IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.379 of 2016

The New India Assurance Co. Ltd.,
Motor Claims Third Party Cell,
No.45, Moore Street,
Chennai 600 001. .. Appellant/Respondent-II

Vs.

1. D.Ramkumar
2. P.V.Jayanthi ..Respondents/Petitioner & /Respondents-I

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.07.2015 passed by the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai, in M.C.O.P.No.3993 of 2009.

For Appellant : Mr.J.Chandran

For 1st Respondent : Mr.T.Karthick Srinath

J U D G M E N T

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

Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the 1st respondent/claimant.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, by its judgment dated 20.07.2015 in M.C.O.P.No.3993 of 2009, the Insurance Company has come up with the present appeal.

3. In an accident which occurred on 17.04.2009, about 10.00 a.m., when the claimant was travelling in a Car bearing Registration No.TN-09 AV 9804 near Kolambakkam, Karpagavinayagar Engineering College, GT Padalam, P.S. Line proceeding towards

Villupuram, a Lorry bearing Registration No.TN 28 4455 proceeding in front of the Car driven by its driver in a rash and negligent manner in a great speed, suddenly turned and hit the claimant's car, thereby resulting in grievous injuries to the claimant. For the injuries sustained, the claimant filed a Claim Petition before the Tribunal seeking a sum of Rs.25,00,000/- as compensation. The owner of the Lorry, who is the 2nd respondent herein remained exparte before the Tribunal. Disputing the manner of accident and contending that the compensation claimed is too high, the appellant Insurance Company resisted the Claim Petition.

4. Before the Tribunal, in support of the claim, the claimant was was examined as P.W.1; one Dr.Sai Chandran was examined as P.W.2 and Exs.P1 to P13 were marked, the details of which are as follows:

Ex.P-1	FIR
Ex.P-2	Accident Register copy
Ex.P-3	Discharge Summaries
Ex.P-4	Discharge Summaries
Ex.P-5	Discharge Summaries
Ex.P-6	Discharge Summaries
Ex.P7	Discharge Summaries
Ex.P8	Discharge Summaries
Ex.P9	Discharge Summaries
Ex.P10	Medical Bills
Ex.P11	Claimant's Degree Certificate copy
Ex.P12	X-ray
Ex.P13	Disability Certificate

On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

5. The Tribunal, taking note of the oral evidence of P.W.1 coupled with the documentary evidence vide Ex.P1 - F.I.R., came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN 28 4455 and awarded a sum of Rs.19,60,000/- as compensation to the claimants with interest at 7.5% per annum, from the date of filing of the claim petition till the date of deposit, under the following heads:

Transportation and Miscellaneous expenditure	Rs. 1,00,000.00
Extra nourishment	Rs. 3,00,000.00
Attender charges	Rs. 3,00,000.00
Medical expenses	Rs. 15,000.00
Disability	Rs. 1,95,000.00
Loss of earning during the period of treatment	Rs. 4,50,000.00
Damages for pain, suffering and trauma	Rs. 3,00,000.00
Loss of amenities	Rs. 3,00,000.00
Total compensation	Rs.19,60,000.00

6. Though the appellant/Insurance Company has raised an issue as regards the manner of accident, learned counsel appearing for the Insurance Company restricted his arguments mainly questioning the exorbitant compensation awarded by the Tribunal. It is also his contention that the percentage of permanent disability fixed by the Tribunal is too high when compared to the injuries sustained by the claimant.

7. While so, learned counsel appearing for the 1st respondent/claimant would submit that the compensation awarded by the Tribunal is just and reasonable and that the percentage of disability assessed by the Doctor is also reasonable.

8. Heard the submissions made by the learned counsel on either side and carefully perused the materials available on record.

9. On a perusal of the records, it is seen that at the time of accident, the claimant was aged 45 years and was working as a Regional Manager in a Private Company. In the Claim Petition, the claimant has averred that he has been earning a sum of Rs.75,000/- per month. Though there is no proof in support of his avocation, in view of the ratio laid down in the case of Om Praksh Gupta and others v. Wajeer Ahmed Ali Nayak Wadi and another (2013 ACJ 2498), wherein, the income of an Engineering student who died in an accident in 2003, was fixed notionally as Rs.15,000/- per month, the Tribunal fixed the notional monthly income of the claimant at Rs.15,000/-. In

view of the same, this Court has no reason to modify the notional monthly income of the claimant and accordingly, the same is confirmed.

