



CM.A.No.510 of 2021

WEB COPY **IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on	06.03.2024
Pronounced on	14.03.2024

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI,J.**

C.M.A.No.510 of 2021
and C.M.P.No.3234 of 2021

The Branch Manager,
Reliance General Ins. Co.Ltd.,
I Floor, Dhanam Towers,
I Binny main Road,
Park Road, Tiruppur-641 601.

... Appellant

Vs.

1. G.Karuppusamy
2. S.Rajkumar

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 30th June 2020 passed in M.C.O.P.No.1641 of 2017 by the Hon'ble Motor Accident Claims Tribunal, Spl., District Court at Tiruppur.

For Appellant : Ms.C.Bhuvanasundari



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For Respondents : Mr.K.Myilsamy [R1]
R2-Notice Dispensed with

JUDGMENT

This appeal has been preferred against the judgement and decree in M.CO.P.No. 1641 of 2017 dated 30.06.2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Tirupur.

For the sake of convenience, the parties are referred as described before the Tribunal.

2. Briefly stated, on 28.11.2016 at about 14 hrs., the petitioner was riding his motor cycle bearing registration No.TN 38 AK 2253 from east to west in Naduvacherry to Cheyyur near Murugan Thottam Avinasi. At that time a vehicle bearing registration No.TN 39 BJ 6033 TATA ACE driven by its driver cum owner in a rash and negligent manner without adhering the traffic rules and regulations dashed against the petitioner.



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3. Due to the said accident the petitioner sustained grievous fracture injuries on his left Patella, left intertrochant eric and mid third shaft of femur & left clavicle. Immediately the claimant was taken to the Government Hospital at Tirupur and thereafter to Ganga Hospital Coimbatore and was admitted as in-patient. The petitioner was undergoing treatment for two months and he is in continuous treatment. The petitioner has spent huge amount for the said medical treatment.

4. The claimant was employed in Bhavani Cavincare Diary. Tirupur as a milk supplier and earned Rs.15,000/- per month. Due to the said accident, the petitioner is unable to go for work. The petitioner is the only bread winner of the family. The injuries sustained by the petitioner is permanent in nature. Hence, the petitioner filed the above petition claiming compensation for a sum of Rs.20,00,000/- for the injuries sustained by him from the respondents.

5. The first respondent remained ex-parte.

6. The claim of the petitioner was resisted by the second respondent in its counter stating that the alleged accident took place only due to the careless



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riding of the petitioner at the time of the accident. The age, health and occupation of the petitioner mentioned in the petition was also denied. According to the 2nd respondent the amount of compensation claimed by the petitioner is excessive.

7. The Tribunal came to a conclusion that the accident took place only due to the negligent act of the first respondent vehicle driver and awarded a sum of Rs. 13,46,289. as compensation to the petitioner. Aggrieved by this, the present appeal is filed.

8. Through this appeal, the appellant insurance company challenged the award passed by the Tribunal on the ground that, the Tribunal has wrongly assessed the petitioner's permanent disability to be 70% based on the certificate issued by the Medical Board, which is on the higher scale.

9. The learned counsel appearing for the appellant insurance company contended that the award granted by the Tribunal at Rs.13,46,289/- is very excessive and unjustified. The Tribunal simply equated disability percentage



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at 70% as loss of earnings without following the procedure laid down in ***Raj Kumar Vs. Ajay Kumar & Anr. and affirmed in Sandeep Khanuja Vs. Atul Dande and Anr.*** Hence, the award passed by the learned Motor Accident Claims Tribunal requires interference.

10. On the other hand, the learned counsel appearing for the claimant respondent would submit that the Tribunal has thoroughly analysed the nature of injuries sustained by the claimant and upon perusing Ex.C1 disability certificate issued by the medical board has rightly fixed the disability at 70% as partial permanent disability for the claimant. His further contention is that due to the said accident, the claimant has lost his earning capacity and therefore the Tribunal has rightly applied multiplication and awarded just compensation towards loss of income. Therefore, the award passed by the Tribunal calls for no interference.

11. Heard on both sides and perused the materials placed on record.

12. On the side of the claimant Ex.P.2 medical report and Ex.P.3



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medical bills and Ex.C.1 disability certificate are produced to prove the nature of the injuries sustained by the claimant and the percentage of disability and the treatment undergone and the expenditure for the treatment. The Tribunal in the impugned order had rendered a finding as follows:

8.பிரச்சனை எண்: 3

ஊனம்:

மதுதாரருக்கு இவ்விபத்தினால் இடது தோள்பட்டையில் கிளாவிக்கல் எலும்பு முறிந்ததாகவும், இடதுகால் முட்டியில் எலும்பு, முறிவு ஏற்பட்டதாகவும், இடது காலில் தொடை எலும்பு பல துண்டுகளாக முறிந்து விட்டதாகவும், விபத்திற்கு முன்னர் பால் வியாபாரம் செய்ததாகவும், விபத்திற்கு பின்னர் இடது கையினால் எந்த பொருளையும் எடுக்கவோ, தூக்கவோ, முடியவில்லை என்றும், இடது காலினால் நிற்கவோ, நடக்கவோ, உட்காரவோ, படியேறவோ, முடியவில்லை என்றும், ஆதனால் தான் பார்த்த வேலையை செய்ய முடியவில்லை என்றும், சாட்சியம் அளித்துள்ளார். மதுதாரருக்கு ஏற்பட்ட காயங்களை மெய்ப்பிக்கும் வகையில், கங்கா மருத்துவமனையில் வழங்கப்பட்ட விபத்து சிகிச்சை குறிப்பை ம.சா.ஆ.2 ஆக குறியீடு செய்துள்ளார். அதில் மதுதாரருக்கு



