



C.M.A.No.2533 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 18.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2533 of 2022

and

C.M.P.No.19694 of 2022

M/s.United India Insurance Co. Ltd.,
D.O.Katpadi, “Ramanas”,
No.84, II Floor, 14th East Cross Road,
Gandhi Nagar, Vellore – 632 006.

.. Appellant

Vs.

1.S.Suresh Babu

2.A.Suhail Ahmed

.. Respondents

(2nd respondent remained exparte
in the Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Decree and Judgment dated 07.10.2021 passed in M.A.C.T.O.P.No.136 of 2019 by the Special Sub Judge, Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Ms.R.Rathna Thara

For R1 : Mr.S.Murugan



C.M.A.No.2533 of 2022

J U D G M E N T

WEB COPY The Insurance Company has come up with this appeal aggrieved by the award passed by the Special Sub Judge, Motor Accidents Claims Tribunal, Krishnagiri, in M.A.C.T.O.P.No.136 of 2019 dated 07.10.2021.

2.The case of the claimant is that on 12.02.2017, he was riding a two wheeler along with his wife and children and was traveling from Vaniyambadi to Bargur and at about 11.00 A.M., when the vehicle approached Concordia School, the Omni van owned by the 1st respondent was driven in a rash and negligent manner and it hit the two wheeler as a result of which, the claimant was thrown out of the vehicle and he sustained serious injuries. An FIR came to be registered in Crime No.66 of 2017. The claimant sustained hip fracture and underwent treatment as an inpatient for nearly 4 days. The Medical Board assessed the disability and concluded that the claimant suffers from 30% partial permanent disability. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal considering the facts and circumstances and on appreciation of the oral and documentary evidence, came to a conclusion



that the accident had taken place only due to the rash and negligent driving on the part of the driver of the vehicle belonging to the 1st respondent. Having rendered such a finding, the Tribunal proceeded to determine the compensation and the total compensation was fixed at Rs.7,09,030/- in the following manner:

Sl. No.	Head	Amount (in Rs.)
1.	Loss of earning capacity	6,06,900/-
2.	Medical Expenses	28,130/-
3.	Transportation expenses	10,000/-
4.	Extra nourishment and attender charges	15,000/-
5.	Pain and sufferings	24,000/-
6.	Social amenities	24,000/-
7.	Damages to clothes and articles	1,000/-
	Total	7,09,030/-

4.The above compensation was directed to be paid with 7.5% interest per annum.

5.The Insurance Company aggrieved by the quantum of compensation fixed by the Tribunal has preferred the present appeal before this Court.



6.Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.The learned counsel for the appellant submitted that there was absolutely no indication in the report given by the Medical Board which was marked as Ex.C1 that the claimant suffered any permanent disability. The learned counsel further submitted that the Medical Board on assessment of disability came to a conclusion that the claimant suffered from 30% partial permanent disability. Therefore, it was contended that the Tribunal without any reasons or basis, adopted the multiplier method while determining the contribution under the head of disability. The learned counsel further submitted that even assuming without admitting that the multiplier method can be adopted in this case, it is seen that the claimant had sustained hip injury and hence the Tribunal went wrong in



fixing the disability percentage at 25% rather than 10% considering the particular portion in the body where the injury had been sustained. To substantiate the same, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar** reported in **2010 (2) TNMAC 581 (SC)**.

10.Per contra, the learned counsel for the claimant submitted that the Tribunal apart from assessing the disability certificate issued by the Medical Board, also had the opportunity of physically assessing the claimant and found that the claimant was finding it very difficult to walk normally and considering the nature of avocation in which the claimant was involved, the Tribunal had rightly fixed the disability at 25% and had applied the multiplier method considering the fact that the claimant suffered functional disability. The learned counsel further submitted that the reasons assigned by the Tribunal does not suffer from any illegality and hence, it does not warrant the interference of this Court. Accordingly, the learned counsel sought for the dismissal of this appeal.

11.In the instant case, the claimant had sustained fracture in the neck of the right femur and he underwent a procedure. The Medical



C.M.A.No.2533 of 2022

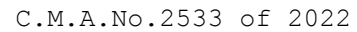
Board assessed that the claimant is suffering from 30% partial permanent disability. The claimant contended that he was running a two wheeler mechanic shop and he was also doing certain other works to earn his livelihood.

