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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**

AND

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

C.M.A(MD) No.1317 of 2013

and

M.P(MD)No.1 of 2013

The Branch Manager,
United India Insurance Co. Ltd.,
Sree Saravana Complex,
1st Floor, 18/116, Mettupalayam Road,
Thudiyalur, Coimbatore .. Appellant/2nd Respondent

vs.

1.M.Muthanna .. 1st Respondent/ Claimant
2.M/s.Rashid Brothers,No.934, Avinashi Road, Coimbatore.
(2nd respondent stood
ex-parte before the Tribunal) ..2nd Respondent/1st Respondent

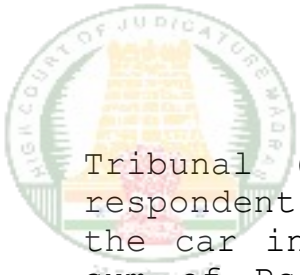
Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.182 of 2012 on the file of Motor Accident Claims Tribunal (I Additional District Court), Thoothukudi, dated 17.01.2013.

For Appellant	: Mr.S.Natarajan
For R1	: Mr.Pon Karthikeyan
For R2	: Ex-parte

JUDGMENT

[Judgment of the Court was made by V.M.VELUMANI, J]

The appeal is against the order, dated 17.01.2013, made in M.C.O.P.No.182 of 2012 on the file of Motor Accident Claims Tribunal (I Additional District Court), Thoothukudi.



Tribunal (I Additional District Court), Thoothukudi. The first respondent is the claimant. The second respondent is the owner of the car involved in the accident. The first respondent claimed a sum of Rs.25,00,000/- as compensation. Tribunal considering the pleadings and evidence, awarded a sum of Rs.17,85,405/- as compensation.

3. Against the said award, dated 17.01.2013, the appellant has filed the present appeal.

4. Facts of the case:-

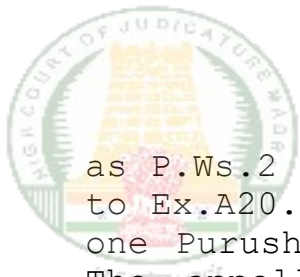
On 26.07.2011 at 14.30 hours, the first respondent was riding his motor cycle at V.E.Road, Tuticorin. The said road is one-way to be used as East to West only. At that time, driver of one Hyundai car belonging to second respondent driving in a rash and negligent manner from opposite side in a wrong way, dashed against the motor cycle of first respondent. He was thrown out and sustained grievous multiple injuries. He was admitted in AVM Hospital, Tuticorin, on 26.07.2011 and took treatment as in-patient till 18.08.2011. Again, he was admitted on 26.08.2011 and discharged on 04.09.2011. The movement in his right leg has been completely restricted and he could not move the right leg and he is bed ridden and he is undergoing physiotherapy treatment. The doctors advised him to undergo another surgery. The cost of the said surgery is Rs.1,00,000/-. He has sustained 100% total permanent disability. The accident took place only due to rash and negligent driving by driver of Hyundai car belonging to second respondent. A case in Cr.No.373 of 2011 was registered by Tuticorin Central police station against the driver of the second respondent. The car was insured with the appellant. Therefore, he filed claim petition claiming a sum of Rs.25,00,000/- as compensation against appellant and second respondent.

5. The second respondent remained ex-parte before the Tribunal.

6. The appellant filed counter statement denying all the averments made by the first respondent in the claim petition. It is stated in the counter statement that accident did not take place, due to rash and negligent driving by driver of the car. Only, the first respondent drove the motor cycle in a rash and negligent manner and invited the accident. In the accident, two vehicles were involved and insurer of the motor cycle is a necessary party. The negligence of the petitioner is 50%. The driver of the Hyundai car did not have effective valid licence to drive the LMV vehicle. The first respondent did not suffer permanent disability. Therefore, prayed for dismissal of the claim petition.

<https://hcservices.ecourts.gov.in/hcservices/>

7. Before the Tribunal, the first respondent examined himself as P.W.1 and examined two doctors, Dr.Muthalagu and Dr.Ramalingam



as P.Ws.2 and 3. The first respondent marked 20 documents as Ex.A1 to Ex.A20. Appellant examined one Tmt.Divya, Assistant Manager and one Purushothaman, Junior Assistant in Regional Transport Office. The appellant did not mark any document. The Tribunal framed necessary points for consideration.

