

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2014 of 2011 and
M.P.No.1 of 2011

The New India Assurance Company,
Arcot Woodlands Building,
Cuddalore.

...Appellant / 2nd Respondent

...Vs...

1.Sivakumar ...Respondent / Petitioner

2.Subramanian ...Respondent / 1st Respondent
(R2 remained exparte
before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 28.10.2010 in M.C.O.P.No.228 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Virudhachalam.

For Appellant : Mr.Elveera Ravindran

For Respondents : Mr.J.Vennila for R1
R2 - exparte before Tribunal

JUDGMENT

The appellant the New India Assurance Company, Cuddalore has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The first respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, in M.C.O.P.No.228 of 2008 on the file of the Principal Subordinate Judge, Virudhachalam seeking a compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 15.02.2008.

2.The brief facts of the case of the claimant are as follows:

On 15.02.2008, the first respondent/claimant was riding a two wheeler bearing Registration No. TN 22 X 360 along Virudhachalam - Bangalore road. When he was nearing

periyakosappallam main road, a speeding tractor bearing Registration No. TN 31 AX 2598 belonging to the second respondent hit the two wheeler ridden by the first respondent/claimant, as a result of which, the claimant sustained injuries all over his body.

3. According to the first respondent/claimant, the rash and negligent driving of the driver of the tractor was the cause of the accident and that since the tractor was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

4. The owner of the said tractor remained absent before the Tribunal and was set ex-parte. The present appellant contested the claim petition. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.4,46,000/- to the first respondent/ claimant together with interest at the rate of 7.5% per annum. Aggrieved over the said orders passed by the Tribunal, the appellant has filed the present appeal.

5. Mr. Elveera Ravindran, learned counsel appearing for the appellant would contend that the Tribunal was not correct in adopting multiplier method merely because, the first respondent/claimant had lost vision in one of his eyes. He relied on the decision in New India Assurance Company Limited, No.171, Thembu Chetty Street, Karnataka Bank Building, Chennai - 1 -vs- Syed Khalid and another in C.M.A.No.3884 of 2004 wherein in para no. 18 it has been observed thus:

18. "Except the ipse dixit of P.W.1, claiming that he is unable to attend to his avocation as computer technician because of loss of vision in one eye, no supporting evidence has been found in the materials available on record. Taking judicial notice of the facts, because the claimant lost his vision in one eye, it cannot be said that he cannot attend his avocation. With vision in one eye, several professionals are attending to their avocation without any difficulty. Therefore, the contention of the learned counsel for the first respondent cannot be accepted. There is absolutely no material on record warranting the application of multiplier method in this case".....

6. Per Contra, the learned counsel for the first respondent/claimant contended that the first respondent/claimant was a driver by profession apart from doing agricultural operations. She also drew the attention of this Court to a copy

of the driving license along with a badge which was marked as Ex.P10.

7.A perusal of Ex.P10 as well as the evidence of the first respondent/claimant clearly shows that the first respondent/claimant was a driver by profession on the date of accident and therefore, his vision is very much essential for carrying on his profession as a driver. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

"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 permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a

result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9. 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."

Therefore, the multiplier method adopted by the Tribunal in the instant case cannot be faulted with. At this stage, the learned counsel appearing for the appellant contended that the award passed by the tribunal cannot be enhanced since the first respondent/ claimant is no more. The appellant did not take steps to amend the cause title of the appeal. However, it is also pertinent to point out that the first respondent/claimant did not file any cross objections or appeal against the compensation awarded by the Tribunal. Therefore, I feel that there is no necessity to upset the award passed by the Tribunal.

8.In the facts and circumstances, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rna/mbi

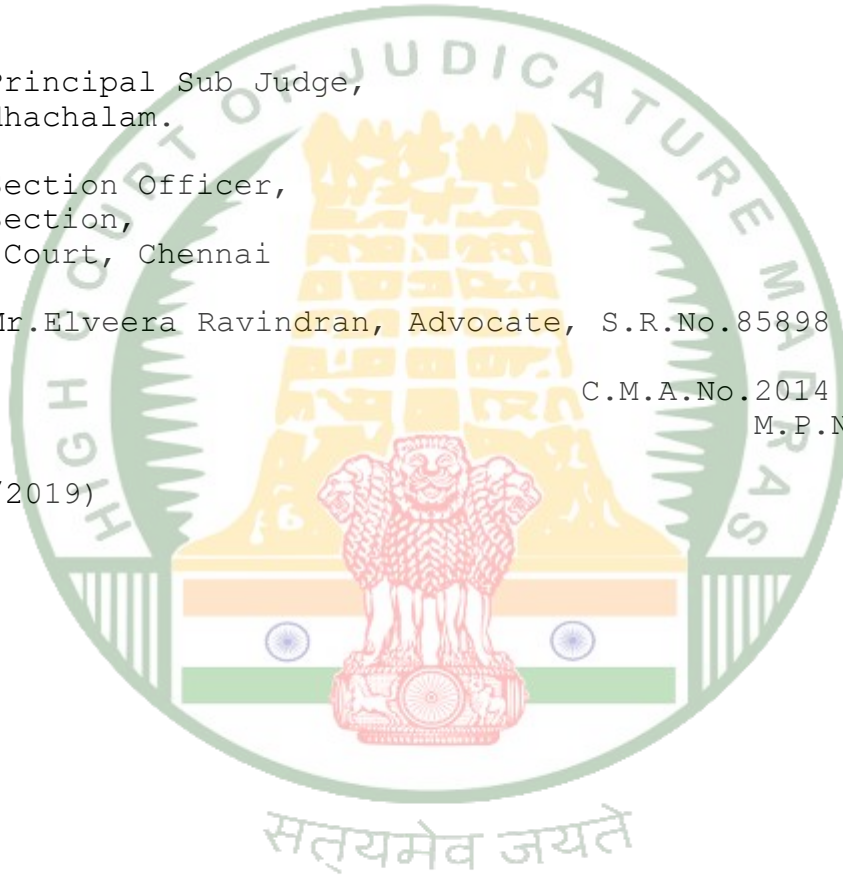
To

- 1) The Principal Sub Judge,
Virudhachalam.
- 2) The Section Officer,
V.R.Section,
High Court, Chennai

+1 cc to Mr.Elveera Ravindran, Advocate, S.R.No.85898

C.M.A.No.2014 of 2011 and
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AD(CO)
SSM(20/02/2019)



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