IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.06.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1185 OF 2016
AND CMP NO.8968 OF 2016

Branch Manager
M/s.National Insurance Co. Ltd.,
Tanjavur Town,
Mayiladudurai. ... Appellant/2nd Respondent

Versus

1.K.Senthilkumar
2.P.Manimegalai
3.Sethuraman ... Respondents/petitioner/
1 & 3 Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.01.2016 made in MCOP No.242 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) Mayiladuthurai.

For Appellant : Mr.J.Chandran
For Respondent-1: Mr.LSM. Hasan Fizal

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award of compensation passed in MCOP No.242 of 2010, dated 28.01.2016, on the file of Motor Accidents Claims Tribunal (Additional Sub Court) Mayiladuthurai, National Insurance Company Limited, preferred this appeal, on the grounds of liability and quantum.

2. According to the appellant, the accident which had occurred on 22.12.2009, at 09.30 a.m, and the death caused by the same is not disputed. But the second respondent - owner of the bus was not having fitness certificate and permit to run the mini bus, on the date of accident. According to the appellant, the third respondent bus has violated the policy condition and therefore, they are not liable to pay any compensation.

3. On the other hand, the first respondent / claimant would contend that the bus was having proper fitness certificate and thus, the insurance company is liable to pay the compensation.

4. We have heard the submissions made on either side and perused the materials available on record.

5. We have perused the evidence of R.W.1 - Administrative Officer of the appellant / Insurance Company. From the evidence, it could clearly be elicited that the fitness certificate was extended from 06.02.2006 to 05.02.2011 for a period of five years. During cross examination, R.W.1 had categorically admitted the contents of the documents produced before him, in respect of extension given by the Regional Transport Officer, Thanjavur.

6. We have also perused Ex.P2 - report of the Motor Vehicle Inspector, in which, at Column No.8, date of issue and expiry of fitness certificate has been given. In the said column, the date of issue of the fitness certificate was given as 08.09.2000 and the validity of permit was given as from 08.01.2009 to 09.01.2010. Date of expiry of the insurance certificate was given as 21.02.2010. The insurance company had renewed the insurance and it has expired on 21.02.2010. The accident had taken place on 22.12.2009. In such circumstances, it can be easily inferred that during the insurance coverage, there should have been valid fitness certificate issued to the vehicle, otherwise, in normal circumstances, the insurance certificate will not be issued.

7. Apart from this, by way of cross examination, it is clearly proved on the side of the first respondent / claimant that there was an endorsement by the Regional Transport Officer, Thanjavur, extending validity of the fitness certificate from 06.02.2006 to 05.02.2011, for a period of five years. Therefore, it is crystal clear that the vehicle had not violated any policy condition and the insurance company is liable to pay the compensation.

8. In respect of quantum, the appellant has raised an issue that the percentage of disability fixed by the Tribunal at 92% is very excessive and is liable to be interfered with. The Doctor, who issued the disability certificate was not a Neuro Surgeon or a Spinal Specialist and therefore, the percentage of disability fixed by the Doctor as well as acceptance of the same by the Tribunal, is erroneous. The discharge summaries issued by the Hospital, where the injured underwent treatment, clearly shows the grievousness of the injuries. From the perusal of the discharge summaries, marked as Ex.P4, Ex.P13 and Ex.P18, it is seen that the injured has undergone various surgeries. Finally, it was diagnosed as Post Traumatic Sciatica and spine posterior

pedicle fixation with metal artifact seen in D_{11} - L_1 vertebra. In the shoulder, K wire was fixed and then removed. Further diagnosis says fracture and decompression, D_{11} - L_1, pedicle screw fixation, posterolateral fixation. screw in the spinal cord. The impression found in the discharge summaries are extracted hereunder:

"EX.P4 - DISCHARGE SUMMARY

ROHINI HOSPITALS
Arulananda Nagar Extn., Pudukkottai Road, Thanjavur - 7.
Phone: 04362 - 279801 - 06 Fax: 04362 - 233601

DISCHARGE SUMMARY

Name of the Patient : Mr.Senthil Kumar Age: 32 Yrs Sex: M
Name of the Consultant : Dr.S.Ramu MS Mch IP No.: 549
Dr.R.Rathinasabapathy
M.S.Ortho
Date of Admission : 6/1/2010 Surgery: Yes/No
Date of Discharge : 11/1/2010 Date of Surgery:
Diagnosis : D12 Compression MLC : Yes/No
AR No.
CMO

TREATMENT SUMMARY:

De compression, D11 - L Pedicle screw fixation, posterolateral fixation.