8. Tribunal considering the pleadings and evidence, came to the conclusion that the accident took place only due to rash and negligent driving by driver of the Car belonging to second respondent. The car was insured with the appellant. Therefore, the second respondent and appellant were held to be liable to pay compensation. Tribunal considering the evidence of P.Ws.2 and 3, awarded a sum of Rs.13,32,400/- as compensation for loss of earning capacity. Tribunal awarded compensation on the other heads and totally awarded a sum of Rs.17,85,405/- as compensation.

9. Against the said award, dated 17.01.2013, the appellant has filed the present appeal.

10. The learned counsel for the appellant contended that Tribunal is not correct in fixing the negligence only on the part of the driver of the Hyundai car of the second respondent. The first respondent did not examine any independent witness to prove the negligence on the part of the driver of the Car. Tribunal is not correct in relying upon the FIR, Criminal Court records, Ex.P.2 wound certificate and Ex.P5 discharge summary, in arriving at negligence on the part of the driver of the Hyundai Car and quantum of compensation. A sum of Rs.17,85,405/- awarded as compensation is exorbitant. The wound certificate given by the P.W.3 is not the Doctor, who treated the first respondent. The first respondent suffered only one grievous injury and two simple injuries. For shortening of 3 c.m., in right leg, fixing 74% partial permanent disability is not correct. Tribunal erred in applying the multiplier method and ought to have seen the discharge summary given by the hospital, where the first respondent took treatment, it has been stated that the first respondent is medically fit and healthy. Even according to the first respondent, he was not able to go to work only for one year and for the rest of the period I.e., 15 years, he is claiming compensation at Rs.5,000/- per month, which comes to Rs.10,20,000/- and Tribunal erred in awarding a compensation of Rs.13,32,000/-. Percentage of disability cannot be equivalent to percentage of loss of earning capacity. Amounts awarded on the other heads are also excessive.

11. Per contra, the learned counsel for the first respondent contended that the first respondent has proved by evidence that he has suffered permanent disability and he is not able to do the work and first respondent has suffered loss of earning capacity. Tribunal has appreciated the facts of the case and given reasons



for applying multiplier method. Amounts awarded as compensation is just compensation and therefore, prayed for dismissal of the appeal.

12. The points for consideration in this appeal are:

(i) whether multiplier method adopted by the Tribunal is correct?

ii) whether the compensation awarded by the Tribunal is just or excessive?

13. Points (I) & (ii)

The first respondent has claimed a sum of Rs.25,00,000/- as compensation for the permanent disability suffered by him on his right leg. According to the first respondent, on 26.07.2011 at 14.30 hours while he was riding the motorcycle in V.E. Road, Tuticorin, Hyundai Car belonging to second respondent was driven in a rash and negligent manner coming in wrong side in one way traffic, dashed against him and he suffered multiple injury. He was treated in AVM hospital as Inpatient from 26.07.2011 to 18.11.2011 and again from 26.08.2011 to 04.09.2011.

14. The first respondent underwent a surgery. Due to the accident, his right leg was shortened by 3 c.m.. His movement in right leg got restricted and he is unable to do the work, as he was doing earlier. He was working as daily savings deposit collection agent at Tuticorin, Melur Co-operative Bank, New Colony Branch and therefore, he has to travel a lot. As per Ex.P12 - Income Tax return filed by him for the year 2010-11, his monthly income is Rs.10,000/-. The Tribunal accepting Ex.P12, correctly fixed his income as Rs.10,000/- per month. He is undergoing physiotherapy treatment. He has to undergo another surgery at the cost of Rs.1,00,000/-. Further on his complaint, a case was registered in Crime No.373 of 2011, for the offences under Sections 279 and 338 of IPC, on the file of Thoothukudi Central Police, against the driver of the Hyundai Car.

15. We have heard the learned counsel appearing for both parties and perused the materials on record.

16. From the evidence on record, it is seen that the first respondent has proved that accident took place only due to rash and negligent driving by driver of the Hyundai Car. By examining PWs.2 and 3, Doctors, first respondent has proved that he has suffered permanent disability in his right leg. From the photograph filed by the first respondent, it is seen that his right leg is dis-figured. The Tribunal considering the nature of work done by the first respondent and his age, came to the conclusion that multiplier method is proper method to arrive at compensation for future loss of earning.



