IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-08-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1733 OF 2015

Reliance General Insurance Co.Ltd.,
No.2054, Anna Nagar,
Chennai-40. ...Appellant/2nd Respondent

-vs-

1.P.Brinda
2.R.Sumathy ...Respondents/Petitioners & 1st Respondent

Appeal against the award, dated 24.10.2013, made in MCOP No.5568 of 2011, on the file of Motor Accident Claims Tribunal-cum-III Court of Small Causes, Chennai.

For appellant : Mr.S.Arun Kumar

For respondent 1 : Mr.N.M.Muthurajan

JUDGMENT

(Judgment of the Court was delivered by S.Manikumar,J.)

Reliance General Insurance Company Limited, the appellant herein, has questioned the quantum of compensation of Rs.18,38,880/- awarded by the Motor Accident Claims Tribunal-cum-III Court of Small Causes, Chennai, with interest at the rate of 7.5% per annum, from the date of claim till deposit, to the first respondent/injured, on the grounds, inter alia, that the Claims Tribunal has failed to note that the first respondent/claimant was out of employment for a year, prior to the accident and that the same is substantiated under Ex.P-20, Relieving Order.

2. The appellant has further contended that Ex.P-21, copy of Offer for Employment Letter, has been marked only to contend that there was an alleged loss of employment

opportunity. Added further, Mr.S.Arun Kumar, learned counsel for the appellant, has submitted that in the absence of proof, towards loss of earning power, the Tribunal ought not to have computed and awarded compenstion under the head ''loss of future earnings". He also submitted that the Claims Tribunal erred in awarding the compensation of Rs.2,08,000/- towards loss of income, when the first respondent was unemployed at the time of accident.

3. The contention of the learned counsel for the appellant is that as per Ex.P-20, Relieving Order, the first respondent/claimant had already been relieved and that she was out of employment and, therefore, the Tribunal ought not to have awarded Rs.2,08,000/- towards loss of income. He has also questioned the application of multiplier.

4. Heard Mr.N.M.Muthurajan, learned counsel for the caveator, with reference to the above submissions, who prayed to sustain the award.

5. From the materials on record, it could be adduced, that the first respondent/claimant was stated to be aged 42 years and was a Clinical Trial Coordinator in Sri Ramachandra Hospital, earning Rs.26,831/- per month. She also claimed to have acquired M.Sc., Biochemistry. Further, she has submitted that when she got a job as Data & Submission Officer in M/s.B.L.S. International Service at Dubai, she got herself relieved from Sri Ramachandra Hospital. As per the Offer for Employment Letter, the salary in the job of Data & Submission Officer in M/s.B.L.S. International Service at Dubai, was Rs.42,820.84 ps. Government of Dubai had issued Employment Entry Permit to her. When she was about to obtain visa and air ticket for joining her new job at Dubai, the accident occurred, and, due to the injuries, she has lost her employment opportunities, permanently. Due to the disablement, she has lost her future earning capacity permanently. She has also submitted that she has incurred considerable medical expenses. In support of her contention regarding the gravity of the injuries, treatment as inpatient and outpatient, loss of her future earning capacity, due to the permanent disablement, she has marked Ex.P-3, copy of the Accident Register; Ex.P-4, Discharge Summary, issued by Parvathy Hospital; Ex.P-5, Hospital Bill; Ex.P-6, Pharmacy Bills; Exs.P-7 and P-8, Discharge Summaries, issued by Parvathy Hospital; Ex.P-9, Hospital Bill; Ex.P-10, Pharmacy Bills; Ex.P-11, Doctor Certificate; Ex.P-12, Outpatient Record; Ex.P-13, Pharmacy Bills; Ex.P-14, X-ray; Ex.P-15, Scan report; Ex.P-16, Photos with CD; Ex.P-17, Copy of Degree

Certificate; Ex.P-18, Copy of Appointment Order; Ex.P-19, Copy of Pay Slip; Ex.P-20, Copy of Relieving Order; Ex.P-21, Copy of Offer for Employment Letter; Ex.P-22, Employment Entry Permit; Ex.P-23, Copy of Passport; Ex.P-24, Copy of Visa; Ex.P-25, Disability Certificate; Ex.P-26, X-Ray Report and Ex.P-27, X-Ray.

6. On evaluation of the oral evidence and on a perusal of the discharge summaries and employment records, the Tribunal has found that the first respondent/claimant had taken treatment, as inpatient in Parvathi Hospital from 28.11.2011 to 12.12.2011. She had suffered chest injury, bilateral hemopneumothorax, fracture 2nd to 11th rib at right side, fracture of right scapula, fracture middle 3rd right clavicle and fracture spinous process of L1 to L13 vertebra. ICD insertion at right side chest was done on 28.11.2011. Open reduction and internal fixation with plate osteosynthesis at right clavicle was done. Ex.P-7, Discharge Summary, shows that she had taken further inpatient treatment at the abovesaid hospital on 23.12.2011, for follow-up treatment. Ex.P-8, Discharge Summary, shows that she had taken inpatient treatment at the above hospital from 15.08.2012 to 17.08.2012, for implant removal. Ex.P-12, Outpatient Record, shows that she had taken continuous treatment in the above hospital. Ex.P-16 is the Scan Report. Ex.P-25 , Disability Certificate, issued by P.W.3, Dr.Mathiazhagan, also speaks about the same.

