IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 08.11.2018

DELIVERED ON 20.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2778 of 2006

National Insurance Company Limited,
No.66, Perundurai Road,
Erode. ... Appellant/3rd Respondent

Vs.

1. P.Chandran
2. A.Thyagarajan
3. R.Rajagopal ... Respondents/Claimant, Respondents 1 & 2

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.396 of 2003 dated 31.01.2005 on the file of the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Bhavani, Erode District.

For Appellant : Ms.N.B.Surekha
For 1st Respondent : Mr.Mapa.Thangavel
For 3rd Respondent : Mr.V.P.Sengottuvel
Second Respondent : Exparte

J U D G M E N T

The National Insurance Company Limited No.66, Perundurai Road, Erode has filed this present appeal under Section 173 of the Motor Vehicles Act 1988 against the decree and judgment dated 31.01.2005 passed by the Subordinate Judge, Bavani in MCOP No.396 of 2003.

2. The appellant Insurance company have mainly questioned the quantum of compensation awarded by the tribunal by adopting multiplies method while calculating the loss of earning capacity. They have also contended that the negligence fixed on the 2nd respondent in the present case is wrong, especially when two vehicles are involved in the accident.

3. On 29.022003, the first respondent/claimant was riding his two wheeler bearing registration No. TN 33 L 0561 on Perundurai Road. At about 9.30 p.m., a speeding ambassador car bearing registration No. TN 45 E 8969 hit the claimant, as a result of which, the claimant sustained injuries and he was immediately rushed to the Government Hospital, Erode. Subsequently, he was admitted in Ganga Hospital, Coimbatore. Since his left leg was completely crushed in the accident, it was amputated.

4. According to the claimant, he was working in S.Thangavel Textile earning a sum of Rs.5,000/- per month.

5. The tribunal applied the multiplier method, while calculating the loss of earning capacity, since the claimant is a weaver. Dr.Thambiraj (Pw2) has assessed the claimant's disability as 63%.

6. Mr.N.B.Surekha, learned counsel appearing for the appellant relied on the decision of this court in New India Assurance Company Limited, Mettupalayam, Coimbatore District, Vs. 1. C.K.Ramesh, 2.Sakthivel and 3. V.Krishnasamy reported in 2009 (6) CTC 589 and contended that only if the injured is permanently disabled or prevented from doing his routine work or profession, the court can adopt multiplier method and in other cases, adopting multiplier method is not legally permissible.

7. As far as the present case is concerned, the claimant sustained grievous injury on his left leg and the injury was in such condition that even the bones and the muscles were exposed. Dr.Thambiraj (PW2) had assessed the disability as 63%. In Rajkumar Vs. Ajaykumar and another reported in (2011) 1 SCC 343, it has been held thus.

> "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 accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal opportunites, Protection of Rights and Full Participation) Act, 1995 ('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.

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 cpacity. 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."

8. In the instant case, the claimant is a weaver working in a textile company at Perundurai and he cannot carry on his profession as a weaver, as before inspite of the permanent disability suffered by him. Therefore, the multiplier method adopted by the Tribunal cannot be faulted with. Though the claimant had contended that his income was Rs.5,000/- per month, the Tribunal took only a sum of Rs.4,000/- per month, as the salary of the claimant. The accident took place in the year 2003 and in the absence of proof of income, the trial court should have fixed the notional income of the claimant as Rs.4,500/-. As per Sarla Verma's case, the multiplier is 14, since the age of the claimant is 45 years. Hence, the loss of earning capacity is fixed at Rs.4,76,280/- (4500 x 12 x 14 x 63/100 = 4,76,280.) However, the trial court has awarded only a sum of Rs.3,93,120/-. It is relevant to note that the claimant did not file any cross objection or appeal for enhancement of compensation. No arguments were advanced for enhancement of compensation. Hence, the award amount passed by the Tribunal is upheld.

9. As far as the negligence aspect is concerned, the Sub Inspector of Police, Perundurai Police Station has investigated the case and filed a final report (Ex.P6) before the concerned Judicial magistrate. The appellant did not adduce any evidence, except the rough sketch (Ex.R1) to show that there is a contributory negligence on the part of the claimant. The tribunal had clearly fixed the responsibility on the driver of the ambassador car based on the evidence and I do not see any reason to interfere with the findings of the trial court, especially when the victim has not only deposed about the accident but also has withstood the testimony of cross examination.

10. In view of all these reasons stated by me, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

1 . The Subordinate Judge,
Motor Accidents Claims Tribunal,
Bavani, Erode District.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.Ma.P.Thangavel, Advocate Sr.No.79521
+1 cc to Ms.N.B.Surekha, Advocate Sr.No.79333

CMA.No.2778 of 2006

NMI (CO)
CSL/02.01.2019