BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2018
(Reserved on 10.07.2018)

CORAM :

THE HONOUR ABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.831 of 2017
and
MP(MD)No.8935 of 2017

The Branch Manager,
Bharti Axa General Insurance Company Ltd.,
No.11, Brindhavan Road,
Fair Lands, Salem-16. ... Appellant/2nd Respondent

vs.

1)Veerachamy ... 1st Respondent/Petitioner
2)Amutha Thenmozhi ... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27.9.2016 made in MCOP.No.64 of 2014 on the file of Motor Accident Claims Tribunal, Additional District Judge and Special Judge of Pudukottai.

For Appellant : Mr.G.Maruthiah
For R1 : Mr.K.C.Maniyarasu
For R2 : No appearance

JUDGMENT

This appeal has been filed against the decree and judgment dated 27.09.2016 made in MCOP.No.64 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge and Special Judge of Pudukottai.

2.In an accident which occurred on 03.11.2013, the 1st respondent/claimant sustained fracture of ulna bone in the right hand and fibula bone in the left leg and injuries on head and face. The claimant laid a claim in MCOP.No.64 of 2014 on the file of Motor Accident Claims Tribunal, Additional District Judge and Special Judge of Pudukottai, claiming compensation of Rs.10,00,000/-. The appellant insurance company disputed the age, avocation, income of the claimant and the compensation claimed under various heads. Considering the oral and documentary evidence adduced on either side, the Tribunal directed the appellant who is the insurer of the offending vehicle to pay compensation of Rs.5,00,800/- with 7.5% interest per annum. Aggrieved by the said award, the appellant has filed this appeal challenging quantum of compensation.

3.Learned counsel for the appellant would contend that the Tribunal has erred in applying multiplier method to arrive at the loss of income when the percentage of disability is only 40%. Further, the quantum of award by the Tribunal under all heads is excessive and requires reduction. In support of the contention that the Tribunal ought not to have applied multiplier method, learned counsel relied on the following decisions:-

i)Raj Kumar vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581(SC).

ii)National Insurance Company Limited vs. B.Rayappan reported in 2011 (2) TN MAC 174.

4.Learned counsel for the 1st respondent/claimant would submit that the Tribunal is right in applying multiplier method as the injuries sustained by the claimant disabled him from doing his avocation as Tailor. In support of his contention, he relied on the following passage from the decision of the Hon'ble Supreme Court in ***Sandeep Khanuja vs. Atul Dande and another reported in 2017 ACJ 979***:-

> ''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 been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. Recognition to this principle was given for the first time in the year 1966 in the case of Municipal Corporation of Delhi v. Subhagwanti & Ors. 1996 ACJ 57 (SC). Again, in Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar & Ors. 1977 ACJ 290 (SC), the Court referred to an English decision while emphasising the import of this principle in the following manner:
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> > ''(6)A method of assessing damages, usually followed in England, as appears from Mallet v. McMonagle, 1969 ACJ 312 (HL, England), is to calculate the net pecuniary loss upon an annual basis and to arrive at the total award by multiplying the figure assessed as the amount of the annual 'dependency' by a number of 'years' purchase', that is, the number of years the

benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand...''

15..... **A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method,** as held by this Court in Yadava Kumar v. Divisional Manager, National Insurance Company Limited & Another 2010 ACJ 2713 (SC) [sic Arvind Kumar Mishra vs. New India Assurance Co. Ltd., 2010 ACJ 2867 (SC):

> ''(7) We do 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 claimant 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. 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.''''

5.Heard the learned counsel for the appellant, 1st respondent and perused the materials available on record.

6.Perusal of record shows that in the accident, the 1st respondent/claimant sustained fracture of ulna bone in right hand and fibula bone in the left leg and injuries on head and face and other injuries. Before the Tribunal, the injured claimant was examined as PW1 who deposed that prior to the accident, by doing tailoring work, he earned Rs.20,000/- per month. The claimant was aged 51 years at the time of accident. Though the claimant marked the membership identity card for doing Tailoring work and receipts regarding payment of professional tax as Exs.P12 and P18 respectively, in the absence of definite proof regarding income, the Tribunal fixed the monthly income at Rs.6,000/- notionally.

7.Perusal of record further shows that the Doctor who examined the claimant has been examined as PW3. He has deposed that he perused the discharge summary, wound certificate of the claimant, accident register and X-ray, and found that there was fracture of ulna bone in the right hand and fibula bone in the left leg of the claimant. He has further deposed that there is a scar in the right hand of the claimant and due to fracture of fibula, the claimant was limping and he would find it difficult to squat; to attend natural call; to lift heavy objects and to do hard work. Further, to fuse the fractured ulna bone in the right hand, a plate has been inserted with screw, and the said plate has to be removed by a surgery, for which, the claimant will incur Rs.25,000/- towards medical expenses. Due to the fracture of ulna bone, the claimant is unable to bend his hand. So saying, PW3 has assessed the disability suffered by the claimant at 40% and issued Ex.P20-disability certificate.

