

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A. No. 2406 of 2014

and M.P.No.1 of 2014

The Branch Manager
The Oriental Insurance Co. Ltd.,
suguna Buildings, II Floor,
No. 707, Avinashi Road,
Coimbatore.

... Appellant / 2nd Respondent

versus

1. Mr. Venkatesan 1st Respondent/ Petitioner

2. M/s. Piper International,
Rep. by its Patner,
Shed No. 44, Tekic Tea Nagar,
Mudalipalayam, Tiruppur. 2nd Respondent/ 1st Respondent

(R2 remained ex parte before the
Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the order and Decree made in M.C.O.P.No.1167 of 2009
dated 30.09.2011 by the Motor Accident Claims Tribunal,
(Additional District and Sessions Court, Fast Track Court No.5),
Coimbatore at Tiruppur.

For Appellants : Mr. N.Vijayaraghavan
For R1 : Mr. Ma.Pa.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the
Insurance Company challenging the quantum of compensation
awarded by the Tribunal.

2. The claim petition has been filed by the claimant
furnishing the following details :-

- i. Name with Age : Venkatesan, aged 35 years
- ii. Employed / Working as: Packing in Babuji Garments,
Tiruppur.
- iii. Earning : Rs.9,000/- p.m.
- iv. Claim : Rs.9,00,000/-
- v. Before : The Motor Accident Claim Tribunal and
in the Court of the sub-ordinate Judge,
Tiruppur.
- vi. OP (Original Petition) No. : M.C.O.P. No. 1667 of

2009

vii. Injuries Sustained : Right Thigh, Knee, foot fracture,
right forehead, left hip and
injuries all over the body

vii. Hospitalization : 2 months

3. The claims Tribunal, on consideration of the oral and documentary evidence placed before, it passed the following award :-

- a) Award for : Rs. 5,18,100/-
- b) Interest : 7.5% p.a.
- c) Award Dated : 30.09.2011

5. The Tribunal awarded compensation under the following heads :-

S. No.	Heads	Tribunal (Amount In Rs.)
1.	Transport Expenses and Extra Nourishment	10,000/-
2.	Loss of Earning Capacity / Disablement compensation with percentage of disability	4,59,000/-
3.	Loss of Enjoyment of Amenities	10,000/-
4.	Pain and Suffering	30,000/-
5.	Medical Expenses	9,000/-
Total		5,18,000/-

5. While quantifying the loss of earning capacity, the Tribunal has fixed the monthly income at Rs.5,000/- and fixing the functional disability at 45%, has quantified the compensation by adopting the multiplier of 17 and has awarded a sum of Rs.4,59,000/- (Rs.5,000 X 12 X 17 X 45/100).

6. The insurance company has taken exception to the adoption of multiplier method for quantification of compensation.

7. A perusal of the records reveal that the claimant was aged 35 years and he was working as a packer and alleged to be earning a sum of Rs. 9,000/- p.m.. The claimant has suffered fracture and consequent disablement on two critical parts of the body. One disability was on account of fracture of the thigh bone and during surgery, implant has been used and later,

plastic surgery has been performed. For the fracture of tibia and fibula and femur bone also, implant has been used. These two fractures would certainly cause loss of enjoyment of amenities leading to loss of earning capacity. In fact, the cumulative effect of fracture of tibia, fibula and femur can be equated to loss of one leg.

8. The Honorable Supreme Court in Sandeep Khanuja vs. Atul Dande & Anr. (Civil Appeal No. 1329 of 2017 arising out of SLP (c) No. 22790 of 2013) held as under :-

"13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of 'just' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure there from is to be done only in rare and exceptional cases. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in the case of Raj Kumar v. Ajay Kumar & Ors.[5] in the following words: "Assessment of future loss of earnings due to permanent disability 8. 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 accident 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 ("the 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."

9. The above ratio laid down by the Supreme Court has been followed by the Tribunal for adoption of multiplier method and, therefore, the same is justified and does not warrant interference.

10. It is also relevant to point out that only a sum of Rs.9,000/- has been awarded towards medical expenses, which is grossly inadequate. Similarly, a consolidated sum of Rs.10,000/- has been awarded towards transport expenses and Extra Nourishment, which is also on the lower side. No compensation has been awarded towards cost of attendant charges and loss of earnings and compensation future medical expense has also not been considered. In such circumstances, under many of the conventional heads, compensation having not been awarded, the award passed by the Tribunal cannot be said to be excessive. The award passed by the Tribunal deserves to be confirmed.

11. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 30.09.2011, passed in M.C.O.P.No.1167 of 2009 by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.5, Coimbatore at Tiruppur. No costs. Consequently, connected miscellaneous petition is closed.

12. The Insurance Company shall deposit the entire award amount, along with interest at the rate of 7.5% p.a. from the

date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/--

Assistant Registrar(CCC)

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Sub Assistant Registrar

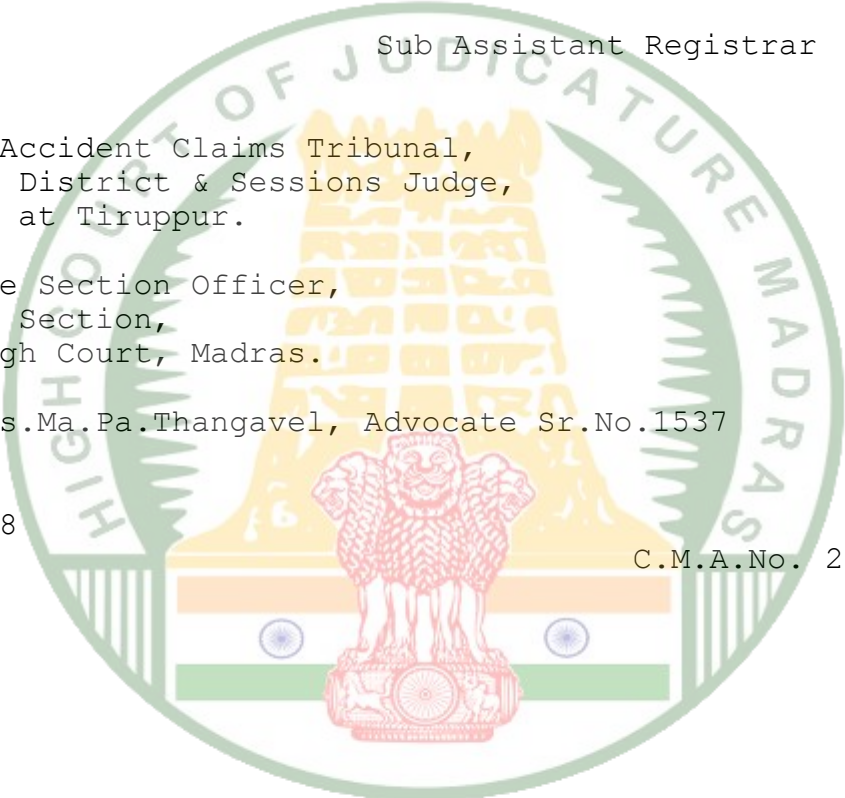
To
The Motor Accident Claims Tribunal,
Additional District & Sessions Judge,
Coimbatore at Tiruppur.

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

+1cc to M/s.Ma.Pa.Thangavel, Advocate Sr.No.1537

SAI (CO)
sm:2.4.2018

C.M.A.No. 2406 of 2014

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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