

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.09.2018	Delivered on 28.09.2018
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.Nos.1524 & 2564 of 2017
and
CMP.No.13976 of 2017

CMA.No.1524 of 2017:

I.Pavithra Appellant

-vs-

1.R.Alan Joy

2.The United India Insurance Co. Ltd.,
Third Party Claim Cell,
No.134, Greams Road,
Anna Salai, Chennai. Respondents

CMA.No.2564 of 2017:

The United India Insurance Co. Ltd.,
Third Party Claim Cell,
No.134, Greams Road,
Anna Salai, Chennai - 600 006. ... Appellant

-vs-

1.I.Pavithra

2.R.Alanjoy Respondents

WEB COPY

PRAYER IN CMA.No.1524 of 2017 and CMP.No.2564 of 2017: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 20.01.2017 made in MCOP.No.4489 of 2013 on the file of the Motor Accident Claims Tribunal cum Special Sub-Court - 2, Small Causes, Chennai and enhance the award amount.

For Appellant : Mr.S.Arunkumar in CMA.No.2564/17

Mr.K.Suryanarayanan
for Mr.M.Selvam in CMA.No.1524/17

For Respondents: Mr.K.Suryanarayanan
for Mr.M.Selvam in CMA.No.2564/17 for R1
Mr.S.Arunkumar in CMA.No.1524/17 for R2

J U D G M E N T

R.SUBRAMANIAN, J

1. The challenge in these appeals is to the award of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP.No.4489 of 2013 granting a sum of Rs.45,52,200/- as compensation for the injuries suffered by the claimant in the motor accident that occurred on 18.10.2012.

2. According to the claimant, while she was returning from Thirupattur after attending the marriage of her friend in a Tempo Traveller bearing registration No.TN-75-E-9945 at about 23.30 hours on Karur to Dindugal road near Sengulam, the driver of the tempo traveller drove the vehicle in a rash and negligent manner, hit against the lorry bearing registration No.TN-28-P-4722 causing grievous injuries to the claimant and her friend. Contending that the driver of the tempo traveller was negligent, she claimed that the 2nd respondent Insurance Company as the insurer of the tempo traveller has to compensate her for the injuries as well as permanent disability caused due to the injuries suffered by her in the accident. The claimant sought for a compensation of Rs.1,00,00,000/- on various heads viz., permanent disability, loss of earning power, medical expenses, future medical expenses etc.,

3. The Insurance Company resisted the claim petition contending that it was the rash and negligent driving of the driver of the lorry bearing registration No.TN-28-P-4722 that caused the accident. It is claimed that the tempo traveller was going at the permitted speed on the extreme left side of the road. The Insurance Company also denied the nature of injuries, the quantum of permanent disablement as well as the quantum of compensation.

4. The Tribunal which heard the Original Petitions concluded that the accident had occurred due to the rash and negligent driving of the tempo traveller. In order to come to the said conclusion, the Tribunal relied upon the FIR which discloses that the driver of the tempo traveller was negligent inasmuch as

he dashed the tempo traveller on the rear side of the lorry which was proceeding ahead of him. The Tribunal held that in the absence of any evidence on the side of the Insurance Company to show the absence of negligence on the part of the driver of the tempo traveller, the contents of the FIR and the evidence of PW1, the defacto complainant will have to be accepted. As regards the liability of the Insurance Company to indemnify the Insurer, the Tribunal found that a valid insurance cover was in force at the time of the accident and therefore, the Insurance Company is liable to satisfy the award.

5. On the quantum, the Tribunal, from the discharge summary issued by Apollo Hospitals marked as Ex.P2, found the following injuries:

1. Fracture Dislocation of right hip
2. Fracture of left Acetabulum
3. Fracture of Left Tibia
4. Facial Injuries and
5. Knee Lacerations

6. The discharge summary also discloses the treatment that has been undergone by the claimant are as follows:-

"Closed reduction right hip,
Intramedullary nailing left tibia,
Debridement and suturing on right knee and
Facial suturing."

7. The discharge summary dated 01.11.2012 marked as Ex.P3 issued by the Apollo Hospitals discloses the diagnosis as follows:-

"Comminuted fracture posterior wall
right acetabulum with hip dislocation, Medial
wall fracture left acetabulum, Left both bone
leg fracture, and Multiple lacerated wounds
over the face and left leg."

