IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.10.2018

DELIVERED ON : 06.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.586 of 2017
and
CMP.No.3489 of 2017 and
CMP.Nos.18692 to 18694/2017

The Divisional Manager
National Insurance Company Limited
Divisional Office
No.110, J.N.Street
Puducheri - 605 001. ... Appellant/IV Respondent

Vs

1. C.Mathivanan ... 1st Respondent/Petitioner

2. S.S.Alagarasan

3. The Divisional Manager
National Insurance Company Limited
Divisional Office
No.110, J.N.Street
Puducheri - 605 001.

4. E.Vijayakumar ... 2 to 4 Respondents/
1 to 3 Respondents

(2nd and 3rd Respondents are only formal parties they are shown only for the purpose of cause title and no relief is claimed as against them.)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 06.10.2016 passed in M.C.O.P.No.3557 of 2013 by the Motor Accidents Claims Tribunal (Court of Special Subordinate Judge), Cuddalore.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.R.Muralidharan

JUDGMENT

Calling in question the decree and judgment dated 06.10.2016 passed in M.C.O.P.No.3557 of 2013 by the Motor Accidents Claims Tribunal (Court of Special Subordinate Judge), Cuddalore, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The first respondent herein is the victim who filed M.C.O.P.No.3557 of 2013. In the claim petition, it is averred that on 28.04.2013, at about 13.00 Hours, when the claimant was proceeding in the fourth respondent's Indica Car bearing registration No.TN 59 AB 6160 from south to north, on the overbridge, driven by its driver, the fourth respondent, at a moderate speed, the second respondent's tanker lorry bearing registration No.TN 30 AA 3939 came from behind at a great speed in a rash and negligent manner and tried to overtake the car in which the first respondent was travelling and in the process, the tanker lorry hit the car in which the first respondent was travelling and a result, the care capsized and the petitioner sustained multiple fractures and grievous injuries. It is stated that the driver of the Indica Car and other occupants were injured in the accident.

3. It is stated that taking advantage of the situation, the second respondent's vehicle rushed to the police station and gave a false complaint against the driver of the Indica Car and though the fact of negligence of the tanker lorry driver was explained to the police at the time of their visit to the Government Hospital, Perambalur, FIR was registered against the driver of the fourth respondent's Indica Car. It is the specific case of the first respondent that the accident was caused due to the driver of the second respondent's tanker lorry.

4. It is further stated that due to fractures and multiple grievous injuries suffered by the first respondent, his life has become a tragedy and he could not do any work and became dependent on others. He claims to have become permanently disabled and incapacitated from earning and his permanent disability has put him into great hardship. He also claims to be the sole bread winner.

5. In this backdrop, the petitioner filed the claim petition seeking compensation of Rs.5,00,000/-. The learned Tribunal, by decree and judgment dated 06.10.2016, awarded compensation of Rs.2,05,658/- in favour of the first respondent.

6. Assailing the said judgment, the present appeal is filed by the Insurance Company.

7. The learned counsel appearing for the appellant insurance company submitted that the first respondent sustained only simple injury, as is evident from Ex.P22 (Accident Register Extract of Kannan Hospital, Cuddalore) and the Tribunal had erroneously presumed that the first respondent will have difficulty in carrying out his fishing avocation due to the alleged headache and giddiness, which the first respondent claims to be suffering as a result of the accident, though not supported with any documentary evidence.

8. He further contended that the Tribunal has arbitrarily determined the loss of earning capacity of the first respondent at 15% based on the alleged 3% permanent impairment for "Old head injury with Sequelae" certified by the Medical Board, which is marked as Ex.P28 and had also erroneously adopted multiplier method for the simple injury suffered by the first respondent and awarded an exorbitant sum of Rs.1,44,000/- towards loss of earning capacity.

9. He further contended that the compensation awarded by the Tribunal under other heads was also excessive and unsustainable. Thus, the total compensation of Rs.2,05,658/- awarded with interest at the rate of 7.5% per annum by the Tribunal is without any basis and totally unjustified.