Lab Diagnosis:-
Blood :- Hb - 16.7
Group : A1 Positive
Sugar (R) - 178
Urea - 26
K+ - 36
CL - 92

CR Scan (or) MRI:-
- OT of the brain - naved
any significant abnormality
- No evidence of EPH / SDH
MRI plain of the lumbar spine
Impression:-
* Wedge compression fracture dislocation of D12
* Posterior displacement of fractured foot with total extradural conus
compression
* Fracture WD B/n D_{11} D_{12} with posterior dislocation
* p+e vertebral soft tissues fluid collection fading to Rt. plewd knee

CO-CONSULTANTS OPINION / OPERATIVE NOTES:

GA pt prone mid line incision from P10 - L2. The muscles at D11 - D12 were badly lacrated and D12 was vert unstable entry pt in D11 L1 defined. 35 mm X 5 mm screws were passed through D11. 40 X 6 mm screws were passed through L1. (R) side rod was fixed. D12 decompression done. Cord was well seen not pulsatile. (L) side rod moeed both rods connected with transverse annector & 2 clamps. Bone graft placed with the posterolateral gulter wound closed in layers over a suction drain. Drainage done. All steps checked under clam.

Temp - 99.4 $^{\circ}$ F
Pulse - 90 / M
BP - 100 / 60 mm / Hg
ADVICE:

1)	D4 - Inj. Pipco 45 gm I.V.	bd X - - X
2)	Inj. Cifran I.V.	bd X - - X
3)	Inj. Themidol @ amp im	bd X - - X
4)	Inj. Fortwin 1 cc	
5)	Inj. Phenergan 1 cc	
6)	Tab. Amitryphylline 10 mg	bd 1 - - 1
7)	Tab. Panto P3	+ ds 1 1 - 1
8)	Tab. TAP 650 mg	+ ds 1 1 - 1
	Syp. Bestone	+ ds 3 3 - 3 (teaspoon)
	Defenac Suppository	bd X - - X

EX.P13 - DISCHARGE SUMMARY

ROHINI HOSPITALS
Arulananda Nagar Extn., Pudukkottai Road, Thanjavur - 7.
Phone: 04362 - 279801 - 06 Fax: 04362 - 233601

DISCHARGE SUMMARY

Name of the Patient : Mr.Senthil Kumar Age : 32 Yrs Sex: M
Name of the Consultant : Dr.R.Rathinasabapathy IPNo.: 100/6/10
M.S.Ortho
Date of Admission : 5/6/2010 Surgery: No
Date of Discharge : 10/6/2010 Date of Surgery:
Diagnosis : POST TRAUMATIC SCLATICA MLC : No
AR No.
CMO

TREATMENT SUMMARY:

32 years male admitted with c/o. Burning sensation both legs, below groin since surgery . Not a known case of T_2DM/sHT.
O/E. conscious / oriented
CVS: S1S2 +
Rs: MVB+
BP: 110/70 mmhg
Pul: 76/mt
Temp: 98^{0} F

CO-CONSULTANTS OPINION / OPERATION NOTES:

DR. GULAM (ORTHO SURGEON) (OPINION)
- Pedicle screw fixation done
- 30 days pain free, then started burning below groin both legs.

DR. RAVICHANDRAN (Opinion)
- Bed sore +
- Flap cover
- Ulcer present

INVESTIGATION

05/06 Hb : 13.2 gms %
Urea : 23 mg/dl
Sug (R) : 97 mg/dl
Creatinine : 0.8 mg/dl

CR LS SPINE
- Posterior pedicle fixation with metal artifact seen in D11 - L1 vertebra

ROHINI HOSPITALS
Arulananda Nagar Extn., Pudukkottai Road, Thanjavur - 7.
Phone: 04362 - 279801 - 06 Fax: 04362 - 233601

DISCHARGE SUMMARY

Name of the Patient : Mr.Senthil Kumar Age : 32 Yrs Sex: M
Name of the Consultant : Dr.R.Rathinasabapathy M.S.Ortho IP No. : 296
Date of Admission : 13/11/2010 Surgery: Yes
Date of Discharge : 20/11/2010 Date of Surgery: 16/11/2010
Diagnosis : (R) shoulder K - wire removed MLC : No
AR No. -
CMO -