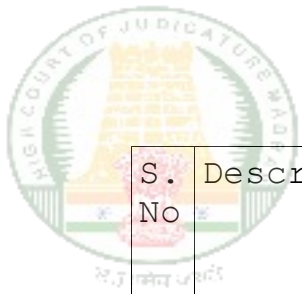
17. The learned counsel for the appellant contended that applying multiplier method in the case of injury is not a proper method and quantum of compensation has to be arrived, by taking into account the number of grievous injuries. The said contention is untenable.

18. It is well settled by various Judgments of this Court and Hon'ble Apex Court that in a case of injury, compensation could be awarded by applying multiplier method.

19. From the facts and circumstances of the case, this Court has to consider the nature of disability and whether the claimant could do the work as he was doing earlier or his capacity is reduced or he is totally incapable and incapacitated to do any work.

20. In the present case, the first respondent has suffered permanent disability in his right leg, by shortening 3 cm and restriction of movement of right leg. The first respondent is a collection agent and he has to travel considerable distance to do his work. The first respondent has stated that he is unable to do work as earlier and his earning capacity has been reduced and he could not do his work for one year. Taking into consideration this fact, the Tribunal has concluded that multiplier method is the proper method to arrive at compensation for loss of earning capacity. We do not find any reason to interfere with the said finding.

21. The first respondent was 42 years, at the time of accident. As per Section 163(A) of Motor Vehicles Act, 1988, 15 is not correct multiplier. As per the Judgment reported in 2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another), correct multiplier is only 14. By applying multiplier 14, the loss of income would be arrived at Rs.12,43,200/- (Rs.10,000/- x 12 x 74/100 x 14). The Tribunal has granted a sum of Rs.25,000/- towards pain and sufferings. The said sum is too meagre. Therefore, by invoking discretionary powers under Order 41 Rule 33 CPC the said amount has to be enhanced. Rs.25,000/- awarded by the Tribunal towards pain and sufferings is hereby enhanced to Rs.1,00,000/-. The first respondent was treated as inpatient for 34 days. But, the Tribunal did not award any amount towards the attender charges. Therefore, a sum of Rs.25,000/- is awarded towards attender charges. In all other aspects, the amounts awarded by the Tribunal are hereby confirmed. Therefore, the award of the Tribunal is enhanced from Rs. 17,85,405/- to Rs.17,96,605/- in the following manner:-



S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Loss of future earning	13,32,000	12,43,2000	Reduced by Rs.88,800/-
2.	Pain and suffering	25,000	1,00,000	Enhanced by Rs.75,000/-
3.	Mental agony	25,000	25,000	Confirmed
4.	Medical bills (Ex.P6)	3,13,405	3,13,405	Confirmed
5	Further treatment (Ex.P.18)	30,000	30,000	confirmed
6.	Extra nourishment	5,000	5,000	Confirmed
7	Transport expenses	5,000	5,000	Confirmed
8	Future Medical expenses	25,000	25,000	Confirmed
9	Loss of amenities in life	25,000	25,000	confirmed
10	Attendant charges	-	25,000	Awarded
	Total	17,85,405	17,96,605	Enhanced by Rs.11,200/-

22.The interest at the rate of 7.5% per annum remains unaltered.

23. In the result, the Civil Miscellaneous Appeal filed by the appellant / Insurance Company, is disposed of and the amount awarded by the Tribunal is enhanced to Rs.17,96,605/- (Rupees Seventeen Lakhs Ninety Six Thousand and Six Hundred and Five only). The Appellant is directed to deposit the said amount with interest at 7.5% per annum, to the credit of MCOP.No.182 of 2012 on the file of Motor Accident Claims Tribunal/ I Additional District Court, Thoothukudi, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit the first respondent is directed to withdraw the entire award amount, with respective proportionate interest and costs, less the amount, if any already withdrawn. The appellant is entitled to withdraw refund of excess amount if any. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/



To
Motor Accident Claims Tribunal
(I Additional District Judge),
Thoothukudi

+1cc to Mr.S.Natarajan, Advocate Sr.No. 51375
+1cc to Mr.R.Pon Karthikeyan, Advocate Sr.No. 51062

am
AA/KBM/SAR-II/28.10.2015/7p-4c

C.M.A(MD) No.1317 of 2013
02.09.2015