8. The procedure/ the surgery performed on the claimant is as follows :

"Open reduction and internal fixation
with Matta plate - Right Acetabulum."

9. The Tribunal took into account the above diagnosis and the treatment as well as the subsequent treatment undergone by the injured claimant between 25.11.2012 and 25.07.2015. The final impression recorded in Ex.P16 reads as follows:-

"Mildly malunited old fractures - distal portions of both bones of leg (tibia and fibula), Minimal cortical offset seen across the distal fibula."

"Teeth implantation - at the site of bilateral incisors."

10. PW2, the Doctor who was examined to prove the disability has assessed the disability at 60%. PW3 who is a Dental Surgeon has assessed the disability due to the injury caused to the teeth certified the disability at 25%. The Tribunal taking into account the evidence of PW2 and PW3 as well as the discharge summaries which were marked as Exs.P2, P3, P4, P5, P6 and P7 concluded that the physical disability was about 60%. Taking into account the other factors, particularly the dislocation of the right hip, fracture in the left acetabulum and also fracture to left tibia, the Tribunal fixed the functional disability/loss of earning capacity at 60%.

11. The Tribunal based on the fact that the injured claimant was House Surgeon who had completed her Under Graduation, took the notional monthly income at Rs.15,000/- per month and added Rs.3,000/- towards private practice. Thus, the Tribunal took the income of the claimant notionally at Rs.18,000/-. The Tribunal added 50% towards future prospects and took the income for the purposes of determination of loss of future earning power at Rs.27,000/-. The Tribunal applied the multiplier method and calculated the future loss of earning power at Rs.34,99,200/-.

12. The Tribunal also granted a sum of Rs.1,86,000/- at Rs.3,000/- per percentage towards continuing permanent disability, the Tribunal granted Rs.60,000/- for pain and suffering, Rs.25,000/- for transport to hospital, Rs.50,000/- for extra nourishment, Rs.4,000/- for damages to clothing and Rs.3,53,000/- for medical expenses based on bills, Rs.25,000/- for attender charges, Rs.25,000/- for loss of amenities, Rs.25,000/- for mental agony and Rs.3,00,000/- for loss of marriage prospects. In all, the Tribunal awarded a sum of Rs.45,52,200/- as compensation.

13. While, the Insurance Company has come forward with CMA.No.2564 of 2017 challenging the award as excessive, the claimant has filed CMA.No.1524 of 2017 seeking enhancement.

14. We have heard Mr.S.Arunkumar, learned counsel appearing for the Insurance Company - Appellant in CMA.No.2564 of 2017 and 2nd respondent in CMA.No.1524 of 2017 and Mr.K.Suryanarayanan, learned counsel appearing for Mr.M.Selvam for the appellant in CMA.No.1524 of 2017 and 1st respondent in CMA.No.2564 of 2017. The owner of the tempo traveller who figures as 1st respondent in

CMA.No.1524 of 2017 and 2nd respondent in CMA.No.2564 of 2017 though served has not appeared either in person or through counsel.

15. The factum of accident and the findings of the Tribunal on the question of negligence are not in dispute. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company is in an unenviable position. He is unable to challenge the findings of the Tribunal on the question of negligence, because the Insurance Company has not chosen to let in any evidence regarding the same. Both the counsel addressed their arguments only on the quantum of compensation.

16. While, Mr.S.Arunkumar would submit that the Tribunal erred in granting a sum of Rs.34,99,200/- towards loss of future income contending that the claimant had completed her education and has also joined Post Graduation, he would also fault the Tribunal for assessing the functional disability at 60%. Drawing our attention to the observations in the discharge summaries, Exs.P2 and P3, which have been extracted above, the learned counsel would submit that the above discharge summaries would show that the claimant had not suffered any permanent disability and she had the best of treatment. He would also contend that the disability suggested by the Doctor at 60% is highly excessive, considering the fact that all the fractures have united and there is only a mild malunion of the old fracture in the distal portion of the leg viz., Tibia and Fibula.

17. Mr.S.Arunkumar would also invite our attention to the judgment of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in 2011 ACJ 1, to contend that the Tribunal should not automatically apply multiplier method in injury cases and there should be some evidence to show that the injury/ permanent disability had resulted in actual loss of earning power.