10. Reiterating the quantum of compensation awarded by the Tribunal, the learned counsel for the first respondent contended that after analysing the oral and documentary evidence, the Tribunal awarded the compensation and therefore, there is no need to interfere with the same and prayed for dismissal of the appeal.

11. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the first respondent and secondly, none of those findings are under challenge. Only the quantum of compensation is under challenge.

13. The main contention of the appellant is that for the alleged 3% permanent impairment for old head injury with sequalae, without any basis, the Tribunal has fixed 15% loss of future earning capacity. Further, in an arbitrary manner, the

Tribunal adopted multiplier method and has determined the loss of future earning capacity at Rs.1,44,000/-.

14. In the case on hand, according to the first respondent at the time of accident, he was aged 35 years and was earning Rs.15,000/- by doing fish catching and fish selling business. The denial of the age, occupation and monthly earning of the first respondent by the appellant is only a formal denial and no rebuttal evidence was produced. In his petition, the first respondent stated that due to injuries sustained in the accident, his life has become a tragedy and he could not do any work and depended on others.

15. A perusal of Ex.P21-Accident Register shows that in the accident, the first respondent sustained injuries on his right eye brow and head. During the course of trial, the first respondent was referred to Medical Board to assess the disability and Medical Board examined the first respondent and assessed the disability at 3% in relation to whole body.

16. According to the first respondent due to head injury, he was not able to carry fish load on his head and he often feels headache and giddiness. Ex.P23 is the discharge summary issued by Kannan Hospital, Cuddalore, wherein it has been stated that the first respondent was admitted on 28.04.2013 and discharged on 01.5.2013 for the injuries sustained in the accident. On a perusal of Ex.P23, it is seen that while discharging, the Doctor advised the first respondent to continue the tablets and dressing. Thus, it is clear that on the date when the first respondent was discharged from the hospital, he was not fully cured and he was advised to take dressing.

17. It is to be noted that the discharge summary was issued on 01.05.2013, however, the Medical Board examined the first respondent on 21.09.2016 nearly after two and half years from the date of issuance of Ex.P23. If really, the first respondent was examined immediately after the accident by the Medical Board, they would have found even higher percentage of disability. In fact, the Medical Board while issuing Ex.P28-certificate stated that "old head injury with sequelae", which means that the head injury sustained by the first respondent not cured in full and till examination by the Medical Board there was infection.

18. Based on Ex.P28-certificate issued by the Medical Board, the Tribunal fixed the permanent disability of the first respondent at 3%. Finding that because of injuries particularly head injury, the first respondent was unable to carry fish load on his head and also often feeling headache while doing fish catching in sea and was also unable to do his fish business, the

Tribunal fixed the loss of future earning capacity at 15%. There was no second thought that before the accident, the first respondent was suffering headache and giddiness. There was also no second thought that before the accident, the first respondent sustained head injury. Therefore, it is to be held that due to injuries sustained in the accident particularly head injury, the first respondent often feels head ache and giddiness.

19. In FAO No.280 of 1995 (Purshotam Dass v. New India Assurance Co. Ltd. and others), decided on 08.04.2011, the Delhi High Court summarized the principles to be followed in all injury cases, which reads as under:

> "13. We may now summarize the principles discussed above:
>
> (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.
>
> 14. The assessment of loss of future earnings is explained below with reference to the following illustrations:-

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade.

Calculation of compensation will be as follows:
a) Annual income before the accident : Rs.36,000/-.
b) Loss of future earning per annum : Rs. 5400/-. (15% of the prior annual income)
c) Multiplier applicable with reference : 17 to age
d) Loss of future earnings (5400 x 17) : Rs. 91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%.

Calculation of compensation will be as follows:
a) Annual income prior to the accident : R. s.36,000/-
b) Loss of future earning per annum : R. s.27,000/- (75% of the prior annual income)
c) Multiplier applicable with reference : 17 to age
d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%.