10. The next issue is the fixation of percentage of permanent disability of the claimant. P.W.2, Doctor who examined the claimant assessed his permanent disability at 65% in view of Grade III C fracture, right intercondylar humerus with supercondylar extension, Thrombus in brachial artery with absent distal circulation, laceration left eye, 'K' wire fixation of right elbow, external fixation of right elbow, brachial artery reconstruction with reverse vein graft, suturing of left eye lid wound and multiple internal and external injuries all over the body. Undoubtedly, the claimant has suffered severe injuries and has undergone surgeries, but, there is no amputation of any part of the body.

11. As regards fixation of permanent disability and calculation of future loss of earning based on the disability sustained by the injured, the Hon'ble Supreme Court, in the case of Raj Kumar vs. Ajay Kumar and another reported in (2011) 1 SCC 343, has framed guidelines. Relevant portion of the said judgment is usefully extracted hereunder:

> "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%.
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> 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 permanent 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."

12. Taking note of the guidelines framed in the said judgment and applying the same to the facts of this case and also that there is only a functional disability and not a permanent disability, this Court is inclined to reduce the percentage of disability of the injured claimant from 65% to 50%. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to him. Therefore there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses. As the injured claimant is incapacitated to pursue his career to the extent as before, the loss of future earning capacity is is also assessed

as 50%. Thus, compensation towards "future loss of earning" to the claimant in this case, is calculated as under:

Annual income of the injured claimant (Rs.15,000/- x 12)	:	Rs. 1,80,000/-
Loss of future earning per annum (50% of the expected annual income)	:	Rs. 90,000/-
Multiplier applicable with reference to the age of the claimant	:	13
Loss of future earnings : (Rs.90,000/- x '13')	:	Rs. 11,17,000/-

13. Though the Tribunal has not awarded any amount towards "future loss of earning", the compensation awarded under different heads is undoubtedly exorbitant. As this Court has awarded separate compensation to the claimant under the head "future loss of earning", the compensation awarded under the heads "disability" and "loss of earning during treatment period" is struck down and the compensation under other heads is modified, as tabulated below:

Transportation charges	:	Rs. 20,000.00
Pain and Suffering	:	Rs. 1,00,000.00
Extra nourishment	:	Rs. 50,000.00
Attender charges	:	Rs. 25,000.00
Loss of amenities	:	Rs. 50,000.00

Since a sum of Rs.15,000/- awarded towards "Medical expenses" is supported by valid documents, the same is confirmed. Also, taking note of the injuries suffered, this Court is inclined to award a sum of Rs.20,000/- towards "Future medical expenses"

14. In fine, the award of the Tribunal is modified and the details of the revised award would run thus:

Heads	Award of the Tribunal	Revised Award of this Court
Future loss of earning	-	Rs.11,17,000.00
Future medical expenses	-	Rs. 20,000.00

Heads	Award of the Tribunal	Revised Award of this Court
Medical expenses	Rs. 15,000.00	Rs. 15,000.00
Transportation charges	Rs. 1,00,000.00	Rs. 20,000.00
Pain and suffering	Rs. 3,00,000.00	Rs. 1,00,000.00
Extra nourishment	Rs. 3,00,000.00	Rs. 50,000.00
Attender charges	Rs. 3,00,000.00	Rs. 25,000.00
Loss of amenities	Rs. 3,00,000.00	Rs. 50,000.00
Disability	Rs. 1,95,000.00	-
Loss of earning during period of treatment	Rs. 4,50,000.00	-
Total compensation	19,60,000.00	Rs.13,97,000.00

15. Thus, the injured claimant is entitled to a sum of Rs.13,97,000/- (Rupees Thirteen Lakhs Ninety Seven Thousand only) as compensation. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed. It is needless to state that if the Insurance Company has not deposited any amount so far, it is directed to deposit the entire award amount as ordered by this Court together with accrued interest from the date of the claim petition till the date of deposit to the credit of M.C.O.P.No.3993 of 2009 on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the award amount. It is also made clear that the award amount shall be paid to the claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

The Civil Miscellaneous Appeal is partly allowed with the above modification. No costs. Consequently, connected C.M.P.No.2890 of 2016 is closed.

aeb

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

The Motor Accidents Claims Tribunal,
(V Court of Small Causes),Chennai.

+ 1 CC TO J.CHANDRAN, ADVOCATE SR 10848

+ 1 CC TO T.KARTHICK SRINATH, ADVOCATE SR 10951

KR/24/3/16