7. P.W.3, Dr.Mathiazhagan, who clinically examined the first respondent, with reference to the medical records stated supra, has assessed the functional disability at 65% (spinal injuries-35%, clavicle fracture-15% and ribs fracture-15%). He has also deposed that due to the spinal cord injuries, right side body of the petitioner is senseless and that she cannot use her right hand for cooking, and, due to ribs fracture, she experiences pain, while breathing. He has further deposed that her active movement is restricted. The first respondent/claimant has also deposed that after the accident, she is unable to lift heavy objects. Due to the spinal cord injury, she has lost sense in the right side. She is not able to sit before the computer for long hours.

8. Though the functional disability was assessed by P.W.3 doctor at 65%, considering the oral and documentary evidence adduced, the Claims Tribunal, by observing that the entire extent of functional disability assessed by P.W.3 doctor cannot be assumed to affect the whole body, determined the whole body disablement at 22%, for the purpose of computing loss of future earnings.

9. Accepting the oral testimony of the first respondent/claimant that she was earlier employed in Sri Ramachandra Hospital as a Clinical Trial Coordinator, duly corroborated by Ex.P-17, copy of Degree Certificate; Ex.P-18, copy of Appointment Order; Ex.P-19, copy of Pay Slip; Ex.P-20, copy of Relieving Order, the Claims Tribunal has fixed the monthly income of the injured at Rs.26,831/-, on the basis of the last drawn salary.

10. To prove that she was offered employment at Dubai as Data & Submission Officer in M/s.B.L.S. International Services, she has marked Ex.P-21, copy of Offer for Employment Letter. Ex.P-22 is the Employment Entry Permit. Ex.P-23 is the Passport. Ex.P-24 is the copy of Visa.

11. After a perusal of the abovesaid documents, the Claims Tribunal has noticed that the salary of the injured for the said post in terms of Indian value was Rs.42,820.84 ps.

12. Though Mr.S.Arun Kumar, learned counsel for the appeallant/Insurance Company has submitted that when the first respondent was already relieved from Sri Ramchandra Hospital and she was not earning any income, the Claims Tribunal has erred in awarding a sum of Rs.2,08,000/- towards loss of income during the period of hospitalisation, this Court is not inclined to reduce the quantum of compensation, awarded under the abovesaid head, for the reason, that, but for the accident, which had incapacitated the respondent/claimant from joining the job at Dubai, she would have had an opportunity to draw a salary of Rs.42,820.84 ps., as per Ex.P-21, Offer of Employment Letter. Admittedly, she was hospitalised between 28.11.2011 and 12.12.2011 and she had sustained fractures from second to eleventh rib on the right side, fracture of right scapula, fracture of third right middle clavicle, and fracture of L1 to L3 vertebra. ICD insertion at right side chest was done on 28.11.2011. There had been open reduction and internal fixation with plate osteosynthesis at right clavicle. Subsequently, she had taken treatment from 23.12.2011 to 15.08.2012. Thereafter, from 15.08.2012 to 17.08.2012, she was again hospitalised for implant removal. Thus, from the materials on record, it could be deduced that from 28.11.2011 to 17.08.2012, she had been taking continuous treatment, either as an inpatent or outpatient. Ex.P-12 is the Outpatient Record. For a period of nine months, she has produced treatment records. But for the unfortunate accident, she would have joined the new job at Dubai, and earned double the income or even higher income. Therefore, a sum of Rs.2,08,000/-, awarded by the Tribunal under the head "loss of

earnings'', restricting up to the maximum period of eight months, we feel, cannot be said to be without any basis, warranting interference.

13. On the applicability of multiplier method, for computing the loss of future earnings, the first respondent/claimant has adduced oral evidence, coupled with medical records, to prove as to how her physical frame has been shattered. The whole of upper body, particularly the right side, had been badly affected. To repeat, she had sustained fractures from 2nd to 11th rib, fracture of right scapula and fracture of clavicle fracture of spine from L1 to L3.

14. PW.3, doctor, has assessed the functional disability at 65%, but, the Tribunal has adopted the same, to the whold body disablement, which would result in loss of earning capacity only at 22%.

15. Going through the impugned award, we are unable to understand, on what basis, the Tribunal has grossly reduced the functional disability assessed at 65% to the whold body disablement as 22%. In the award, the Tribunal has recorded a finding that "if the disability of 65% assessed by P.W.3 is converted into the whole body disability, then, it cannot exceed more than 22%, and so, the whole body disability of the petitioner is assessed and fixed at 22%".

