



C.M.A. No. 2515 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE MRS. JUSTICE **R. KALAIMATHI**

C.M.A. No. 2515 of 2017

and

C.M.P. No. 13701 of 2017

Universal Sompo General Insurance Co. Ltd
Kilpauk, Chennai

... Appellant / 2nd Respondent

Vs.

1.Chakravarthi

... Respondent / Petitioner

2.Siva Shanthi

... Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 26.09.2016 passed in M.C.O.P. No.2305 of 2011 on the file of the II Additional Sub Court, Motor Accident Claims Tribunal, Cuddalore.

For Appellant	:	Ms.R.Vijaya Kamala
For R1	:	Ms.Ramya Rao
For R2	:	No appearance



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J U D G M E N T

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This Civil Miscellaneous Appeal has been preferred by the insurance company against the Judgment and Decree passed in M.C.O.P. No.2305 of 2011, dated 26.09.2016 on the file of the II Additional Sub Court/Motor Accident Claims Tribunal, Cuddalore, in respect of the quantum of compensation.

2. The case of the claimant is that on 30.08.2011, at about 8.3 p.m, when he was walking along Chennai-Trichy National Highway, proceeding towards east, along the Kadilam river Bridge, a Maruti Alto car bearing Registration No.TN 28 AY 2404, came in a rash and negligent manner and hit on him. Due to that accident, the claimant sustained injuries and suffering from permanent disability. Hence, the claimant came forward with this claim petition under Section 166(J) of Motor Vehicles Act, 1988s claiming a total compensation of Rs.10,00,000/-.

3. It is the case of the respondent that the accident took place only due to the negligence of the claimant and also the compensation claimed under various heads is on the higher side, and they prayed to dismiss the claim petition.



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4. The Tribunal, after evaluating the evidence, awarded a compensation of Rs.6,68,500/- with interest at 7.5% p.a from the date of filing of petition till the date of deposit, fastening liability on the second respondent/insurance company.

5. The learned counsel appearing for the appellant/insurance company would stoutly argue that on the date of the accident i.e., on 30.08.2011, the claimant, who was 59 years old, was said to be a flower merchant. Though his income was not proved, the Tribunal fixed his income at Rs.6,500/- p.m which is on the higher side. It is his further argument that the claimant suffered fracture of neck and femur right tibia and had undergone surgery for the same. He was assessed by two doctors and Dr.R.Venugopal issued disability certificate (Ex.P6) and assessed disability of the claimant at 90% which is on the higher side. He has not assessed functional disability of the claimant. The Tribunal has fixed the disability at 75% without any basis. Though the further treatment records of the claimant were not filed, the same were not taken into consideration by the Tribunal. He further contended that 75% disability was taken into account for the purpose of calculating loss of earning power by invoking multiplier method which is not reasonable.



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6. Per contra, the learned counsel for the first respondent/claimant vehemently contended that due to the partial permanent disability suffered by the claimant, P.W.2/Dr.R.Venugopal fixed the disability at 90% which is not on the higher side. As put forth by the learned counsel for the appellant, considering the age and nature of the work done by the claimant, the monthly income fixed is also acceptable. As the amount awarded by the Tribunal appeared to be reasonable and the same need not be interfered with.

7. To buttress his arguments, the learned counsel for the respondent/claimant relied upon the following judgments rendered by Hon'ble Supreme Court:

(i) **Sandeep Khanuja vs. Atul Dande and Another** reported in **(2017) 3 SCC 351**;

(ii) **Erudhaya Priya vs. State Express Transport Corporation Ltd** **(Civil Appeal Nos.2811-2812 of 2020, decided in 27.07.2020)**;

(iii) **Karthik Subramanian vs. B.Sarath Babu and another** reported in **2021 ACJ 993**.



8. Heard submissions made by both sides and perused the materials placed on record.

9. Before the Tribunal, on the claimant's side, the claimant examined himself as P.W.1 and Dr.R.Venugopal was examined as P.W.2. Seven documents were marked. Ex.P2 is the discharge summary issued by JIPMER Hospital, Podicherry. On the second respondent's side, no oral evidence was let in.

10. It is the evidence of P.W.1/injured that on 30.08.2011 at about 8.30 p.m, when he was walking along Chennai-Trichy National Highway proceeding towards east, at the point to Kadilam Bridge, a Maruti Alto car bearing Registration No.TN 28 AY 2404, came in a rash and negligent manner and hit on him. It is not in dispute.