12.The Tribunal had an opportunity to physically assess the claimant and rendered the following finding:

“விசாரணையின் போது ம.சா.1ஐ ஆராய்ந்ததில் மனுதாரர் வலது காலை தாங்கியவாறு மிகுந்த சிரமத்துடன் நடந்து வந்தார். அவருக்கு நிற்பதில் சற்று சிரமம் தென்பட்டது. அவரால் முன்பு போல வேகமாக நடக்க முடியாது. அவருடைய இயல்பு நடை மாறியுள்ளது. அவரால் நீண்ட நேரம் நின்று கொண்டு வேலை செய்வதிலும், படி ஏறி, இறங்குவதிலும், உடை மாற்றிக் கொள்வதிலும், கீழே உட்கார்ந்து எழுந்திருப்பதிலும் சிரமம் இருக்கும். அதனால் அவருடைய நிலையை வைத்து பார்க்கும் போது அவருடைய வேலை பார்க்கும் திறன் குறைந்துள்ளது என்பது தெளிவாக புலனாகிறது.”

13.In the light of the above finding rendered by the Tribunal, the Tribunal came to a conclusion that the claimant suffered from functional disability and the same was fixed at 25%.

14.In the considered view of this Court, considering the nature of



15. The next question is as to whether the Tribunal was right in assessing the functional disability at 25%. At this stage, it will be relevant to take note of the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar**, referred to supra, which was relied upon by the learned counsel for the appellant. The Hon'ble Supreme Court on dealing with the entire case laws on the issue, summarized the law at paragraph No.13 of the judgment. It is clear that the percentage of permanent disability with reference to the whole body of a person cannot be assumed to be the percentage of loss of earning capacity. For the purpose of ascertainment of the effect of permanent disability on the actual earning capacity, the Hon'ble Supreme Court devised a three step method. The first step is to ascertain the activities of



C.M.A.No.2533 of 2022

the claimant which could not be carried out as a result of permanent disability. The second step is to ascertain his avocation / profession etc., and the third step is to see if the claimant is totally disabled from earning or he can still effectively carry on activities and functions which he was earlier carrying on. The Hon'ble Supreme Court also held that the Tribunal can look into the aspect of whether the claimant can carry on lesser scale of activities and functions to earn his livelihood.

16.If a Doctor or Medical Board fixes the percentage of disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal must seek the Doctor's opinion as to whether it is possible to reduce the corresponding functional permanent disability with reference to the whole body and if so, what percentage can be assessed.

17.Thus, fixing the percentage for a functional disability is not a matter of assumption and it requires some assistance from experts. The Tribunal has not sought for any clarification from any Doctor and it has



merely gone by the disability certificate and assessed the claimant who was present before the Court for adducing evidence. Admittedly, the fracture confined itself to the hip. As a result, the normal movement of the claimant was affected. However, that did not result in the total loss of earning capacity.

18.Hence, this Court is inclined to reduce the percentage of functional disability assessed by the Tribunal from 25% to 10%. This Court could have remanded the matter back to the Tribunal to undertake this exercise. However, it will again take some more time and hence, this Court decided to fix the functional disability at 10%. This is in view of the fact that there will not be any major alteration in the compensation that is fixed under the head of disability.

19.The next issue pertains to the notional income that was fixed by the Tribunal. The accident in this case had taken place in the year 2017 and the Tribunal has fixed the notional income at Rs.8,500/-. The claimant was aged about 27 years at the time of accident as is evidenced by the Adhar card that was marked as Ex.P5. Considering the avocation involved by the claimant, this Court is inclined to enhance the monthly



C.M.A.No.2533 of 2022

notional income from Rs.8,500/- to Rs.10,000/-. If 40% future prospects is added, the monthly income comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-). The disability can be calculated by taking the notional monthly income at Rs.14,000/-.

20.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

Sl. No.	Head	Amount (in Rs.)
1.	Loss of earning capacity (Rs.14,000/- X 12 X 17 X 10%)	2,85,600/-
2.	Medical Expenses	28,130/-
3.	Transportation expenses	10,000/-
4.	Extra nourishment and attender charges	15,000/-
5.	Pain and sufferings	24,000/-
6.	Social amenities	24,000/-
7.	Damages to clothes and articles	1,000/-
	Total	3,87,730/-

21.The compensation awarded by the Tribunal at Rs.7,09,030/- is hereby reduced to Rs.3,87,730/-. The appellant-Insurance Company is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim



C.M.A.No.2533 of 2022

petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

22. Accordingly, this Civil Miscellaneous Appeal is allowed in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

18.04.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1. The Special Sub Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

N.ANAND VENKATESH, J.



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C.M.A.No.2533 of 2022

krk

C.M.A.No.2533 of 2022

18.04.2024