IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.1631 of 2017
C.M.P.No.8639 of 2017

TATA AIG General Insurance Co. Ltd.,
Pondicherry 605 004. .. Appellant/2nd Respondent

vs.

1. A.Viji @ Vijay .. 1st respondent/Claimant

2. V.Murugan .. 2nd Respondent/1st respondent

Appeal against the fair and decretal order dated 06.06.2016, passed in M.C.O.P.No.2186 of 2014, on the file of the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant .. Mrs.C.Harini
for Mr.N.Vijayaraghavan

For 1st Respondent .. Mr.F.Terry Chellaraja

JUDGMENT

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

Challenge in this appeal filed by M/s.TATA AIG General Insurance Co. Ltd., Pondicherry, is to the quantum of compensation of Rs.15,55,800/-, with interest, at the rate of 7.5% per annum and costs, from the date of claim, till the date of deposit, awarded to the respondent/claimant, stated to have been engaged as a vessel seller by bicycle, and aged 22 years, at the time of accident.

2. Material on record discloses that on 14.02.2014, when 1st respondent/claimant was travelling as a pillion rider in a Motorcycle, bearing Registration No.TN 07 AZ 1059, a lorry, bearing Registration No.TN 31 AB 8149, insured with the appellant-Insurance Company, driven by the driver, in a rash and negligent manner, dashed against the motorcycle. Due to the impact, he fell down and sustained grievous injuries. In this regard, a case in Cr.No.53 of 2014, under Sections 279 and 337 IPC, has been registered, against the driver of the

lorry, on the file of E5 Kovathur Police Station.

3. The respondent/claimant was immediately taken to Chettinad Super Speciality Hospital, Kelambakkam and given first-aid treatment. Thereafter, he was hospitalised in Government Stanley Hospital, Chennai and given treatment for Grade III Open fracture at Supracondyle femur left side, between 04.02.2014 and 15.03.2014. During the second spell, i.e., from 23.05.2014 and 13.06.2014, in the same hospital, he was given treatment for supracondyle fracture left femur. Surgery was done on 09.06.2014. In the third spell, ie., from 11.07.2014 and 28.07.2014, he has taken treatment in the same hospital for Grade III open fracture at Supracondyle femur left side. For the abovesaid injuries and disability suffered, he has claimed compensation of Rs.15,00,000/-, under various heads.

4. Before the Claims Tribunal, respondent/claimant examined himself as PW.2, and deposed about the manner of accident. PW.3 is the Doctor, who examined the respondent/claimant, with reference to the medical records. On the side of the respondent/claimant, he has marked Ex.P1 - FIR, Ex.P4 - Accident Register, Exs.P5 and P6 - Discharge Summaries, Ex.P7 to P9 - X-Rays, Ex.P10 - Disability Certificate and Ex.P11 - Photo. On the side of appellant-Insurance Company, a Senior Assistant of the appellant-Insurance Company has been examined as RW.1 and no document has been marked.

5. PW.3, Doctor, who assessed the extent of disablement, in his testimony, has stated that the respondent/injured had sustained Grade III left leg fracture femur (bone exposed) and supracondyudle (Arterycut) repair done. He has further deposed that there is malunion in left leg femur and shortening of leg. He has also deposed that there is loss of fibroses left thigh muscles, which remains fibrosed. There was also restriction of flexion of knee, to an extent of 60 Degree. PW.3, Doctor, has deposed that due to the injuries, the respondent/claimant finds it difficult to squat, walk, ride cycle and that he was also limping. The respondent has lost his functional disability in the limbs. Thus, PW.3, Doctor, has assessed the extent of permanent disablement as 70% and issued and Ex.P10 - Disability Certificate.

6. Upon perusal of Ex.P4 - Accident Register, Exs.P5 and P6 - Discharge Summaries, Ex.P7 to P9 - X-Rays, Ex.P10 - Disability Certificate and Ex.P11 - Photo, the Tribunal has noticed that the injuries were grievous. Though the respondent/claimant has contended that as a vessel seller in bicycle, he earned Rs.25,000/- per month, no document has been filed to substantiate the same. He was aged about 22 years. Having regard to the avocation pleaded, the Claims Tribunal fixed the monthly income of the injured, as Rs.9,000/-.

7. By observing that the nature of work of the injured,

mainly depends on the active movement of the lower limbs and due to fracture of femur bone and implants fixed, the injured would be prevented from carrying on his work, as vessel seller, due to 70% disablement assessed by PW.3, Doctor, the Claims Tribunal came to the conclusion that the injury suffered in the accident and the consequential disablement would certainly affect the loss of earning capacity of the injured and hence, decided to apply multiplier method. However, while assessing the loss of earning capacity, the Tribunal has reduced the percentage of permanent disability as 65%. The Claims Tribunal has determined the loss of earning capacity of the injured, by adopting '18' multiplier, as Rs.12,63,600/- (Rs.9,000/- x 12 x 18 x 65%).