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1. TYPE II LEFT PATELLA FRACTURE.
2. CLOSED LEFT INTERTROCHANT ERIC
AND MID 3 RD SHAFT OF FEMUR FRACTURE
3. CLOSED LEFT CLAVICLE FRACTURE

என்ற காயங்கள் இருந்ததாக குறிப்பிடப்பட்டுள்ளது. மனுதாரருக்கு ஏற்பட்ட ஊனத்தின் அளவை கணக்கிடுவதற்காக திருப்பூர் மருத்துவ குழு முன்பாக ஆஜராக பணிக்கப்பட்டார். மருத்துவக்குழுவானது மனுதாரரை பரிசோதித்து மனுதாரருக்கு மேற்படி காயங்களினால் 70% பகுதி நிரந்தர ஊனம் ஏற்பட்டுள்ளதாக சான்றிதழ் (நீ.ம.சா.ஆ.1) வழங்கியுள்ளனர். மனுதாரருக்கு ஏற்பட்ட காரணங்களின் தன்மையையும், மருத்துவ குழு வழங்கிய ஊனத்தின் அளவையும், வைத்து பார்க்கின்றபோது மனுதாரர் விபத்திற்கு முன்னர் செய்த வேலைகளை தற்போது செய்ய இயலாமல் உள்ளார் என்பது தெளிவாகிறது. எனவே, மனுதாரர் விபத்தினால் ஏற்பட்ட காரணங்களினால் சம்பாதிக்கும் திறனை இழந்துள்ளார் என்பது மனுதாரர் தரப்பில் மெய்ப்பிக்கப்பட்டுள்ளதாக இந்த தீர்ப்பாயம் தீர்மானிக்கிறது. எனவே, மனுதாரருக்கு பெருக்கத்தின் (Multiplier) அடிப்படையில், இழப்பீடு வழங்குவதுதான் நியாயமானதாக இருக்கும் என்று தீர்மானிக்கப்படுகிறது.

13. I have heard the submissions made by the learned counsel for the



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appellant and respondent in detail.

Admittedly, the claimant has suffered

1. Type II Left Patella Fracture
2. Closed Left Intertrochanteric and Mid 3 RD Shaft of Femur Fracture
3. Closed Left Clavicle Fracture.

14. As per Ex.C.1 disability certificate, the claimant has suffered 70% disability and the Tribunal has held that the claimant has suffered 70% loss in future earnings due to the disability.

15. To assess the quantum of compensation to be awarded, this Court has to assess whether the permanent disability has caused any adverse effect on the earning capacity of the claimant, as held by the Hon'ble Supreme Court in the case of ***Sandeep Khanuja vs., Atul Dande and Another*** reported in ***(2017) 3 SCC 351*** the relevant paragraph extracted here under:

"The crucial factor which has to be taken into



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consideration thus is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of aforesaid test is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a chartered accountant he is supposed to do sitting work and therefore his working capacity is not impaired. A person who is engaged and cannot freely moved to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily able. Movements of the appellant have been restricted to a large extent and that too at a young age."



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16. The Hon'ble Supreme Court laid out in the case of ***Rajkumar Vs. Ajay Kumar and Another*** reported in ***(2011) 1 SCC 343*** that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of permanent disability on his earning capacity. The Hon'ble Supreme Court observed as here under:

"... 7. 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



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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%.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in



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all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the



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percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary; is

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement.

(iii) if the disablement percentage is expressed with reference to any specific limb, then



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the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life) The



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second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

17. In the present case, the claimant is not a salaried person but is self employed who manages his business. The claimant is a Milk Vendor. For the claimant to augment his income, he is most definitely required to move around. The claimant's mobility is affected. This proves that the functional disability of the claimant will severely impact his earning capacity. However, the percentage of permanent disability is expressed by the Doctors with



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reference to the whole body. When a disability certificate states that the injured has suffered disability to certain extent with reference to a particular part of the body, it is not the same permanent disability with reference to the whole body. The extent of disability of a part of the body expressed in terms of a percentage of the total functions of that part, obviously cannot be assumed to be the extent of disability of the whole body. Therefore, where the claimants suffer a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. In this case, the Tribunal has wrongly assumed that the extent of permanent disability would result in corresponding loss of earning capacity. Moreover, it is to be noted that there is nothing on record that the claimant is bed ridden. The claimant failed to examine the Doctor who had issued the disability certificate to establish the effect of the claimants disability on his occupation. Therefore, considering the facts and circumstances of the case and in my view the loss of future earning capacity must be calculated at 50% which would be reasonable.

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18. On the basis of the above mentioned facts and analysis this Court is of the opinion that the just compensation to be awarded to the claimant under different heads ought to be as under:

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of Income	11,34,000	8,10,000	Reduced
2	Medical Bill	1,47,289	1,47,289	Confirmed
3	Pain and Sufferings	30,000	30,000	Confirmed
4	Extra Nourishment	15000	15000	Confirmed
5	Transportation	15000	15000	Confirmed
6	Attender Charges	5000	5000	Confirmed
	Total	13,46,289	10,22,289	reduced by 3,24,000

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs. 13,46,289 is hereby reduced to Rs.10,22,289/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Appellant/Insurance Company is



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directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

.03.2024

rap/vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To:-

- 1.The Motor Accident Claims Tribunal,
Special District Court, Tirupur.
- 2.The Section Officer, V.R.Section,
High Court, Madras.

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Pre-Delivery Judgment made in

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and C.M.P.No.3234 of 2021

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