

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1527 of 2008

National Insurance Company Limited,
74-A, Paramathi Road,
Namakkal. Appellant/2nd Respondent

..Vs..

1.Lakshmi 1st Respondent/Petitioner

2.M/s.Reliance Transporters,
represented by Mrs.S.Dowla,
47, Vayapuri,
Secunderabad 500 094,
A.P. State. 2nd Respondent/1st
Respondent

3.K.Saraswathy 3rd Respondent/3rd Respondent

4.United India Insurance Company Limited,
Divisional Office-II,
104-A, Paramanur Main Road,
Salem-635 007. 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 29.06.2007 in M.C.O.P.No.714 of 2005 on the file of the Motor Accidents Claims Tribunal, (I Additional District Judge), Dharmapuri at Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Selvam for R1

Mr.S.Arunkumar for R4

R2- Not ready

No appearance for R3

JUDGMENT

The National Insurance Company Limited has filed the present appeal under Section 173 of Motor Vehicles Act, 1988, questioning the quantum of compensation awarded in M.C.O.P.No.714 of 2005 dated 29.06.2007 on the file of Motor Accidents Claims Tribunal, (I Additional District Judge), Dharmapuri at Krishnagiri.

2.The brief case of the first respondent/claimants is as follows:

On 27.02.2001, the first respondent/claimant was travelling as a passenger in the bus bearing Registration No. TN 27 J 2233 belonging to the third respondent at Dharmapuri. When the bus was passing near Thoppur petrol bunk on Dharmapuri - Salem National Highways road, the driver of the bus suddenly stopped the bus contending that a tanker lorry hit the bus from behind and all the passengers were asked to get down from the bus. The first respondent/claimant along with other passengers were standing in front of the parked bus and were waiting for another bus to board. At that time, a speeding lorry bearing Registration No. AP 10 T 5824 belonging to M/s.Reliance Transports hit the passengers, as a result of which, the first respondent/claimant sustained grievous injuries.

3. The contention of the first respondent/claimant is that since the lorry bearing Registration No. AP 10 T 5824 was insured with National Insurance Company Limited and the bus bearing Registration No. TN 27 J 2233 was insured with United India Insurance Company Limited, all the respondents were jointly and severally liable to pay compensation to her.

4.The trial court after analysing the evidence on record, awarded compensation of Rs.4,49,800/- with a specific direction to the first and second respondents to pay a sum of Rs.3,14,860/- together with interest at the rate of 7.5% per annum. The third and fourth respondents were directed to pay a sum of Rs.1,34,940/- together with interest at the rate of 7.5% per annum.

5.Mr.D.Bhaskaran, learned counsel appearing for the appellant would contend that when the first respondent/claimant is working as an Assistant in Dharmapuri Agricultural Engineering Department, the trial court ought not to have adopted the multiplier method while calculating the partial permanent disability.

6.A perusal of the disability certificate (Ex.A8) and other medical records clearly shows that the first respondent/claimant sustained a fracture on her left femur bone. Dr.D.V.Gandhi

(P.W.2) assessed the partial permanent disability as 45%. However, the Tribunal took the partial permanent disability as 30% without assigning any reasons. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

"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 a 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 disability (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."

7.As far as the present case is concerned, it is not the case of the first respondent/claimant that she lost her earning capacity completely and suffered loss of income on account of the accident. Being a Government servant, the first respondent/claimant would have drawn salary even during the period of her absence. Therefore, the trial court has committed an error in adopting the multiplier method for the injuries sustained by the first respondent/claimant. Since no reasons were assigned by the trial court for fixing the partial permanent disability as 30%, the partial permanent disability assessed by the Dr.D.V.Gandhi (P.W.2) is taken up for calculation of loss of income. A sum of Rs.2000/- per percentage is awarded which will work out to Rs.90,000/-. Apart from this, the first respondent/claimant is entitled to a sum of Rs.52,000/- towards the medical expenses and a sum of Rs.10,000/- towards transportation charges and a sum of Rs.10,000/- towards extra nourishment and a sum of Rs.15,000/- towards pain and sufferings. Thus, the following amount is awarded to the first respondent/ claimant as detailed below:

S.No	Head	Amount granted
1.	Loss of income (for 3 months)	Rs.90,000/-
2.	Medical expenses	Rs.52,000/-
3.	Transportation	Rs.10,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Pain and sufferings	Rs.15,000/-
Total		Rs.1,77,000/-

Thus the first respondent/claimant is entitled only to a sum of Rs.1,77,000/- together with interest at the rate of 7.5% per annum.

8. In the result,

(i) The appeal is allowed and a sum of Rs.1,77,000/- (Rupees one lakh seventy seven thousand only) is awarded to the first respondent/claimant as compensation together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(ii) It is represented before this court that the fourth respondent had deposited the entire award amount and that the present appellant had deposited 50% of the award amount which works out to Rs.2,84,000/-. The fourth respondent has not

questioned the quantum of compensation by any filing appeal/cross-objections. Since the first respondent is only entitled to a sum of Rs.1,77,000/- for the injuries sustained by her together with interest at the rate of 7.5% per annum, which shall be paid in the same ratio by the respondents 2 and 4 as per the direction of the trial court, the appellant is directed to withdraw the amount beyond the amount awarded by this court. The respondents 2 and 4 can also recover the excess amount paid by them from the claimant in accordance with law.

(iii) No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The I Additional District Judge,
Dharmapuri at Krishnagiri.

+1 cc to Mr.D.Bhaskaran, Advocate Sr.No.78913

+1 cc to Mr.M.Selvam, Advocate Sr.No.78753

+1 cc to Mr.S.Arunkumar, Advocate Sr.No.79115

C.M.A.No.1527 of 2008

SPD(CO)
CSL/08.01.2019

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