16. At this juncture, it is worthwhile to refer to a decision of the Hon'ble Apex Court in Raj Kumar v. Ajay Kumar reported in 2011 ACJ 1 (SC), wherein, in paragraphs 4 to 17, it has been held as follows :

> "General Principles relating to compensation in injury cases:
>
> 4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the

physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical

expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (`Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries

sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

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 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 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 terns 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 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; (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 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 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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a

result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an 12 active explorer and seeker of truth who is required to `hold an enquiry into the claim' for determining the `just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the `just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent 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 will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert

evidence of doctors who did not treat the injured but who give `ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability. 13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) 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. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability

may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration `A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

a) Annual income before the accident : Rs.36,000/-.

b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5400/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

Illustration `B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

a) Annual income prior to the accident : Rs.36,000/-.

b) Loss of future earning per annum (75% of the prior annual income) : Rs.27000/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration `C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two

months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

a) Minimum annual income he would have got if had been employed as an Engineer : Rs.60,000/-

b) Loss of future earning per annum (70% : Rs.42000/- of the expected annual income)

c) Multiplier applicable (25 years) : 18

d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation :

"5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:-

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following :-

(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.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's

Compensation Act, 1923."

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach `professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long

way in demonstrating that Courts/Tribunals show concern for litigants and witnesses. Assessment of compensation.

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate."

17. In the light of the principles of law discussed supra, this Court is of the view, that, by no stretch of imagination, it can be concluded that loss of future earning capacity assessed at 22% is on the higher side, warranting any reduction. No contra medical evidence has been adduced.

18. Though the first respondent/claimant has sustained grievous injuries and had continuous treatment both inpatient and outpatient, she has been awarded Rs.8,000/- towards ''extra nourishment". A sum of Rs.10,000/- has been awarded towards transportaion, and Rs.1,000/- towards damage to clothes and articles. Medical expenses of Rs.3,50,000/- incurred by her is duly supported by Exs.P-5 to Ex.P-13. A sum of Rs.10,000/- has been awarded attendant charges. Another sum of Rs.10,000/- has been awarded under the head ''loss of amenities''. Considering the nature of injuries, the extent of permanent functional disablement assessed by P.W.3,doctor, at 65%, compensation of Rs.10,000/- awarded under the head 'loss of amenities'' is less.

19. "Loss of amenities'', as per the Full Bench decision of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433, is as follows:

"deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of congenial employment, loss of pride and pleasure in one's work, loss of marriage prospects and loss of sexual function",

20. A sum of Rs.75,000/- has been awarded under the head "pain and suffering". One cannot visualise the pain, the respondent experienced, at the time of accident, and thereafter. Pain is one, which is experienced momentarily, but it may continue even for a longer period, depending upon the gravity and situs of the injury, whereas, suffering is loss of happiness, on account of the same. Pain has no difference between Rich and Raff. Therefore, the compensation of Rs.75,000/-, awarded towards pain and suffering, is not on the higher side.

21. The question as to whether a person can be awarded compensation both for permanent disability and loss of future earning capacity is considered in Rajkumar's case, extracted supra.

22. The quantum of compensation awarded at Rs.18,38,880/- is apportioned as under :

Loss of Income	-	Rs. 2,08,000/-
Transport to Hospital	-	Rs. 10,000/-
Extra Nourishment	-	Rs. 8,000/-
Damage to Clothing	-	Rs. 1,000/-
Medical Expenses	-	Rs. 3,50,000/-
Attender Charges	-	Rs. 10,000/-
Los of Amenities of Life	-	Rs. 10,000/-
Pain and Suffering	-	Rs. 75,000/-
Permanent disability	-	Rs.11,66,880/-
		Rs.18,38,880/-

23. In the light of the above discussion and decisions, this Court is of the considered view that the method adopted by the Claims Tribunal for awarding compensation under various heads, stated supra, cannot be said to be manifestly erroneous, warranting interference, and the quantum of compensation awarded under certain heads requires reconsideration.

24. However, this Civil Miscellaneous Appeal is dismissed, and the award impugned is confirmed. No costs.

Consequently, the connected M.P.No.1 of 2015 is closed.

25. Mr.S.Arun Kumar, learned counsel for the appellant/Insurance Company, has submitted that the entire award amount has already been deposited with the Tribunal. Consequent to the dismissal of the appeal, the first respondent/claimant is at liberty to seek for withdrawal of the same, now lying in the Court deposit, by making necessary application.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dixit

To

The Motor Accident Claims Tribunal-cum-
III Court of Small Causes,
Chennai.

1 CC to Mr.S.Arun Kumar, Advocate SR.No. 44791

1 CC to Mr.N.M.Muthurajan, Advocate SR.No. 44537

C.M.A.No.1733/2015

KSJ (CO)
PSI (16.10.2015)