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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2397 of 2015

J.Chinnaponnu .. Appellant

Vs.

1.Arulanandham
(since R1 remained exparte before the Tribunal, his presence may be dispensed with)

2.National Insurance Co., Ltd.,
No.751, Anna Salai,
Chennai-2. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.02.2015 made in M.A.C.T.O.P.No.1002 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant	:	Mr.F.Terry Chellaraja for Ms.M.Malar
For R1	:	Exparte vide in EB
For R2	:	Mr.P.Sankaranarayan

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 27.02.2015 made in M.A.C.T.O.P.No.1002 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

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2.The appellant is claimant in M.A.C.T.O.P.No.1002 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. She filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 04.11.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the first respondent and directed the second respondent/Insurance Company, insurer of the first respondent, to pay a sum of Rs.2,06,022/- as compensation to the appellant.

4.Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was doing house keeping work and was earning a sum of Rs.10,000/- per month. The Tribunal erred in fixing the notional income of the appellant at Rs.5,000/- per month. The Tribunal ought to have granted compensation under the heads of permanent disability and loss of earning capacity. The Tribunal erred in awarding compensation towards loss of income only for three months at the rate of Rs.5,000/- per month. The appellant examined P.W.2/Doctor and filed disability certificate to prove that the appellant has suffered 45% partial permanent disability and the Tribunal without assigning any reason fixed disability of the appellant at 40%. The amounts awarded by the Tribunal under different heads are meager. The Tribunal ought to have awarded compensation towards mental agony and future medical expenses and prayed for enhancement of compensation. In support of his contentions, the learned counsel for the appellant relied on the following judgments and contended that the compensation may be awarded by applying multiplier method:

(i) 2010 (2) TN MAC 581 (SC) (Rajkumar vs. Ajay Kumar and another);

> "9. 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

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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 ability (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

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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. Be that as it may."

(ii) 2014 (1) TN MAC 459 (SC) (Syed Sadiq etc., vs. Divisional Manager, United India Insurance Company Limited);

"17. The appellant/claimant in this appeal has sustained type -3 compound fracture of right femur, fracture of tibia, fracture of middle shaft tibia and fibula. .. .. .. for the reasons recorded in that appeal, we determine the functional disability of the appellant/claimant in the present appeal at 35%. Considering his age, and based on the legal principle laid down by this Court in the cases mentioned supra, we hold his increment on future income at 50% and the multiplier at 18. Therefore, he is entitled to Rs.7,37,100/- [Rs.6,500 x 35/100 + 50/100 x 35/100 x Rs.6,500 x 12 x18] under the head of 'loss of future income'."

(iii) (2017) 1 TN MAC 410 in Sandeep Khanuja Vs. Atul Dande and Another:

"12.We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the Multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has

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been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. .. ..

13.While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.(1996) 4 SCC 362 justified the application of multiplier method in the following manner:

"13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168 of the Motor Vehicles Act, 1988) envisaged payment of "just" compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases. "

6.Per Contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal considering the evidence of P.W.2/Doctor and nature of work done by the appellant, has reduced the disability from 45% to 40%. In the absence of any materials with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.5,000/- per month, which is proper. P.W.2/Doctor, who examined the appellant, has not stated that

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the appellant suffered functional disability. P.W.2/Doctor has stated that the appellant has suffered only 40% disability and the defects the appellant is facing due to the injuries sustained by her. There is no evidence with regard to avocation and income of the appellant. The amounts awarded by the Tribunal under different heads are not meagre and the Tribunal awarded compensation only after considering all the materials on record and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel for the second respondent and perused the materials available on record.

8.From the materials on record, it is seen that P.W.2/Doctor, has certified the permanent disability of the appellant at 45%. The Tribunal considering the nature of disability suffered by the appellant, reduced the same to 40%. There is no error in the said findings of the Tribunal. As far as the contention of the learned counsel for the appellant that the Tribunal has not granted any amount for loss of earning by applying multiplier method is concerned, there is no evidence to show that the appellant has suffered functional disability and she is immobilised. Considering the ratio of the Hon'ble Apex Court in the judgment reported in 2010 (2) TN MAC 581 (SC) (Rajkumar vs. Ajay Kumar and another) referred to above, the appellant is not entitled to any amount under the head 'loss of earning'. The Tribunal has granted a sum of Rs.80,000/- (2000 X 40%) by awarding Rs.2,000/- per percentage for 40% disability. The said compensation is enhanced to Rs.1,20,000/- (3000 X 40%) by awarding Rs.3,000/- per percentage of disability. The appellant has not let in any evidence to show that due to the injuries sustained by her, she could not do the work and lost her income. The Tribunal considering the treatment period, has awarded a compensation for three months towards loss of income as Rs.30,000/- and the same is proper. The Tribunal has granted a sum of Rs.10,000/- towards extra nourishment and the same is enhanced to Rs.15,000/-. A sum of Rs.3,000/- granted towards attendant charges is enhanced to Rs.7,500/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	30,000	30,000	confirmed

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2.	Transportati on	10,000	10,000	confirmed
3.	Extra nourishment	10,000	15,000	enhanced
4.	Damage to clothing	500	500	confirmed
5.	Medical expenses	17,522	17,522	confirmed
6.	Attendant charges	3,000	7,500	enhanced
7.	Loss of amenities	25,000	25,000	confirmed
8.	Pain and suffering	30,000	30,000	confirmed
9.	Disability at 40%	80,000	1,20,000	enhanced
	Total	2,06,022	2,55,522	Enhanced by Rs.49,500/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,06,022/- is hereby enhanced to Rs.2,55,522/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay the necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with accrued interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accident Claims Tribunal
III Small Causes Judge,Chennai.
+1cc to M/s.Malar, Advocate SR.No. 79640

C.M.A.No.2397 of 2015

RGN(CO)
A.SK(30.09.2021)