The calculation of compensation will be as follows:
a) Minimum annual income he would : Rs.60,000/-

have got if had been employed as an Engineer
b) Loss of future earning per annum : Rs.42,000/- (70% of the expected annual income) Multiplier applicable (25 years)
c) Multiplier applicable (25 years) : 18
d) Loss of future earnings:(42000 x 18) : Rs.7,65,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C), however, are based on actuals taken from the decision in Arvind Kumar Mishra (supra)]."

20. In Sandeep Khanuja v. Atul Dane and another, (2017) 1 SCC 351, the Hon'ble Supreme Court held:

"10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases and that is now recognised mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand. In that case, after following the judgment in Kerala SRTC v. Susamma Thomas, the Court chose to apply multiplier of 18 keeping in view the age of the victim, who as 25 years at the time of the accident.

21. In the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298, the accident resulted 70% permanent disablement. The Hon'ble Supreme Court held the functional disability to be 70%. The loss of earning capacity was computed according to the multiplier method. The Hon'ble Supreme Court held as under:-

"The basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for

> that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

22. The Tribunal has proceeded on the basis that the permanent disability of the injured claimant was 3% and the loss of his future earning capacity was 15%. Though the Medical Board assessed the disability at 3% in relation to whole body, the Tribunal has overlooked the same. The said extent of permanent disability has not been taken into account by the Tribunal for awarding amount under the head "disability". However, the Tribunal, taking note of the head injury and its complication and/or infection, considered to take the loss of future earning capacity at 15%.

23. In a case like this and having regard to injuries suffered by the first respondent, there is a definite loss of future earning capacity and it calls for grant of compensation with the adoption of multiplier method. This Court does not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the first respondent in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the Court must take care to give him full and fair compensation for that he had suffered.

24. On the facts and circumstances of the case, to do complete justice, though the Medical Board assessed the permanent disability at 3% in relation to whole body, the Tribunal had fixed the future earning capacity as 15%, which in my opinion is not arbitrary and only on the basis of the evidence.

25. In his evidence, the first respondent deposed that he was earning Rs.15,000/- per month by doing fish catching and

fish business. To prove the same, the first respondent has not produced any document. In the absence of proof, the Tribunal has taken the monthly income of the first respondent at Rs.5,000/-, which in my opinion is reasonable. Thus, the annual income before the accident was Rs.60,000/- and if we take the loss of future earning capacity at 15%, the loss would come to Rs.9,000/- (Rs.60,000 x 15/ 100). At the time of accident, the first respondent was aged 35 years and as per Second Schedule to M.V. Act, the proper multiplier to be adopted is “16”. Adopting multiplier “16”, the loss of future earning capacity would comes to Rs.1,44,000/-, which the Tribunal has rightly awarded. I find that a sum of Rs.1,44,000/- awarded by the Tribunal by taking 15% loss towards future earning capacity warrants no interference.

26. As far as other heads are concerned, the Tribunal awarded Rs.25,000/- towards pain and suffering; Rs.10,000/- towards transport charges; another Rs.10,000/- towards extra-nourishment and Rs.5,000/- towards other expenses. Considering the nature of injuries sustained in the accident and the period of treatment undergone by the first respondent, the amounts awarded by the Tribunal under the aforesaid heads are maintained. Thus, the total compensation of Rs.2,05,658/- payable with interest at the rate of 7.5% awarded by the Tribunal warrants no interference and the same is confirmed. No valid grounds have been made out to interfere with the award passed by the Tribunal and the appeal is liable to be dismissed.

27. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant is directed to deposit the award amount with interest, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is entitled to withdraw the deposited amount with accrued interest on filing proper cheque application before the Tribunal. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Sub-Court, Cuddalore.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.R.Muralidharan, Advocate Sr.No.83943
+1 cc to Mr.J.Michael Visuvasam, Advocate Sr.No.83934

Order made in
C.M.A.No.586 of 2017 and
CMP.No.3489 of 2017 and
CMP.Nos.18692 to 18694/2017

CA(CO)
CSL/24.01.2019