11. Age of the claimant is 59 years and at the relevant point of time, he is said to be a flower merchant. Admittedly, no document was filed with regard to his avocation or income. The Tribunal, extracting the observation made by the Hon'ble Supreme Court in the case of **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd** reported in **2011 ACJ 2436 (SC)**, has notionally fixed monthly



income of the claimant at Rs.6,500/- p.m. The Hon'ble Supreme Court, in the case of **Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd** reported in **2014 (1) TNMAC 459 (SC)** for the 24 year old injured vegetable vendor, fixed the notional income at Rs.6,500/- p.m, for the accident that occurred in the year 2008.

12. In this case, the accident took place in the year 2011. As per the discharge summary issued by JIPMER Hospital, Pondicherry (Ex.P2), the claimant's age is mentioned as 62 years.

13. From the evidence of P.W.1 and P.W.2 coupled with the treatment record/discharge summary of JIPMER Hospital, Pondicherry (Ex.P2), it is clear that the claimant, on account of the accident, suffered fracture of shaft of right femur, open fracture of both bones right leg distal 1/3 and fracture of neck of left humerus.

14. Thus, as per the evidence of P.W.1, after the accident, he is not in a position to stand or walk for a long time and he finds it difficult to ride any vehicle.



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15. It is the evidence of P.W.2/Dr.R.Venugopal, Orthopaedic Surgeon that the claimant suffered above said fractures and as regards the effect of the fractures, his evidence is culled out as mentioned hereunder:

“,,, மனுதாரருக்கு வலது தொடையில் தொடை எலும்பில் எலும்பு முறிவும், இடது பஜ எலும்பில் மேல் பகுதியில் (கழுத்து பகுதியில்) எலும்பு முறிவும், வலது காலில் வெளிக் காயங்களுடன் இரண்டு எலும்புகளிலும் எலும்பு முறிவுகள் ஏற்பட்டு அறுவை சிகிச்சை மூலம் வலது காலில் வலது டிபியாவில் கம்பி பொருத்தி சிகிச்சை அளிக்கப்பட்டுள்ளது....”

“... இடது பஜ எலும்பில் ஏற்பட்ட எலும்பு முறிவு கோணலாக கூடியுள்ளது...”

“....பளுவான பொருள்களை இடது கையால் தூக்க முடியவில்லை. வலது காலில் பளு தாங்க முடியவில்லை....”

16. It the further evidence of P.W.2 that the claimant was using a walking stick and he would find difficulties in climbing stairs and attending his day-to-day activities. P.W.2 has assessed the disability at 30% for each fracture (90%).

17. On a careful perusal of Ex.P2/discharge summary, it appears that the claimant underwent first surgery on 31.08.2011 where ankle



spanning was done. On 16.09.2011, for healing of left femur and right tibia was done. For the fracture of neck of humerus, 2K wires were fixed.

18. It is clearly evident that due to the accident, the 62 year old claimant suffered fracture in the right leg above knee and below knee. Besides that, in the left hand, he suffered fracture of upper arm. Therefore, his functional disability is fixed at 68%.

19. The learned counsel for the respondent invited the attention of this Court by citing the judgment rendered by the Hon'ble Supreme Court in **Sandeep Khanuja's** case (cited supra), wherein, due to the accident, the appellant suffered fracture in both legs and the disability was fixed at 70%. In my considered opinion, due to the injuries in both legs which is also duly proved in evidence by the claimant and the doctor, he cannot freely move and attend his duties. His movements are restricted to a large extent and that too, in young age. It is for all these reasons, I feel that the Tribunal has awarded less compensation under this head and hence, the same is enhanced under the head of Mental and Physical agony and also under the head of permanent partial disability and loss of earning capacity is called for.



20. In **Erudhaya Priya's** case (cited supra), the appellant was travelling in a bus which was owned by the respondent/corporation, from Chennai to Bangalore. The bus dashed with a stationary lorry and due to the collision, many passengers sustained multiple injuries including the appellant/Erudhaya Priya besides the death of the bus conductor on the spot. Initial treatment for the appellant was taken at Jallappa Research and Medical College Hospital, Tamak, Kolar and she was given further treatment at the Manipal Hospital, Bangalore for about 8 months in admission. The disability was assessed at 31.1% of the whole body. The appellant was 23 years old and she was a software engineer. The total compensation was quantified as Rs.35,24,288/- with interest at 7.5% p.a. This was challenged before this Court by the Transport Corporation and it was reduced to Rs.25,00,000/- on the ground that the multiplier method for quantifying loss of earning power has been wrongly applied as it had not come on record as to how the injuries suffered by the appellant/Erudhaya Priya would have affected her earning capacity as a software engineer. The Apex Court, on appeal by the injured, based on the principles set out by the Hon'ble Supreme Court in **Jagdish vs. Mohan and others** reported in **(2018) 4 SCC 571**, the compensation was enhanced to Rs.41,69,831/- with interest at the rate of 9% p.a from the date of application till the date of payment.



