

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2537 of 2018

P.Beer Mohamed

..Appellant/Petitioner

.Vs.

1.Naveen Baby

2.United India Insurance Company Limited,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai - 600 006.

..Respondents/Respondents

(R1 set exparte before the Tribunal
Notice to R1 may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2016 made in M.C.O.P.No.571 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For R1 : Exparte before the Tribunal

For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 16.11.2016 made in M.C.O.P.No.571 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Court No.I, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.571 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Court No.I, Small Causes Court, Chennai. He filed the above claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.12.2012.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle bearing Registration No.KL-41-C-2404 belonging to the first respondent and directed the second respondent being the insurer to pay a sum of Rs.5,60,100/- 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 seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant was 60 years old at the time of the accident and was working as a cook and Parotta Master in a hotel and was earning a sum of Rs.10,000/- per month. The Tribunal without any basis erroneously fixed the notional income of the appellant at Rs.6,500/- per month, which is meagre. P.W.2/Doctor has assessed permanent disability of the appellant at 65%. The Tribunal without properly considering Ex.P9/disability certificate, medical report and Ex.P4/discharge summary reduced the percentage of disability to 60%. The appellant due to the injuries sustained by him as mentioned by the Doctor and documents produced by them, has proved that he suffered 100% disability and he could not continue his work as he was doing earlier. The Tribunal has not considered the contention of the appellant with regard to 100% disability for loss of earning capacity and fixed only 30% functional disability. The Tribunal fixing 30% functional disability, applied multiplier method, which is erroneous. The Tribunal ought to have applied multiplier method for 60% disability. The Tribunal awarded a sum of Rs.3,000/- per percentage for 60% disability. The Tribunal ought to have applied multiplier method for granting compensation towards permanent disability also. The appellant was in hospital for 53 days and he underwent surgery with internal and external and was taking treatment as out-patient. The Tribunal without properly appreciating this fact, has awarded meager amounts under different heads. The appellant was aged 60 years at the time of the accident and the Tribunal failed to award 50% enhancement for future prospects and prayed for enhancement of compensation. In support of his contention, he relied on the following judgments:

- (i) 2010 (2) TN MAC 581 SC (Raj Kumar vs. Ajay Kumar and another);
- (ii) 2013 (2) TN MAC 88 SC (S.Manickam vs. Metropolitan Transport Corporation Limited);
- (iii) 2014 (1) TN MAC 641 (SC) (Dinesh singh vs. Bajaj Allianz General Insurance Co. Ltd.);
- (iv) 2014 (1) CTC 745 (Sanjay verma vs. Haryana Roadways);
- (v) 2015 (2) TN MAC 454 (DB) (The Branch Manager, United India Insurance Company Limited vs. M.Ethirajulu and others);
- (vi) 2017 (1) TN MAC 410 (Sandeep Khanuja Vs. Atul Dande and

Another);

(vii) 2017 (2) TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi);

(viii) 2018 (2) TN MAC 289 SC (Anant vs. Pratap);

(ix) 2018 (2) TNMAC 452 (SC) Supreme Court (Magma General Insurance Company vs. Nanu Ram @ Chuhru Ram and others);

6.Per contra, the learned counsel appearing for the second respondent contended that the appellant failed to substantiate his claim that he was earning a sum of Rs.10,000/- per month and he suffered 100% permanent disability and he is totally immobilized. In view of the above, the Tribunal fixed notional income of the appellant at Rs.6,500/- per month, which is reasonable. Considering the evidence of P.W.2/Doctor and documents with regard to nature of injuries and disability certificate, which relates to only particular limb, the Tribunal has fixed 30% functional disability for whole body of the appellant and there is no error in the said finding. The Tribunal has awarded compensation towards loss of earning capacity by applying multiplier method and awarded compensation towards permanent disability by awarding Rs.3,000/- per percentage of disability. In all the cases for both permanent disability as well as loss of earning capacity, the multiplier method cannot be applied. Based on the facts and circumstances of each case only, multiplier method can be applied for permanent disability also. The Tribunal has considered all the materials on record and then only awarded just compensation under different heads and prayed for dismissal of the appeal. In support of his contentions, he relied on the following judgments:

