

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.532 of 2016
& C.M.P.No.4419 of 2016

Universal Sampo General Insurance
Company Ltd.,
201-208, Crystal Plaza,
Opp. Infinity Mall,
Link Road,

Andheri (W) Mumbai-400 058.

Service through: 554, 555,
Central Towers, 5th Floor,
Anna Salai, Teynampet,
Chennai-18.

..Appellant/IIInd respondent

Versus

1.K.Ramamurthy

..Respondent/Petitioner

2.K.Pandian

..2nd Respondent/1st Respondent

(second respondent in CMA remained
exparte before the Tribunal) as a 1st respondent)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the judgment and decree dated
09.01.2015 made in M.C.O.P.No.5585/2011 on the file of the Motor
Accidents Claims Tribunal, (VI Judge, Small Causes Court),
Chennai.

For Appellant : Ms.R.Vijaya Kamala
For Respondents : Mr.N.Mohan for R1

J U D G M E N T

Assailing the quantum of compensation of Rs.10,13,600/- as
against the claim of Rs.12,00,000/- for the multiple injuries
sustained by the claimant, the Universal Sampo General Insurance
Company Limited/appellant herein has brought this appeal.

2.The case of the claimant is that on 30.09.2010, at about
23.00 hrs. while the claimant was travelling in the auto
rickshaw bearing Registration No.TN 22 BM 4349 from East to West
direction on Poikadai to Mangadu Road, which was driven by its

driver in a rash and negligent manner, the said vehicle hit on a two wheeler bearing Registration No.TN 22-5389 in which the claimant sustained grievous injuries.

3.Ms.R.Vijaya Kamala, learned counsel appearing for the appellant would submit that the learned Tribunal has wrongly applied the multiplier method while calculating the loss of future earning capacity and awarded a huge compensation of Rs.5,61,600/- for a non-schedule injury. She would further submit that P.W.2/Doctor K.J.Mathiazhagan has assessed 65% partial and permanent disability, without following the guidelines laid down by the Ministry of Social Justice and Empowerment while assessing disability and on the basis of the same, the learned Tribunal has erroneously arrived its finding that the claimant would suffer 30% loss of future earning capacity and has calculated the same as Rs.5,61,600/- ($6500 \times 50/100 \times 12 \times 16 \times 30\%$). Adding further, she would submit that as the claimant did not have any permanent employment, the learned Tribunal has erroneously added 50% of the actual salary towards future prospects, without any supporting document to prove the income, by merely relying upon the marking of a salary slip as Ex.P2 and therefore, the approach adopted by the learned Tribunal needs interference.

4.Learned counsel appearing for the first respondent would submit that the learned Tribunal, considering the fact that the claimant was aged about 32 years at the time of accident and was earning a sum of Rs.6,925/- per month as a Messenger in Bharathan Publications Pvt. Ltd. and to prove the income, Ex.P2/salary slip for the month of September 2010 has been filed and considering the socio economic condition forced to any individual to earn at the rate of Rs.200/- per day for his livelihood, as per the ratio laid down by the Hon'ble Apex Court in the case of Syed Sadiq and others vs. Divisional Manager United India Insurance Co. Ltd. reported in 2014 ACJ 627 wherein it has held that the claimant was a vegetable vendor, who met with an accident in the year 2008 and has assessed the monthly income at Rs.6,500/- per month, has fixed the monthly income of the claimant at Rs.6,500/-. Considering the nature of treatment namely fracture of both bones in the right leg and fracture of shaft of femur and screw has been fixed and removed and he was admitted in the private hospital for getting sufficient treatment and considering the pain and sufferings sustained by the claimant for which Doctor K.J.Mathiazhagan, who was examined as P.W.2 has issued 65% partial permanent disability for the above said injuries, the learned Tribunal has fixed the loss of earning capacity percentage as 30% and thereby, arrived a sum of Rs.65,000/- (6500×10) towards loss of income. Therefore, the calculation for loss of earning capacity has been arrived at Rs.5,61,600/- ($6500 \times 50/100 \times 12 \times 16 \times 30\%$), which does not warrant interference.

5.I find merits on the submissions made by the learned counsel appearing for the first respondent/claimant. The claimant, while travelling as a passenger in a Autorickshaw, the driver of the same caused the accident by hitting against a motor bike and as a result, the claimant sustained multiple injuries and he was taken to Government Hospital and subsequently for getting better treatment, he was shifted to Ramachandra Medical Hospital, Porur. Ex.P5/discharge summary issued by Sri Ramachandra Medical Centre clearly shows that the claimant was admitted on 30.09.2010 and discharged on 02.10.2010, secondly he was admitted on 02.10.2010 and discharged on 08.12.2010 for the IM nailing of right femur and right tibia, thirdly he was admitted on 13.06.2011 and discharged on 01.07.2011 for the injuries of synovitis of right knee and right knee antrotomy was done, fourthly he was admitted on 19.12.2011 and discharged on 21.12.2011 for the fracture of SOF with implant and finally he was admitted on 07.04.2012 and discharged on 05.05.2012 for implant exit from the right tibia and right femur has been done.

5.1.As the injured was serving as a Messenger in Bharathan Publications Pvt. Ltd. with a monthly salary of Rs.6,925/-, which has been supported by the pay slip, marked as Ex.P.2, issued by the said company, following the ratio laid down by the Hon'ble Apex Court in the case of Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd. Reported in 2014 ACJ 627 holding that the claimant was a vegetable vendor, who met with an accident in the year 2008 and considering the present rising prices in agricultural product, fixing Rs.6,500/- as monthly income of the claimant, the learned Tribunal has rightly fixed a sum of Rs.6,500/- as monthly income of the claimant and it is relevant to extract para 9 as under:

"9.There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the Appellant/Claimant. On the other hand, going by the present state of economy and the rising prices in Agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."

5.2.Learned Tribunal, considering the ratio laid down by the Hon'ble Apex Court in the case of Santhosh Devi vs. National Insurance Company and others reported in 2012 (2) TN MAC 1 (SC), has added 50% of the actual salary towards future prospects. As he was taking treatment as inpatient at Rama Chandra Hospital for a period of 119 days and underwent repeated operations, the learned Tribunal, keeping in mind that the claimant has taken treatment for a period of 10 months, has fixed the loss of earning capacity percentage as 30% and thereby arrived a sum of Rs.65,000/- (6500 x 10) towards loss of income and accordingly arrived a sum of Rs.5,61,600/- towards loss of earning capacity (6500 x 50/100 x 12 x 16 x 30%), by correctly applying the

multiplier '16'. Therefore, the contentions made by the Insurance Company that the learned Tribunal has committed mistake in adopting multiplier method is devoid of merit. Even the award of compensation with regard to other heads also cannot be found fault with, since the learned Tribunal following the ruling of Apex Court in the case of Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd. Reported in 2014 ACJ 627 and Santhosh Devi vs. National Insurance Company and others reported in 2012 (2) TN MAC 1 (SC), has awarded the compensation under various heads. Therefore, this Court is not able to find any infirmity in the impugned award.

6.In fine, for the reasons stated above, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7.Learned counsel for the appellant submitted that the entire award amount has been deposited. It is for the claimant to move a petition before the learned Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vga
To

1.The Motor Accidents Claims Tribunal,
(VI Judge, Small Causes Court), Chennai

Copy to: The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P. Anbarasan, Advocate, S.R.No.54828
+1cc to Mr.R. Vijaya Kamala, Advocate, S.R.No.55171

SSI(CO)
EU(03/11/2016)

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