



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2 of 2014

The Branch Manager,
Royal Sundaram Alliance Insurance co. Ltd.,
No.127, 2nd Floor, Natesan Towers,
Natesan Nagar, Ellaipillaichavadi,
Pondicherry. ... Appellant / 2nd Respondent

versus

1. Arulmurugan ... 1st respondent/Petitioner
2. Velan ... 2nd respondent/1st respondent
(2nd respondent remained
ex parte before the Tribunal)

Prayer:

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 24.06.2013, made in M.C.O.P.No.62 of 2012 on the file of the Motor Accident Claims Tribunal (I Additional District Court), Tiruppur.

For Appellant : Mr.S.Manohar
For R1 : Mr.Ma.Pa.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation awarded at Rs.6,49,265/- as excessive.

2. The claimant/first respondent, Arulmurugan, aged 24 years, employed as a Driver, earning a sum of Rs.10,000/- per month, met with an accident on 10.07.2012. Therefore, he filed a claim petition claiming a sum of Rs.7,00,000/= as compensation.

3. The Tribunal, on consideration of the oral and documentary evidence, quantified the compensation in a sum of Rs.6,49,265/=, the break up of which is as hereunder :-

Loss of earning capacity	-	Rs.5,50,800/-
Pain and suffering	-	Rs. 25,000/-
Loss of enjoyment of amenities-		Rs. 20,000/-
Nutrition	-	Rs. 2,000/-
Transport Expenses	-	Rs. 2,000/-



Medical Expenses as per Ex.P8 - Rs. 49,465/-

Total - Rs.6,49,265/-

Challenging the compensation awarded as excessive, the present appeal has been filed by the insurance company.

4. A perusal of the records reveal that the Doctor, who treated the claimant, has assessed that the claimant has sustained permanent disablement to the extent of 52%. The Tribunal has extracted the disablement suffered by the claimant in para 13 of the order, where the claimant is said to have suffered a fracture in the left hand humerus bone; plate and screw had been used as an implant and the claimant had also taken physiotherapy treatment. The Doctor has conceded the restriction in the movement in the left elbow and has further deposed that the claimant finds difficulty in turning; the muscle strength has been reduced and in fact length of the elbow itself has been reduced by 1.5 cm. On the basis of the above disablement, the doctor has assessed the disablement at 52%. However, the Tribunal, considering the injuries sustained by the claimant and its impact on the mobility and future life of the claimant, has fixed the functional disability at 45%.

5. Based on the above fixation, the Tribunal, fixing the monthly income at Rs.6,000/-, adopting the multiplier 17, quantified the loss of earning capacity for 45% at Rs.5,50,800/-; awarding Rs.25,000/- towards pain and suffering, Rs.20,000/- towards loss of enjoyment of amenities, Rs.2000/- towards nutrition; Rs.2,000/- towards transport expenses and Rs.49,465/- towards medical expenses, which is supported by bills, Ex.P8, the Tribunal awarded a total sum of Rs.6,49,265/-.

6. The learned counsel appearing for the appellant/Insurance Company has relied upon the decision reported in 2005 ACJ 1483 (United India Insurance Co. Ltd. vs. Veluchamy and another), wherein, the principles of the assessment in respect of the injuries has been discussed in para-11 of the Judgment. For better clarity, the relevant portion of the order is extracted hereunder :-

"11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?



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(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

Multiplier method : The applicability of multiplier method depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc.

7. Yet another decision reported in 2011 ACJ 1 (Raj umar vs. Ajay Kumar and another) is relied upon by the learned counsel for the appellant. In the decision also, the principles of determination of loss of future earnings of the injured has been explained. The learned counsel has also relied upon para 8 of the Judgment, which reads as follows:

"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 economic loss or loss of earning capacity."

As per the principles laid down in para 8 of the Judgment cited supra, when the claimant suffered permanent disability, the assessment under the head loss of future earning depends upon the effect and impact of permanent disablement on his earning capacity. The above principle has to be applied to the present case on the basis of the facts as is available before this Court.

8. The learned counsel for the appellant submits that just because the driving licence is produced, it cannot be stated that the petitioner is eking his livelihood as a driver as every person who is using the road is required to have a driving



licence.