(i) 2017 (2) TN MAC 465 (SC) (New India Assurance Co. Ltd., Vs. Gajender Yadav and others);

(ii) 2018 (2) TN MAC 606 (DB) (A.Gunasekar @ Gunasekaran Vs. U.Muthukumar);

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

8.The main contention of the learned counsel appearing for the appellant is that the Tribunal erred in reducing the percentage of disability from 65% as certified by P.W.2/Doctor to 60% and similarly, fixing 30% for functional disability on whole body was erroneous. From the materials on record, it is seen that P.W.2/Doctor has certified 65% as permanent disability and there will be variation of 5% with regard to disability fixed by P.W.2/Doctor, if the same is assessed by some other Doctor. In such circumstances, the order of the Tribunal fixing the percentage of disability at 60% does not warrant any interference by this Court.

9.As far as disability fixed for functional disability for the whole body is concerned, it is well settled that the disability to a particular part of the body will not be the same for entire body. The disability with regard to entire body will differ from disability for loss of earning capacity. In the judgment reported in 2010 (2) TN MAC 581 (SC) (Raj kumar vs. Ajay Kumar and another) relied on by the learned counsel appearing for the appellant, the Hon'ble Apex Court has given illustration as to how the disability for limb as well as for the whole body has to be assessed. In conclusion in paragraphs 18 and 20, the Hon'ble Apex Court held as follows:-

"18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.

19. . . .

20. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore, there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses."

10. In view of the ratio of the Hon'ble Apex Court in the above said judgment, I hold that there is no error in the Tribunal fixing 30% of disability for whole body, when P.W.2/Doctor certified 65% disability for a part of the body.

11. The next contention of the learned counsel appearing for the appellant is that the appellant was aged 60 years at the time of the accident and the Tribunal ought to have given future prospects, is without merits. The Tribunal has adopted multiplier method for loss of earning capacity even after taking note of the fact that the appellant failed to prove any loss of earning capacity after the accident. Further, the Tribunal has granted compensation at the rate of Rs.3,000/- per percentage of disability in addition to compensation granted for loss of earning capacity. In view of the same, the appellant is not entitled to any enhancement for future prospects. The amounts awarded by the Tribunal under the heads of pain and suffering, extra nourishment and attendant charges are meager. Considering the fact that the appellant was in the hospital for 53 days and underwent surgery, a sum of Rs.50,000/-, Rs.30,000/- and Rs.30,000/- are hereby enhanced under those heads respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same 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.	Permanent disability	1,80,000	1,80,000	confirmed
2.	Loss of earning capacity	2,10,600	2,10,600	confirmed
3.	Pain and suffering	40,000	50,000	enhanced
4.	Loss of income	32,500	32,500	confirmed
5.	Transportation	4,000	4,000	confirmed
6.	Extra nourishment	20,000	30,000	enhanced
7.	Damage to clothes and articles	3,000	3,000	confirmed
8.	Attendant charges	20,000	30,000	enhanced

9.	Loss of amenities	25,000	25,000	confirmed
10.	Mental agony	25,000	25,000	confirmed
	Total	5,60,100	5,90,100	enhanced by Rs.30,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,60,100/- is hereby enhanced to Rs.5,90,100/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. 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 order. On such deposit, the appellant is permitted to withdraw the enhanced award amount with interest and costs, less the amount if any, already withdrawn. No costs.

krk/kj

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal,
Special Subordinate Judge No.I,
Small Causes Court,
Chennai.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.M.Malar, Advocate, SR.No.87104
+1cc to Mr.D.Bhaskaran, Advocate, SR.No.81694

C.M.A.No.2537 of 2018

Kak (28/08/2019)