8.Considering the avocation of the claimant and the evidence of PW3 with regard to the fracture, the Tribunal applied multiplier method to arrive at the loss of income. Accordingly, fixing monthly income at Rs.6,000/- and applying 11 multiplier according to the age of the claimant namely, 51, the Tribunal awarded Rs.3,16,800/- (Rs.6000x12x11x40/100) towards loss of income due to 40% disability. Apart from the above, the Tribunal awarded Rs.18,000/- towards loss of income for three months; Rs.50,000/- towards pain and suffering; Rs.25,000/- towards loss of amenities; Rs.42,000/- towards medical expenses; Rs.25,000/- towards future medical expenses; Rs.10,000/- towards nutrition; Rs.5,000/- towards transportation and Rs.9,000/- towards attendant charges. Altogether, the Tribunal awarded compensation of Rs.5,00,800/- with 7.5% interest per annum from the date of petition till the date of deposit.

9.Though the learned counsel for the appellant contended that the Tribunal has erred in applying multiplier method for computing loss of income, this Court is not inclined to accept the same. In this regard, it is relevant to extract below paragraphs 10 and 13 of the judgment in Raj Kumar's case(supra):-

> ''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 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.

13.We may now summarise 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.''

10.To do any work by a person, hands are necessary. In the present case, the claimant has suffered fracture of ulna bone in right hand and fibula bone in the left leg. For a Tailor, proper movement of hands and legs is necessary to run a tailoring machine. Therefore, as held by the Hon'ble Supreme Court in the above reported judgment, though the claimant suffered 40% disability, the actual loss of earning capacity is 100% since the claimant could not at all do his avocation as Tailor due to the fracture of ulna and fibula bones.

11.In *National Insurance Company Limited vs. B.Rayappan reported in 2011 (2) TN MAC 174,* relied on by the counsel for appellant, the injured was a Contractor aged 34 years, sustained fracture of tibia and fibula in the right leg. The Tribunal observed that in spite of injuries, as a Contractor, the claimant can continue to do the contract work, but unless there is personal involvement like inspection, verification and taking note of day-to-day affairs, it will be difficult to execute the contract and that due to grievous injuries, the claimant underwent four surgeries and therefore, it cannot be expected that the claimant could execute the contract awarded in his favour with much ease. Therefore, the Tribunal applied multiplier method for computing loss of income.

12.In the judgment relied on by the counsel for the 1[st] respondent *reported in 2017 ACJ 979 Sandeep Khanuja vs. Atul Dande and another,* the claimant suffered fracture of both legs and rod was implanted in right leg and his movements were restricted to a large extent. Though the claimant was a chartered accountant and is supposed to do sitting/table work which he can still perform properly and his working capacity is not impaired, the Tribunal observing that being a chartered accountant, the claimant is supposed to move around the offices of clients and authorities to do his work efficiently and restriction in movements would adversely affect his work, applied multiplier method for computing loss of income.

13.Comparing facts of the above two reported cases to the case on hand, the position of the claimant herein is worse, as he could not at all do his avocation as Tailor due to fracture of ulna and fibula bones. Therefore, application of multiplier method by the Tribunal for computing loss of income, in my considered opinion, is perfectly justified. Having regard to the nature of injuries and considering the inability of the claimant to do his avocation as Tailor, this Court is not inclined to interfere with the quantum of compensation. Needless to say, due to injuries, the claimant lost his avocation as Tailor and the agony would always linger in his mind till the rest of his life time and the agony caused due to injuries could not be compensated in terms of money. The compensation awarded by the Tribunal is just and reasonable and it cannot be termed as excessive.

14.Pursuant to the direction of this Court, the appellant has deposited the entire award amount awarded by the Tribunal with interest to the credit of the claim petition and a memo dated 27.03.2018 has been filed enclosing the deposit particulars. The said memo is taken on record. In view of the dismissal of the appeal, the 1[st] respondent/claimant is permitted to withdraw the entire deposited amount without filing formal permission petition before the Tribunal.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Additional District Judge and Special Judge,
Motor Accident Claims Tribunal,
Pudukottai.

Copy To:-

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.K.C.MANIYARASU, ADVOCATE IN SR No. 77798
+ 1 CC TO Mr.G.MARUTHAIAH, ADVOCATE IN SR No. 78251

BALA
TE/RSK/SAR-4 : 31/08/2018 : 8P/6C

CMA(MD)No.831 of 2017
09.08.2018