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21. In **Karthik Subramanian vs. B.Sharath Babu and another** reported in **2021 ACJ 993**, wherein an injured, aged 34 years, suffered permanent disability of 40%, the Tribunal awarded Rs.21,92,000/- which was reduced by the High Court to Rs.3,40,000/- and the Hon'ble Supreme Court enhanced the total compensation to Rs.25,00,000/-.

22. The Hon'ble Supreme Court in the case of **Raj Kumar vs. Ajay Kumar and another** reported in **2011 (1) SCC 343**, laid down certain parameters while invoking the multiplier method in a case of injury and the same are extracted hereunder:

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

(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 limp, then the effect of such disablement of the limp on the functioning of the entire body, that is, the permanent disability suffered by the person.”

23. Therefore, due to the fracture sustained by the claimant in his left upper arm, there is no second opinion that he would find it difficult to lift



objects. As mentioned supra, the claimant, at the age of 62 years, suffered two fractures over the right leg, one above knee and another below knee.

24. Due to the above said partial permanent disability, the claimant will not be in a position to carry on his work effectively as he did before. But, of course, he could carry on some lessor scale of activities.

25. Relying upon the evidence of P.W.1, P.W.2/Dr.R.Venugopal coupled with Ex.P2/discharge summary and Ex.P6/Disability certificate, functional disability of the claimant is fixed at 65%. Based on the aforesaid discussions, invoking of multiplier method for computing the loss of earning power by the Tribunal cannot be found fault with. For computing loss of earning power, the income fixed by the Tribunal is Rs.6,500/- p.m. As per the law laid down by the Hon'ble Supreme Court in **Sarla Varma and others vs. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)**, the relevant multiplier to be adopted is '7'. For computing of loss of earning of income, the formula is =Rs.6500/- x12x7x68%=Rs.3,71,280/-. The loss of income, multiplier method is invoked. The compensation awarded under the other heads appear to be reasonable and is confirmed.



26. In this case, the claimant has sustained fractures and injuries on account of accident. For grant of compensation, the multiplier method invoked by the Tribunal is found to be reasonable. When the claimant is granted compensation under the head of loss of earning power, then he is not entitled for loss of income during the treatment period and that amounts to double claim. Hence, the claimant is not entitled to the amount of Rs.78,000/- granted by the Tribunal under the head “loss of income” during the treatment period.

27. Accordingly, the award passed by the Tribunal under various heads is hereby reworked and tabulated as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	For Loss of earning power on 68% disability	4,09,500/-	3,71,280/-	Reduced
2.	For Pain and Sufferings	75,000/-	75,000/-	Confirmed
3.	For Extra Nourishment	15,000/-	15,000/-	Confirmed
4.	For Attender Charges	20,000/-	20,000/-	Confirmed
5.	For Loss of comfort and amenities	50,000/-	50,000/-	Confirmed
6.	For Damage to cloths	1,000/-	1,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
7.	Partial Loss and earnings during the treatment period	78,000/-	---	Rejected
8.	For Transportation Charges	20,000/-	20,000/-	Confirmed
	Total Compensation	6,68,500/-	5,52,280/-	Reduced

28. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,68,500/- is hereby reduced to **Rs.5,52,000/- [Rupees Five Lakhs and Fifty Two Thousand only]** together along with interest at the rate of **7.5% per annum** from the date of filing of Claim Petition till the date of realization, excluding the default period, if any.

29. The appellant - Insurance Company is directed to deposit the amount awarded 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 copy of this judgment to the credit of M.C.O.P.No.2305 of 2011 on the file of the II Additional Sub Court/Motor Accident Claims Tribunal, Cuddalore.



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30. On such deposit, the respondent/claimant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn.

31. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. There shall be no order as to costs in the present appeal.

29.01.2024

apd
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

- 1.The II Additional Sub Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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R. KALAIMATHI,J

apd

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