18. Contending contra, Mr.K.Suryanarayanan, learned counsel appearing for the claimant/ appellant in CMA.No.1524 of 2017 would submit that the mere fact that the injured claimant was able to continue her education will not prevent the Court from assessing the loss of income and applying multiplier method. He would also rely upon the following judgments of the Hon'ble Supreme Court and this Court:

- V.Mekala Vs. M.Malathi and another reported in 2014 (2) TN MAC 6 (SC),
- Kavita Vs. Deepak and others reported in 2012 (2) TN MAC 362 (SC),

- Gurmej Singh Vs. Vijay Kumar and others reported in 2012 ACJ 1351,
- Oriental Insurance Co. Ltd. Vs. Dr.Thakur Surendra Kumar Singh and another reported in 2012 ACJ 1355,
- New India Assurance Co. Ltd Vs. K.S.Jothi Arumugam and another reported in 2014 (1) TN MAC 210,
- Cholamandalam MS General Insurance Co. Ltd., Vs. P.Kapil Chand Jain and another reported in 2015 (1) TN MAC 75 (DB),
- National Insurance Co. Ltd., Vs. Raja and others reported in 2018 ACJ 831,
- New India Assurance Co. Ltd. Vs. Dr.T.Ramachandrudu and another reported in 2018 ACJ 949.

19. Placing reliance on the above judgments Mr.K.Suryanarayanan, would contend that the Tribunal should have granted more compensation under the head of loss of earning capacity and future medical expenses. We have considered the rival submissions.

20. The law relating to grant of compensation in case of injury leading to permanent disablement is by now well settled. The Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in 2011 ACJ 1, had considered the method by which the loss of future earnings could be decided by the Tribunals. After discussing the law on the question of permanent disability leading to loss of earning power, the Hon'ble Supreme Court had summarized the principles as follows:-

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

21. The Hon'ble Supreme Court has also referred to Note 5 of Second Schedule which reads as follows:-

"5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents : -

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

Plus either of the following :-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's [Compensation Act, 1923.](#)"

22. From the above observations of the Hon'ble Supreme Court, it is clear that the Tribunals and Courts which are enjoined with a duty of arriving at a just compensation will have to decide the same following well accepted principles of determination of compensation. While the percentage of disability caused due to a particular type of injury will have to be decided by the Doctor or a Medical Board as the case may be, the effect of the disability on the earning power of the victim has to be necessarily decided by the Tribunals or Courts for the purposes of granting compensation.

23. There may be case where even a small injury or a disablement or an amputation would result in 100% loss of earning power, and the reverse is also possible. A major amputation of the limb may not have an effect on the earning capacity of the individual concerned. This can be illustrated by taking certain professions as example.

24. In case of a Carpenter, if he loses his left or right thumb the same will have a telling effect on his performance as a carpenter and it will have a larger effect on his earning power. The same amputation may not have the same effect on a clerk or a lawyer or any other professional. Therefore, the Tribunals and Courts while deciding the quantum of compensation for the future loss of earning power must necessarily take into account the occupation of the injured claimant vis-a-vis the disability suffered.

25. The same principle have been stressed by the Hon'ble Supreme Court in Kavita Vs. Deepak and others reported in 2012 (2) TN MAC 362 (SC), where the Hon'ble Supreme Court after referring to Sri Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited reported in 2011 (2) TN MAC 190 (SC) had extracted the following from the said judgment.

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used,

ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

26. Mr.K.Suryanarayanan would invite our attention to the judgment of the learned Single Judge of Punjab and Haryana High Court in Gurmej Singh Vs. Vijay Kumar and others reported in 2012 ACJ 1351, wherein, the learned Single Judge had relied upon the Division Bench judgments of this Court in Management of Sree Lalithambika Enterprises Vs. S.Kailasam reported in 1986 ACJ 1150 (Madras), V.Jayaraj Vs. Thanthai Periyar Transport Corporation Ltd., reported in 1989 (2) LLJ 38 and the judgment of the House of Lords in Bale Vs. William Hunts and Sons Limited reported in (1912) AC 496 to conclude that by merely continuing the employee in the same post the employer cannot deny compensation for the disability suffered by the employee.