9. It is not the case of the claimant that he is doing some other job, excepting the profession of driver. The driving licence has also been produced and no contra evidence has been let in to disprove the abovesaid fact.

10. However, it is submitted by the learned counsel for the appellant that the employer has not been examined to show that the petitioner had been employed as a driver. Therefore, avocation of the claimant itself is under challenge.

11. Even though it is claimed by the claimant that he was earning a sum of Rs.10,000/- p.m., the Tribunal has taken the income of the injured only at Rs.6000/- p.m. The employment is crucial for the purpose of fixation of income and the consequences of disablement impacting on the livelihood of the claimant. If the claimant had been eking out his livelihood only as driver, definitely the injury on the left hand of the claimant would have a serious effect on his earning capacity.

12. Though it is the contention of the learned counsel for the appellant that mere production of driving licence cannot imply that the claimant was earning his livelihood as a driver and the non-examination of the employer is fatal to the case of the claimant, the said contention deserves to be rejected for the simple reason that no contra evidence, negating the stand taken by the claimant has been placed before the Court by the appellant to prove that the claimant was not a driver by profession. Mere submission by the appellant cannot be a substitute to relevant material evidence. In the case on hand, the appellant has not placed any material whatsoever to disprove the stand of the claimant with regard to his avocation. In such view of the matter, this Court is of the considered opinion that the finding of the Tribunal that the claimant was eking out his livelihood as a driver by placing reliance on the driving licence deserves to be sustained.

13. The next question that falls for consideration is whether the fracture sustained by the claimant would have an impact upon the earning capacity of the claimant.

14. The main contention of the learned counsel for the appellant is that the percentage of the disability assessed is not with reference to the whole body.

15. The doctor has not spoken anything about the impact of the disablement upon the earning capacity. The doctor can, at best, only speak about the extent of disability and the difficulty that disability that would be faced by the person in discharging a particular type of work. Therefore, the



disability has to be looked up depending upon the type of job that the person is performing.

16. The learned counsel for the appellant relied upon the observation made by the Tribunal in para-13 of the Judgment, where the Doctor has assessed the restriction of movement in the entire left hand at 6% and in the joint elbow at 15% and the reduction of whole ability to perform at 40%. A careful perusal of the injuries sustained by the claimant and its impact on the day-to-day life of the claimant in the discharge of his daily duties and his avocation, this Court is of the considered view that the restriction in the movement may have an impact upon the daily activities but it may not have serious impact on the driving ability, but may present difficulty to do all other work. Hence, this Court deems it fit that it would be safe to fix the disability at 40% to assess the loss of earning capacity. Accordingly, fixing the disability at 40%, the loss of earning capacity is recalculated and is quantified at Rs.4,89,600/- (Rs.6000 x 12 x 17 x 40%).

17. Insofar as the compensation awarded under the other heads are concerned, this Court taking note of the nature of injuries suffered by the claimant, the period of treatment and the impact of the injuries on the day-to-day activities of the claimant, is of the considered view that the Tribunal has considered all the materials in proper perspective and has awarded just and reasonable compensation on those heads and, accordingly, the same deserves to be confirmed.

18. Accordingly, the compensation awarded by the Tribunal is modified under the break-up details as shown below :-

Loss of earning capacity at 40%	-	Rs.4,89,600/-
pain and suffering	-	Rs. 25,000/-
Loss of enjoyment of amenities	-	Rs. 20,000/-
Nutrition	-	Rs. 2,000/-
Transport expenses	-	Rs. 2,000/-
Medical expenses as per Ex.P8	-	Rs. 49,465/-
Total		Rs.5,88,065/-

19. In the result, the Civil Miscellaneous Appeal is allowed, reducing the compensation from Rs.6,49,265/- to Rs.5,88,065/-, which is payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. No costs.

20. The Insurance Company shall deposit the compensation awarded by this Court above, less the amount, if any, already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, 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. The balance portion, if any, lying in deposit, over and above the award amount as quantified above, the Insurance Company is permitted to withdraw the same.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(I Additional District Court), Tiruppur.

2.The Section Officer,
VR Section,
High Court, Madras(2 copies)

+1cc to Mr.Ma.Pa.Thangavel, Advocate sr.no.4683
+1cc to Mr.S.Manohar, Advocate in sr.no.4249

C.M.A. No.2 of 2014

mr(co)
nr 27/06/2018