TREATMENT SUMMARY:
32 years old male patient admitted.
C/o. Right shoulder pain
No H/O. vomiting diarrhea
Not a known case of DN/SHD/BA/CAHD

O/E:- Patient is conscious, oriented, afebrile
BP : 130/90 MM/HG
Pulse : 82 b/mhs
Temp : 98^0 F
CVS : S_1 S_2 heard
Resp : Clear
Abdomen : Soft

TYPE OF SURGERY
Under GA, the K-wire was removed and wound closed, sutured in layer

INVESTIGATION
Blood:-

Hb %	:	13.3 gms %
Grouping & Typing	:	"A1" Positive
Urea	:	25 mgs %
Sugar (R)	:	87 mgs %
Creatinine	:	0.8 mgs %
HIV I & II	:	Negative

Electrolytes:

Na +	:	138 megl
K+	:	4.3 megl
Chlorides	:	101 megl

EX.P18 - DISCHARGE SUMMARY

ROHINI HOSPITALS
Arulananda Nagar Extn., Pudukkottai Road, Thanjavur - 7.
Phone: 04362 - 279801 - 06 Fax: 04362 - 233601

DISCHARGE SUMMARY

Name of the Patient : Mr.Senthil Kumar Age : 32 Yrs Sex: M
Name of the Consultant: Dr.R.Rathinasabapathy M.S.Ortho IP No.: 296
Date of Admission : 13/11/2010 Surgery : Yes
Date of Discharge : 20/11/2010 Date of Surgery: 16/11/2010
Diagnosis : (R) shoulder MLC : No
K - wire removed AR No. -
CMO -

TREATMENT SUMMARY:

TREATMENT GIVEN

Inj. Taxim 1g IV	Bd	(x - x)
Inj. Gara 80 mg IV		(x - x)
Tab. EMI 200 mg IV	Bd	(1 - 1)
Tab. Rebel +ds		(1-1-1)
Tab. Bidenzen Forte +ds		(1-1-1)
Cap. Proxyvon +ds		(1-1-1)
Tab. Bezoexm 0.25 mg	Hs	(0-0-1)
Tab. Reserve Plus	bd	(1 - 1)
Tab. Citremalal vit	Hs	(0-0-1) "

9. The evidence of claimant goes to show that he is paralyzed completely below the hip and he requires continuous medication as well as attendance both medical and personal. Considering all these things, the Tribunal has rightly fixed the percentage of disability and in all fairness, the functional disability is 100%. Therefore, the quantum of compensation fixed under this head cannot be said to abnormal or excessive. The compensation awarded under other aspects also is just and fair. Therefore, the compensation awarded by the Tribunal need not be interfered with.

10. At this juncture, this Court also deems it fit to extract paragraphs 4 to 14 from RAJKUMAR VS. AJAY KUMAR [2011 ACJ 1 (SC)] wherein, the Hon'ble Supreme Court explained with illustrations, as to how the extent of loss of earning capacity has to be fixed,

> "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)]."

11. The question as to whether, it is open to the insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery under Sections 149 (4) and (5) of the Motor Vehicle's Act, has been extensively considered in ICICI LOMBARD GENERAL INSURANCE COMPANY VS. ANNAKKILI [2012 (1) TN MAC 226] wherein, this Court, following the principles of law laid down by the Apex Court and the Hon'ble Division Bench judgments, held

that, payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, is statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis, the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act held that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, and further held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

12. In the light of the above, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

13. The appellant / insurance company is directed to deposit entire award amount, with proportionate interest at the rate of 7.5% per annum and costs, less the amount already deposited, if any, from the date of petition, till the date of realization, within a period of six weeks from the date of receipt of a copy of this order, to the credit of MCOP No.242 of 2010, on the file of Motor Accidents Claims Tribunal (Additional Sub Court) Mayiladuthurai. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on filing proper application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TK

To

The Motor Accidents Claims Tribunal
(Additional Subordinate Judge)
Mayiladuthurai.

copy to

The Section Officer
VR Section High Court Madras(+2 copies)

+1 cc to Mr.J.Chandran Advocate sr 40805

C.M.A.NO.1185 OF 2016

rj(co)
aa02/03/2018