BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.07.2015

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
CMA.(MD)Nos.1761 of 2013

Marimuthu : Appellant/Petitioner

Vs.

1.Ulagamadha
2.National Insurance Company Ltd.,
Main Road, Kovilpatti. : Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award made in M.C.O.P.No.56 of 2003, dated 29.11.2008 on the file of the Motor Accident Claims Tribunal(Sub-Court, Ambasamuthiram)

For Appellant : Mr.U.Minnavadi
For R1 : No Appearance
For R2 : Mr.J.S.Murali

JUDGMENT

Challenging the quantum of compensation awarded in M.C.O.P.No.56 of 2003, dated 29.11.2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Ambasamuthiram, the claimant has filed C.M.A(MD)No.1761 of 2013, for enhancement of compensation.

2. On 27.05.2001, when the appellant and others were travelling in a Tata Sumo Car bearing registration No.TN 69 Y 0969, at about 21.15 hours, an accident took place and in which, the appellant was injured. The vehicle belonged to the first respondent herein and insured with the second respondent.

3. The first respondent remained ex-parte before the Tribunal. The second respondent in the counter statement denied their liability to pay compensation on the ground that the vehicle was insured for personal use and the appellant travelled as a passenger by paying fare and the vehicle was used for commercial purpose.

4. Considering the evidence on record, the Tribunal came to the conclusion that the appellant and others travelled in the vehicle to conduct the first death anniversary ceremony of the husband of the first respondent and to attend a marriage and while returning, the accident took place. The brother-in-law of the first respondent also travelled in the said vehicle. Based on these pleadings, the Tribunal by order dated 29.11.2008 awarded compensation of Rs.74,250/- with 7.5% interest per annum. This amount was arrived at by taking into account the nature of injury suffered by the appellant. For each injury, the Tribunal awarded fixed compensation and arrived at total compensation of Rs.74,250/- to the appellant including compensation for pain and suffering.

5. The learned counsel for the appellant contended that the Tribunal awarded only a meagre amount and the Tribunal should have

applied multiplier method for compensation for loss of earning capacity to the appellant. The Tribunal did not grant compensation for the petitioner for the period for non-employment.

6. He relied on the following judgments in support of his contentions:

(a) In *Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd., and another* reported in *2010(2) TN MAC 356 (SC)*, wherein, in Paragraph Nos.18,19, 22, 23, it has been held as follows:

> *"18. It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the Concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable (See Helan C.Rebello and others v.Maharashtra State Road Transport Corpn. And another, AIR 1998 SC 3191).*
>
> *19.This Court also held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly in as much as in a free country law must value lift and limb on a generous scale (See Hardeo Kaur and others v.Rajasthan State Transport Corporation and another, 1992(2) SCC 567).*
>
> *22.This Court could have remanded the matter to the High Court for assessment of compensation on the aforesaid lines but the accident took place in March 2003 and a remand to the High Court for determination of compensation will further delay the matter. Therefore, to shorten litigation, and having regard to this Court's power under Article 142 of the Constitution to do complete justice between the parties, this Court itself assesses the compensation as follows:*
>
> *Therefore, in the present case, the Loss of Future Income may be calculated using the multiplier method as follows:*
>
> *Income of the Appellant (as accepted by the High Court) is Rs.3,000/- p.m. Therefore, the yearly income is Rs.36,000/-*
>
> *Multiplier according to age (30 years) as per Schedule is 17.*
>
> *Thus, the total comes to Rs.36,000/- x 17- Rs.6,12,000/-.*
>
> *Percentage of disablement is 20%*

Therefore, loss of future earnings would come to Rs.1,22,400/-

23.If this is added to the compensation provided by the High Court in other categories, the total compensation comes to Rs.1,22,400/- +Rs.72,000/-, that is Rs.1,94,400/-."

(b) *Sanjay Batham vs. Munnalal Parihar and others* reported in *2011(2) TAN MAC 651(SC):*

6.On an appeal filed by the Appellant, the learned Single Judge of the High Court re-appreciated the evidence produced by the parties and determined the amount of compensation by taking the Appellant's income to be Rs.1500/- per month. He assessed the disability of Appellant to be 50% and held that loss of earning would be Rs.750/- per month. The learned Single Judge applied the multiplier of 16 and concluded that the Appellant was entitled to a sum of Rs.1,44,000/- in lieu of the Loss of Earning. The learned Single Judge also awarded Rs.50,000/- for Treatment and Rs..56,000/- for paid and suffering and Loss of Marriage Prospects. However, the rate of interest was reduced from 9% to 7% per annum.

