IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2381 of 2011
and
M.P.No.1 of 2011
and
Cross.Objection No.91 of 2012

C.M.A.No.2381 of 2011 in

The New India Assurance Co. Ltd
No.21, Pattulas Road,
Mechmillan House, Chennai -2
... Appellant/2nd Respondent

..Vs..

1.P.Sarath ...1st Respondent/Petitioner
2.J.Thilak Babu ...2nd Respondent/1st Respondent
(second respondent exparte before lower Court. Hence notice may be dispensed with).

Cross.Objection No.91 of 2012

P.Sarath ...Petitioner/Cross Objector

..Vs..

1.The New India Assurance Co. Ltd
No.21, Pattulas Road,
Mechmillan House, Chennai -2
...1st Respondent/Appellant

2.Thilak Babu ...2nd Respondent/2nd Respondent

PRAYER in CMA.No.2381 of 2011: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.5370 of 2005, dated 10.06.2009 passed by the II Judge, Court of Small Causes, Chennai.

PRAYER in Cross Objection No.91 of 2012: Cross Objection filed under Order XXXXI, Rule 22 of the Code of Civil Procedure, praying for enhancement of compensation against the decree and Judgment in MCOP No.5370/05, dated 10.06.2009 passed by the II Judge, Court of Small Causes, Chennai.

For appellant in CMA.No.2381/2011	:	Mr.N.Vijayaraghavan
For Respondents in CMA.No.2381/2011	:	Mr.P.Chinnaraj for R1 R2- Exparte
For petitioner in Cross Objection No.91/2012	:	Mr.P.Chinnaraj
For First Respondent in Cross Objection No.91/2012	:	Mr.N.Vijayaraghavan
	:	R2 - Exparte

COMMON JUDGMENT

The New India Insurance Company Limited have filed the present appeal against the award passed in M.C.O.P.No.5370 of 2008 on the file of the II Judge, Court of Small Causes, Chennai. The claimant has filed Cross Objection No.91 of 2012 seeking for enhancement of compensation awarded by the Tribunal.

2. The brief case of the claimant is as follows:

The claimant was working as a business Executive in a Private Limited Company earning a sum of Rs,10,000/- per month. On 13.10.2005, the claimant was riding his motor cycle bearing Registration No.TN-02-P-5047 along Anna Nagar, 3rd Avenue, Chennai. When he was nearing Ganga Motors a speeding car bearing Registration No.TN-02-M-6548 hit the two wheeler ridden by the claimant as a result of which, the claimant sustained injuries all over his body. He was immediately rushed to a nearby hospital.

3. According to the claimant, the rash and negligent driving of the driver of the car bearing Registration No.TN-20-M-6546 was responsible for the accident and that since the said car was insured with the second respondent, both of them are jointly and severally liable to pay compensation of Rs.10,34,361/- to the claimant. The owner of the car namely, first respondent in MCOP.No.5370 of 2005 remained absent and was set-exparte before the trial Court. The second respondent alone

contested the claim petition.

4. The trial Court after analyzing the evidence on record, awarded a sum of Rs.10,34,361/- together with interest at the rate of 9.5% per annum from the date of petition till the date of deposit.

5. The learned counsel appearing for the claimant would contend that the right leg of the claimant was amputated below knee level and therefore, the award of Rs.10,34,361/- passed by the trial Court is very meagre.

6. Per contra, the learned counsel for the appellant would contend that the trial Court had fixed an exorbitant amount towards compensation and therefore, the same should be reduced. A perusal of the medical records shows that the right leg of the claimant was amputated below knee level and therefore, multiplier method should be adopted as far as the present case is concerned in the light of the decision of a division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 wherein it has been 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 terns 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."

7. In the instant case the claimant was working as business executive which according to him would involve frequent travel.

Therefore, multiplier method should be adopted for the functional disability. The income of the injured is Rs.6,400/- per month on the date of the accident as per records. He is also entitled to 40% towards future prospects, as per the decision laid down in the decision rendered by National Insurance Co. Vs. Pranay sethi and others reported in 2017 (2) TNMAC 601, and thus, the monthly income of the claimant is fixed at Rs.7,660/-. Dr.J.R.R.Thiagarajan (PW2) has assessed permanent disability as 50%. Since the age of the claimant was 30 years, proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, loss of earning capacity is calculated as follows:

= 7660/- x 12 x 18 x 50/100 = 8,27,280/-

8. The trial Court has awarded only a sum of Rs.50,000/- towards pain and sufferings, especially when the right leg of the claimant was amputated below knee level. In the facts and circumstances of the case, I am of the opinion that a sum of Rs.1,00,000/- should be awarded towards pain and sufferings.

9. Apart from the above amount, the claimant is also entitled to a sum of Rs.5,000, Rs.10,000/- and Rs.25,000/- towards attendaner's charges, transportation charges and loss of amenities respectively. The claimant has filed medical bills to the tune of Rs.1,10,875/-. Apart from this amount he is also entitled to a sum of Rs.20,000/-. The enhanced compensation amount under various heads is extracted hereunder:-

S.Nos.	Heads	Amount granted
1.	Permanent Disability	8,27,280/-
2.	Pain and Sufferings	1,00,000/-
3.	Attendant charges	5,000/-
4.	Transportation charges	10,000/-
5.	Loss of Amenities	25,000/-
6.	Medical Bills	1,10,875/-
7.	Extra Nourishment	20,000/-
Total		10,98,155/-

10. Thus, the claimant is entitled to a sum of Rs.10,98,155/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

11. The New India Insurance Company Limited is directed to deposit the enhanced claim amount along with interest and costs, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is at liberty to withdraw the same, as per due process of law.

12. In the result,

(i) the Civil Miscellaneous Appeal filed by the New India Insurance Company Limited is dismissed.

(ii) and the Cross Objection is partly allowed enhancing the compensation amount to Rs.10,98,155/-. No costs. Consequently, connected Miscellaneous Petition is closed.

dna

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1. The Motor Accidents Claims Tribunal,
II Judge, Court of Small Causes, Chennai.

2. The Section Officer, V.R.Section,
High Court, Chennai - 104.

+1cc to M/s.M.B.Gopalan, Advocate, SR.NO.87929

C.M.A.No.2381 of 2011
and
M.P.No.1 of 2011
and
Cross.Objection No.91 of 2012

RK(CO)
KAK(07/02/2019)