27. The House of Lords in Bale Vs. William Hunts and Sons Limited cited supra, had held that the incapacity of work included inability to work or in other words, there is incapacity for work when a man has a physical defect which makes his working unsaleable in any market reasonably accessible to him. Applying the same logic, a person who has suffered an injury may not come by immediate loss if he is continued in the same employment, but, at the same time, it cannot be disputed that his own saleability in future, if he is to seek better career options with some other employer. There is no doubt, in such cases, definitely, the employee/ victim would suffer a certain amount of loss of earning power.

28. In V.Mekala Vs. M.Malathi and another reported in 2014 (2) TN MAC 6 (SC), relied upon by Mr.K.Suryanarayanan, the Hon'ble Supreme Court took note of the fact that the claimant who was aged about 16 years at the time of the accident had suffered permanent disability and it was found that the knee

bones in both the legs have malunited and knee folding was restricted to 25° to 85°. She had the difficulty in stretching the legs fully and sitting cross legged and squatting on the floor was ruled out. Under such circumstances the Hon'ble Supreme Court accepted the assessment of disability at 70% made by the Tribunal and approved the multiplier method adopted by the Tribunal in granting compensation. In fact the Hon'ble Supreme Court granted a sum of Rs.30,93,000/- as compensation.

29. In New India Assurance Co. Ltd Vs. K.S.Jothi Arumugam and another reported in 2014 (1) TN MAC 210, the learned Single Judge of this court had considered the award of compensation both under the head of permanent disability and loss of earning capacity. The learned Single Judge after assessing the disability at 65% because of the restriction in the knee joint movement and reduction in right thigh bone concluded that the claimant therein would not be able to continue his job as Deputy Sales Manager in a private Company applied multiplier method and awarded Rs.17,20,800/- towards loss of earning power. The jurisdiction of the Tribunal to award compensation under both the heads viz., loss of earning power and permanent disability was affirmed by this Court.

30. In National Insurance Co. Ltd., Vs. Raja and others reported in 2018 ACJ 831, also the Division Bench of this Court adopted multiplier method to assess the loss of earning power.

31. In New India Assurance Co. Ltd. Vs. Dr.T.Ramachandrudu and another reported in 2018 ACJ 949, a Division Bench of this Court had taken into account the injury, permanent disablement caused to a Doctor where it was found that the Doctor who was working as Professor in Medical College and hospital and earning Rs.3,00,000/- per month and also earning from his private practice suffered 83% permanent disability due to the injuries caused. Applied the multiplier method and assessed the loss of income at Rs.1,48,61,057/-. The Division Bench based on the medical evidence specifically found that the disability was 83%. The Insurance Company had claimed that the injured can continue his practice as Doctor and therefore the Tribunal was not right in accepting the evidence of PW2 and PW3 and fixing the disability at 83%. The Division Bench however concluded that the percentage of disability was about 65% and based on the income drawn, the Tribunal calculated the loss of earning power at Rs.1,39,20,300/-.

32. In Sandeep Khanuja Vs. Atul Dande and another reported in 2017 (1) TN MAC 410 (SC), the Hon'ble Supreme Court concluded that a Chartered Accountant who suffered fracture of both the legs had suffered 70% disability is entitled to be compensated for loss of future earning power. In calculating the loss of earning power the Hon'ble Supreme Court followed the multiplier

method taking the disability suffered by the victim at 70%. However, the Hon'ble Supreme Court denounced the view of the Tribunal which held that considering the nature of the work there may not be any loss of earning power. Finally the Hon'ble Supreme Court took the disability at 70% and granted a sum of Rs.14,28,000/- towards loss of earning power.

33. The sum and substance of the principles on which the courts have decided the loss of earning power is as follows:-

1. The quantum of permanent disability caused by the injuries is to be essentially decided by the medical professionals.

2. The effect of such permanent disability on the earning power of the victim will have to be decided by the Tribunals and Courts.

3. While deciding the said loss of earning power, the Courts and Tribunals are expected to arrive at the just and reasonable compensation.

4. The basis for calculation of reasonable compensation would be the extent to which the earning power is reduced due to the injuries caused. This will however involve some guess work and there cannot be a precise mathematical formula in deciding it.