8. Upon perusal of Exs.P5 and P6 - Discharge Summaries, the Claims Tribunal has found that due to the fracture of femur bone, the respondent/claimant would not have attended his work, for a period of six months and accordingly, awarded Rs.72,600/- towards loss of income, during the period of treatment. The injured has taken inpatient treatment in Government Stanley Hospital, Chennai, for nearly 62 days and considering the said aspect, the Tribunal has awarded Rs.18,600/- towards attendant charges.

9. As the injures were grievous in nature and during the second spell of hospitalisation in Government Stanley Hospital, Chennai, for 22 days, ie., between 23.05.2014 and 13.06.2014, a surgery has been performed on 09.06.2014 and having regard to the fact that there was restriction of movement in the knee by 60 Degrees, the Claims Tribunal has awarded Rs.50,000/- for pain and suffering. In addition, a sum of Rs.25,000/- has been awarded towards damages of mental and physical shock. While considering the difficulties in day to day activities, the Tribunal has awarded Rs.50,000/- towards loss of amenities. Going through Ex.P11 - Photographs of the respondent/claimant, the Tribunal has noticed disfigurement in his left leg and awarded Rs.25,000/- towards disfigurement. In addition to the above, the Claims Tribunal has awarded Rs.40,000/- for extra nourishment, Rs.10,000/- for transportation and Rs.1,000/- towards damages to clothes. Altogether, the Claims Tribunal has awarded Rs.15,55,800/- with interest, at the rate of 7.5% per annum.

10. On the issue, as to whether, the Claims Tribunal has committed any error in applying the multiplier method, for the purpose of arriving at the loss of future earing. Reference can be made to a decision in Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343, wherein, the Hon'ble Supreme Court considered the correlation between the physical disability suffered by the injured and the loss of earning capacity, resulting from it. At Paragraphs 10, 11 and 13, the Hon'ble Apex Court observed as follows:

> "10. 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.

11. 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).

....

13. 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."

11. Though Mrs.C.Harini, learned counsel for the appellant-Insurance Company, submitted that the Claims Tribunal has erred in adopting multiplier method, for arriving at the loss of earning capacity, when according to her, there is no substantial evidence, regarding functional disability, which affected the loss of earning capacity of the respondent/injured, having regard to the nature of injuries, situs, particularly, Grade III Left Leg fracture in femur and taking note of the assessment made by PW.3, Doctor, this Court is not inclined to accept the said contention. However, considering the fact that the disability has been assessed before the healing period, this Court is inclined to compute the loss of earning capacity, by taking 40% functional disablement, which works out to Rs.7,77,600/- (Rs.9,000/- x 12 x 18 x 40/100).

12. In B.Kothandapani v. Tamil Nadu Transport Corporation Ltd., reported in 2011 (5) SCC 420, the Hon'ble Supreme Court held that an injured is entitled to claim compensation under both heads, disability and loss of earning capacity. In the light of the principles of law and considering the gravity of the nature of injuries, sustained by the respondent/claimant and the extent of permanent disablement, assessed by PW.3, Doctor, this Court is inclined to award the disability compensation of Rs.2,10,000/- for 70% disability, assessed by PW.3, Doctor, at the rate of Rs.3,000/- per percentage.

13. When the respondent/claimant is compensated for pain and suffering, there is no need to award compensation towards mental and physical shock, as it would be a double compensation and hence, it is deleted. However, considering the period of hospitalisation, surgery and convalence, compensation awarded towards nutrition and transportation, is less and hence, it is enhanced to Rs.45,000/- and Rs.20,000/- respectively. There is evidence to prove disfigurement in left leg, which is also a permanent disablement, as defined in Section 142 of the Motor Vehicles Act, 1988 and hence, this Court is inclined to award another sum of Rs.25,000/-, in addition to the amount already awarded. Compensation of Rs.1,000/- awarded towards damages to clothes is enhanced to Rs.2,500/-. On appeal, compensation now determined by this Court is Rs.12,96,300/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

14. In the light of the above, the Civil Miscellaneous Appeal is partly allowed, with a reduction in compensation by Rs.2,59,500/-. The appellant-Insurance Company is directed to deposit the compensation amount, now determined by this Court, if not already deposited, with proportionate accrued interest and costs, less the amount already deposited to the credit of M.C.O.P.No.2186 of 2014, on the file of the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

Copy to
The section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Velu, Advocate, S.R.No.42783

C.M.A.No.1631 of 2017

SSI(CO)
GN(05/09/2017)