14. It is not in dispute that at the time of accident, the Appellant was earning Rs.50/- per day by doing the work as an unskilled labourer with Raj Gas Agency. It is also not in dispute that as a result of accident, the Appellant suffered injuries on different parts of body including the head and after operation left portion of his body, ie left hand and left leg got paralyzed and as a result of that he will not be in a position to do the work which he was doing before the accident. In his deposition, Dr.N.D.Vayas, Head of Neurosurgery Department, J.A.H. Hospital, who treated the Appellant before and after the operation, stated that left portion of the Appellant's body was paralyzed but after treatment there was slight improvement in his condition. Dr.Vayas then gave out that the Appellant will require further treatment for paralysis. The learned Single Judge, who had the occasion to see the Appellant in the Court, found that he was not in a position to move his left hand and left leg. He assessed the disability to be 50% and enhanced the compensation awarded by the Tribunal. However, he committed an error by applying the multiplier of 16 ignoring that at the time of accident, the Appellant's age was only 20 years. In Sarla Verma v. Delhi Transport Corporation, 2009(2) TN MAC 1 SC: 2009 (6) SCC 121 this Court has considered several issues including the application of correct multiplier and held:

"We therefore hold that the multiplier to be used should be as mentioned in Column(4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and

Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 15 years, and M-13 for 46 to 50 years, then reducede by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

In view of the above noted judgment, we hold that multiplier of 18 deserves to be applied for the purpose of determining the compensation playable to the appellant in lieu of the Loss of Earning. Thus, under this head the Appellant will be entitled to a sum of Rs.1,62,000/-"

(c) *United India Insurance Co. Ltd., Branch Manager, Salem Division Office, Salem* reported in *2011(2) TNMAC 183*,

"12.Further, on the basis of Ex.A7, Pay Certificate, the Tribunal had determined the monthly income of the Claimant at Rs.3,000/-. Since the deceased was aged about 28 years at the time of occurrence, the multiplier ''18'' was selected to determine the Loss of Earning Capacity at the ratio of 12%. Accordingly a sum of Rs.77,760/- was awarded for Permanent Disability.

13. In this connection, the learned counsel appearing for the first respondent/claimant has submitted that the injured First Respondent/Claimant had sustained eight injuries, out of which, three were grievous in nature and five were simple in nature.

14.He has also submitted that P.W.3, the Doctor, had also correctly assessed the permanent disability of the Claimant at 12% and on the basis of his monthly income of Rs.3,000/-, the Tribunal had correctly calculated a sum of Rs.77,760/-, after applying the multiplier of ''18''. Hence, the award of the Tribunal need not be interfered with."

7. Per contra the learned counsel for the second respondent contended that the order of Tribunal is just and proper and multiplier method need not be applied in all the cases and he relied on the following judgments and only when loss of earning capacity is proved by the appellant he is entitled to compensation under that heading. In the present case, appellant failed to prove that his earning capacity had been reduced due to the injuries sustained by him in the accident.

8.The learned counsel for the second respondent relied on the following judgments:-

(a) In *Raj Kumar vs. Ajay Kumar & another* reported in *2010(2) TN MAC 581 (SC)*, wherein in Paragraph Nos.8, 9, 13, it has been held as follows:

"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 case, 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 case, 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 required 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 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(2) TN MAC 356 (SC) 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.*

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 as 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.

(b) New India Assurance Co. Ltd., vs. Kannayiram reported in *2012(1) TN MAC 611 (DB):*

"19. The above guidelines are appropriate in applying the multiplier in functional disability. The Court must first decide whether there is any functional disability in relation to the avocation of the injured claimant. 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.

29. Therefore, the compensation cannot be assessed on functional disability. Therefore, the tribunal is wrong in *fixing the monthly income at Rs.10,000/- and mechanically applying the multiplier theory. However, the Claimant has suffered 70% permanent disability and 25% partial disability and therefore, We are of the considered view he is entitled for a compensation for such disability at the rate of R.3,000/- per percentage as an exceptional case.*

9. The only question to be decided in the appeal is whether multiplier method should have been applied by the Tribunal to grant compensation for loss of earning capacity.

10. A person who has sustained injuries in an accident will be entitled to compensation for loss of earning capacity only if he proves the said fact. This issue had been considered by the Apex Court in the Judgment reported in *2010(2) TNMAC 581 (SC) (Rajkumar vs. Ajay Kumar & another)* in paragraph 13 it has been held as follows:-

"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 as 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.

11. In the present case, the appellant has not proved that he is unable to do work which he was doing earlier and thereby his income has been reduced or his future earning capacity has been reduced. The Tribunal has given categorical finding that appellant has failed to prove his loss of future earning capacity. The said finding is based on materials and evidence on record. Therefore, I hold that appellant is not entitled to any compensation for loss of future earning capacity.

12. It is well settled that multiplier method need not be applied in all cases of injury. The compensation for injuries

suffered by the victim is different from compensation for loss of earning capacity. In a given case, Court can grant both compensation for injuries sustained as well as for loss of earning capacity in the facts and circumstances of the case. In the present case, the appellant is entitled to compensation only for injuries suffered by him. In the circumstances of the case, Tribunal has rightly granted lumpsum compensation for the injuries suffered by him.

13.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge,
The Motor Accident Claims Tribunal
Ambasamuthiram

Copy to:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai

+One cc to Mr.J.S.Murali, Advocate, SR.No.38442

am/pm
RL/4 c- 11/8/2015

CMA.(MD)No.1761 of 2013

14.07.2015