge summary, Ex.P.15 - Disability Certificate,, the doctor has assessed the disability at 60%. Following the law laid down by the Hon'ble Supreme Court and discussed supra, this Court has no hesitation to hold that the multiplier method adopted by the Tribunal is acceptable. This Court deems fit to fix the functional disability at 60%.

20. Having regard to the fact that the accident has occurred in the year 2012 , the monthly income fixed by the Tribunal appears to be reasonable. As regard, the multiplier to be adopted as per law laid down in **Sarla Verma vs Delhi Transport Corporation and Others** reported in (2009) 2 TN MAC 1 SC, wherein it is stated that for the age group of persons between 30 to 35, the multiplicand to be adopted is '16'. Therefore, this Court is inclined to fix the loss of earning capacity as follows:-



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Rs.8,500 x 12 x 16 x 60% = Rs.9,79,200/-

21. As regards the medical expenses, the learned counsel for the appellant/Insurance Company vehemently argued that without any discussion, the Tribunal has awarded a sum of Rs.8,15,277/- towards medical expenses which is on the higher side. A series of medical bills have been marked as Ex.P.6 to prove as to the medical expenses incurred. I find the amounts have been written and calculated and the above said amount is arrived at. Therefore, the Tribunal was right in granting a sum of Rs.8,15,227/- for medical expenses.

22. The Tribunal has awarded a sum of Rs.11,44,860/- under the head of loss of income by invoking multiplier method and a sum of Rs.1,40,000/- towards permanent disability is totally incorrect. From the medical records, it is discernible that the claimant having suffered three fractures and undergone three surgeries, towards pain and suffering an additional amount of Rs.45,000/- is granted.

25. Under these circumstances, the compensation under the heads



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awarded by the Tribunal is reduced and modified as follows:-

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	For Loss of earning capacity	11,55,864	9,79,200	Confirmed
2	For Permanent disability(Injured)	1,40,000	-	Deleted
3	For Pain and sufferings	50,000	95,000	Enhanced
4	For Medical Expenses	8,15,227	8,15,227	Confirmed
5	For Extra Nourishment	2,000	2,000	Confirmed
6	For Transport expenses	2,000	2,000	Confirmed
7	For Attendant charges	2,000	2,000	Confirmed
8	For Damage to clothes	2,000	2,000	Confirmed
Total		Rs.21,69,091/-	Rs.18,99,427/-	Reduced

26. In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed by reducing the compensation amount to Rs.18,99,427/- from Rs.21,69,091/- awarded by the Tribunal.
- (ii) The appellant / Insurance Company is directed to deposit the award amount (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the



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credit of M.C.O.P.No.149 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruvarur, within a period of four weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the 1st respondent / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. No costs.

28.04.2023

Index : Yes/No
Speaking / Non-speaking order
kkd



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R.KALAIMATHI, J.,

kkd

To:

The Motor Accident Claims Tribunal,
Subordinate Court, Tiruvarur,

Pre-delivery Judgment in
C.M.A.No.3424 of 2014

28.04.2023