

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 12.11.2018

DELIVERED ON 22.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1384 of 2008

E.Shanmugam

... Appellant

Vs.

1. V.Mohan

2. United India Insurance Company Limited,
No.38, Annasalai,
Chennai 600 002.

... Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decreetal order passed in M.C.O.P.No.5050 of 2002 dated 30.07.2007 by the II Judge, Motor Vehicle Accidents Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.A.Shanmugaraj
For 2nd Respondent : Mr.D.Bhaskaran
First Respondent : Exparte.

J U D G M E N T

The appellant is the claimant in MCOP No.5050 of 2002 on the file of the II Judge, Motor Vehicle Accidents Claims Tribunal, Court of Small Causes, Chennai.

2. The appellant/claimant had filed a claim petition before the Tribunal seeking compensation of Rs.2,50,000/- for the injuries sustained by him on account of the road accident that took place on 19.10.2001.

3. The trial court had passed the award of compensation under various heads which is extracted hereunder.

Sl No	Heads	Amount
1	Compensation for partial and permanent disability	60,000
2	Pain and sufferings	10000
3	Extra Nourishment	3000
4	Transport to Hospital	3000
5	Medical Expenses	30000
6	Loss of earning	5000
	Total	1,11,000

Aggrieved over the quantum of compensation, the appellant has filed the present appeal.

4. Mr.A.Shanmugaraj, learned counsel appearing for the appellant contended that the award passed by the learned trial court judge is very meagre, especially when the claimant suffered a hip fracture and was operated upon with an implant of a plate. He would further contend that his right leg is 1 1/2 inch lesser than his left leg on account of the accident and that the doctor has also assessed his disability as 70%.

5. The trial court has reduced the partial permanent disability from 70% to 60% and awarded a compensation of Rs.60,000/- for the disability. The observation of the trial judge is that the doctor who issued the partial permanent disability did not give treatment to the appellant/claimant.

6. Mr.A.Shanmugaraj, learned counsel for the appellant relying on the decision in Kumari Kiran Vs. Sajjan Singh reported in 2014(2) TN MAC 553 (SC) and contended that when there is shortening of leg by an inch, the trial judge should have awarded a sum of Rs.3,12,000/- towards further loss of earning and that no amount was awarded under that head. He would also contend that a sum of Rs.15,000/- and Rs.35,000/- should have been awarded towards loss of income and medical expenses respectively by the trial court. According to him, the award should be made separately under the heads "permanent disability" and "loss of earning capacity". He relied upon the decision rendered by the Honourable Supreme Court of India in Managing Director Thiruvallur Transport Company Vs. Thangavelu and another reported in 1996 ACJ 143 (Madras) in this regard. In the instant case, the claimant is running a Lathe Machine work in the name and style of "Sabha Engineers". According to the claimant, he was earning a sum of Rs.6,000/- per month on the date of accident.

7. Though awarding of compensation under the head "permanent disability " is distinct and separate from the claim made under the head "loss of earning capacity " as held in The Managing Director Thiruvalluvar Transport Corporation Vs. Thangavelu and another reported in 1996 ACJ 143 (Madras), relied upon by the learned counsel appearing for the appellant, it is not the case of the appellant/claimant that he has closed down his business on account of his disability. Though he might experience some difficulty in conducting his business, it cannot be said that the disability sustained by him in the road accident has permanently disabled him from conducting the business.

8. In the decision in Rajkumar Vs. Ajaikumar and another reported in 2011(1) SCC 343, a Division Bench of the Honourable Supreme Court of India has held thus

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.

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 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."

Applying the above principles, adopting multiplier method is not warranted. Further, the tribunal is right in not awarding any

amount under the head " Loss of earning capacity " since in Cholan Roadways Corporation Ltd vs Ahmed Thambi in CMA 23/94 dated 03.08.2006 reported in 2006(4) MLJ 362 = 2006(4) CTC 433 a Full Bench of this court had held thus.

" In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary losses the tribunal shall consider a) pain and suffering, b) loss of amenity, c) loss of expectation of life, hardship, mental stress, etc (d) loss of prospect of marriage and under the head pecuniary losses, the tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised.

However, awarding of Rs.60,000/- for partial permanent disability of 70% by the trial court is very meagre and therefore, a sum of Rs.2,10,000/- is awarded for partial permanent disability. The monthly income of the claimant is fixed at Rs.4,500/- as there is no acceptable evidence to show that he was earning a sum of Rs.6,000/- per month. The appellant could not have attended his work atleast for 6 months and therefore, a sum of Rs.4,500 x 6 = 27,000/- is awarded towards loss of income. The various heads, under which the claimant is entitled for compensation is detailed hereunder.

Sl. No	Heads	Amount
1	Partial permanent disability	2,10,000
2	Pain and sufferings	25000
3	Extra nourishment	10000
4	Transportation	5000
5	Medical expenses	35000
6	Loss of Income	27000
7	Attender's charges	5000

Sl. No	Heads	Amount
8	Future Medical expenses	25000
	Total	3,42,000

10. In the result, a compensation of Rs.3,42,000/- is awarded. The compensation of Rs.3,17,000/- shall carry interest at the rate of 7.5% per annum. No interest is awarded for future medical expenses. The enhanced compensation shall be deposited by the 2nd respondent within a period of 4 weeks from the date of receipt of a copy of this order.

11. With the above observation, the appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The II Judge,
Motor Vehicle Accidents Claims Tribunal,
Court of Small Causes, Chennai.
2. United India Insurance Company Limited,
No.38, Annasalai,
Chennai 600 002.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.A.Shanmugaraj, Advocate Sr.79827
+lcc to Mr.D.Bhaskaran, Advocate Sr.79764

CMA.No.1384 of 2008

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srg 02/01/2019