5. The nature of the work or occupation or profession of the victim will definitely have a direct bearing on the loss of earning power due to the permanent disability caused.

34. Coming to the case on hand the injured was a medical student doing House Surgency at the time of the accident. The Tribunal has taken her monthly income at Rs.18,000/- adding 50% towards future prospects, applying multiplier '18' and having held that the injured claimant had suffered 60% of loss of earning power granted a compensation of Rs.34,99,200/- towards loss of earning capacity. It is the compensation awarded under this head which is being very seriously disputed by the Insurance Company.

35. Pointing out the fact that the injuries suffered which have been extracted above and the treatment that has been undergone by the claimant, Mr.S.Arunkumar would strenuously contend that these injuries and the alleged permanent disablement suffered because of the injuries cannot lead to any kind of loss of earning power much less to the extent of 60% as assessed by the Tribunal.

36. Relying upon Ex.P16 which is the digital x-ray of the left leg and AP lateral view dated 25.07.2015 which shows the impression as mildly malunited old fracture - distal portions of both bones of leg (tibia and fibula) and Minimal cortical offset, Mr.S.Arunkumar would contend that there cannot be 60% loss of earning power because of these injuries.

37. Mr.K.Suryanarayanan would however contend that the claimant had suffered fracture in the posterior wall right acetabulum with hip dislocation and medial wall fracture in the left acetabulum, therefore, according to him, these fractures would have the effect of preventing the injured claimant from moving the upper leg free. The acetabulum is a concave surface of the pelvis where the head of the femur (thigh bone) meets with the pelvis. The pelvis and the acetabulum form the hip joint. The hip joint is a ball and socket joint which enables human beings to walk, bend, rotate upper leg etc., Therefore the fracture in the acetabulum and dislocation of the hip can cause difficulty in walking as well as sitting. Relying heavily on the observations of the Tribunal relating to the fracture in the acetabulum Mr.K.Suryanarayanan would contend that the Tribunal was not justified in taking the disability at 60%, but it should have been taken at 70% as per the evidence of PW2 and PW3.

38. Mr.S.Arunkumar, would also contend that the Tribunal erred in adding 50% towards future prospects, it could only be 40%, in view of the recent pronouncement of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331. Mr.S.Arunkumar, would also draw our attention to the fact that the injured claimant is now pursuing Post Graduate in Gynecology to contend that the injuries/ permanent disability suffered in the accident did not have any effect on the future prospects of the petitioner.

39. The fact that the injured claimant is pursuing her Post Graduation is not in dispute. The combined effect of the injuries, particularly, the fractures to the Tibia and Fibula in the right leg and the fracture of the middle acetabulum wall, the fracture in the posterior wall of the right acetabulum and Medial wall fracture in the left acetabulum would definitely have an effect on the movement of the injured claimant. It can be argued that these restrictions in movement alone cannot have the effect of diminishing the earning power of the injured claimant as a practicing Doctor.

40. Though Mr.S.Arunkumar would contend that the very fact that the injured claimant has chosen Gynecology as her Post Graduation course would show that she does not have any difficulty in movement, we do not think that such a contention can be accepted. While we agree with Mr.S.Arunkumar to the extent that the loss of earning power must be related to the

profession or occupation of the injured claimant, we cannot, at the same time, rule out the possibility of the effect of these injuries on the earning power of the injured claimant in future.

41. As rightly pointed out by the learned Single Judge of Punjab and Haryana High Court in Gurmej Singh Vs. Vijay Kumar and others reported in 2012 ACJ 1351, following the judgment of the Division Bench of this Court, a possibility of a reduction in earning power in future should also be taken into account while assessing the loss of earning power of the injuries caused.

42. From the evidence available in the case on hand, it is seen that the injured claimant had undergone several surgeries right from the date of the accident till 25.07.2015. The impression from the scan report of the digital x-ray of the pelvis with both hip are as follows:-

"Fixation plate with screws seen across the acetabulum and pubis on the right side, to stabilize the fracture medial acetabular wall, Elongated ossified structure seen in the lateral supraacetabular region on the region side.-? Myositis ossificans, Dense sclerotic foci seen medial to the ischial spine on the left side, -16 mm loose bony fragment seen lateral to the femoral head on the left side, Medial acetabular wall on the left side appear indistinct-old fracture."

43. These impressions along with impressions in the digital x-ray of the left leg dated 25.07.2015 would show that there would be a certain difficulty for the injured claimant in moving her right leg. The Tribunal has not given any reason as to how the 60% physical disability suffered by the claimant would translate into 60% functional disability or loss of earning capacity. We find no evidence to support the said conclusion.

44. However, we cannot brush aside the fact that the injured claimant is a woman pursuing her medical education and even a minor injury may have a larger impact on her earning power. We are therefore of the considered opinion that the loss of earning power suffered by the claimant can be safely taken at 40%. In coming to the above conclusion, we have taken into account the fact that the injured claimant is now pursuing her Post Graduation in Gynecology and the nature of the work a Gynecologists is expected to perform in the labour room at the time of delivering a child as well as the nature of the duties that they would be performing during surgeries. We have also considered the fact that the restriction in movement and her leg or a difficulty in standing would pose several inconvenient

situations to a medical practitioner.

46. Now that we have fixed the loss of earning power at 40%, we will have to determine the notional income that can be fixed in order to arrive at quantum of loss of earning power. The Tribunal has taken the income at Rs.18,000/-, and added 50% towards future prospects. The Tribunal has gone by the notification issued by the Tamil Nadu Medical Services Recruitment Board, where the starting salary for the post of Assistant Surgeon with MBBS alone is mentioned as Rs.15,600/- - Rs.39,100/- + Grade Pay Rs.5,400/-. The Tribunal though has said that it will carry Dearness Allowance of more than 100%, we are of the considered opinion that the said fixation made by the Tribunal is on the lower side. A Doctor with MBBS qualification doing Post Graduation is entitled to stipend also. We are therefore of the considered opinion that the monthly income could be safely taken at Rs.25,000/-. If 40% is added to it towards future prospects, the monthly income for the purposes of determining the quantum of loss of earning power would be Rs.35,000/- per month. Considering the age of the claimant at the time of the accident the multiplier would be '18', we have already concluded that the loss of earning power would be 40% thus worked the loss of earning capacity works out to Rs.30,24,000/- [35,000 x 12 x 18 x 40%].

47. The Tribunal has granted a sum of Rs.1,86,000/- towards permanent disability after having assessed the permanent disability at 62% and the same is sustained. The Tribunal has granted a sum of Rs.60,000/- towards pain and suffering. We find that the same is on the lower side considering the number of surgeries and the period during which the treatment was taken for almost three years. We are of the opinion that an award of Rs.1,00,000/- under this head would be just and reasonable.

48. The award of Rs.25,000/- towards transportation, Rs.50,000/- towards extra nourishment, Rs.3,53,000/- towards medical expenses, Rs.4,000/- towards damage to clothing, Rs.25,000/- towards mental agony and Rs.25,000/- towards loss of amenities are sustained. We do not see any reason to interfere with the said awards.

49. The Tribunal has awarded a sum of Rs.25,000/- towards attender charges. The same appears to be too low, considering the period of hospitalization. We therefore award a sum of Rs.35,000/- towards attender charges. The Tribunal has awarded Rs.3,00,000/- towards loss of marriage prospects. The same appears to be on the higher side, being the conventional non-pecuniary damage, the loss of marriage prospects will depend on how the injury shapes up in future. We therefore award a sum of Rs.2,00,000/- on that head. Thus worked, the total award works out to Rs.40,27,000/-.

50. For the foregoing reasons, both the appeals are allowed in part. The award of the Tribunal is modified to Rs.40,27,000/- with interest at 7.5% from the date of petition till date of payment. The Insurance Company is directed to deposit the award amount less the amount if any already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit the claimant is permitted to withdraw the entire amount of compensation. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Motor Accident Claims Tribunal,
Special Sub-Court No.2,
Small Causes Court, Chennai.

2.The Section Officer,
VR Section, High Court, Madras. (2 copies)

+1 cc to M/s.S.Arunkumar, Advocate, SR No.67570

+1 cc to M/s.M.Selvam, Advocate, SR No.67512

+1 cc to M/s.K.Suryanarayanan, Advocate, SR No.67288

CMA.Nos.1524 & 2564 of 2017

GP(co)
ssm(28/12/18)

सत्यमेव जयते

WEB COPY