IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2015 of 2005 and
C.M.A.No.1860 of 2006

IN CMA No.2015 of 2005

The Chairman and Managing Director,
United India Insurance Co. Ltd.,
24, Whites Road,
Chennai - 14.

..Appellant/2nd Respondent

..Vs..

1.Manimaran
2.Sankar ... Respondents/Petitioner/1st Respondent

IN CMA No.1860 of 2006

Manimaran ..Appellant/Petitioner

..Vs..

1.United India Insurance Co. Ltd.,
Motor III party claims office,
No.38, Anna Salai,
Chennai -2.
(Cause title accepted vide order of court dated 15.06.2006 and made in C.M.P.No.2920 of 2006)

2.Shankar ... Respondents/Respondents

COMMON PRAYER in C.M.A.No. 2015 of 2005 and 1860 of 2006: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment in MCOP.No.5574 of 2001, dated 10.08.2004, on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

IN CMA No.2015 of 2005

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Ms.Y.Jayanthi
for Mr.J.Mahalingam
for R1
No appearance for R2

IN CMA No.1860 of 2006

For Appellant : Ms.Y.Jayanthi
for Mr.J.Mahalingam

For Respondents : Mr.N.Vijayaraghavan for R1
No appearance for R2

COMMON JUDGMENT

The United India Insurance Company Limited, the second respondent in MCOP.No.5574 of 2001, on the file of the II Judge, Court of Small Causes, Chennai filed an appeal in C.M.A.No. 2015 of 2005 questioning the quantum of compensation awarded by the tribunal vide its order dated 10.08.2004. While, the claimant in the above said MCOP has filed C.M.A.No. 1860 of 2006 seeking enhancement of compensation awarded by the tribunal.

2.For the sake of convenience, the parties are referred to, as indicated in MCOP.No. 5574 of 2001.

3.The brief case of the claimant is as follows:

On 30.11.2000, the claimant was travelling as a passenger in a Government bus bearing Registration No. TN 21 N 0546. At about 10.00 am, a speeding lorry bearing Registration No. TSB 2810, belonging to the first respondent, hit the bus, as a result of which the claimant sustained injuries all over his body.

4.According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TSB 2810, belonging to the first respondent was the cause of the accident, and that, since, the said lorry was insured with the second respondent/United India Insurance Company, both of them are jointly and severally liable to pay compensation of Rs.15,00,000/- to him.

5. The first respondent/owner of the lorry bearing Registration No. TSB 2810 remained absent before the tribunal and therefore, he was set ex-parte. The second respondent/United India Insurance Company contested the claim petition. The learned II Judge, Court of Small Causes, Motor

Accidents Claims Tribunal, Chennai after analysing the evidence of record, awarded compensation of Rs.9,00,000/- together with interest at the rate of 9% per annum to the claimant.

6.Aggrieved over the award passed by the tribunal, the claimant as well as the United India Insurance Company have filed the present appeals.

7.Mr.N.Vijayaraghavan, learned counsel appearing for the United India Insurance Company Limited has raised the following grounds: (i) the tribunal has awarded a sum of Rs.1,00,000/- towards medical expenses, especially, when the claimant has produced bills to the tune of Rs.2,369/- (ii) a sum of Rs.1,00,000/- was awarded towards loss of income and another sum of Rs.1,30,000/- was awarded towards partial permanent disability, (iii) when the tribunal has awarded a sum of Rs.20,000/- towards pain and sufferings, again, a sum of Rs.50,000/- was awarded towards mental agony and (iv) a huge sum of Rs.50,000/- and Rs.4,00,000/- were awarded under the heads loss of amenities and loss of earning capacity.

8. Per contra, Ms.Y.Jayanthi, learned counsel appearing for the claimant would contend that the claimant was a load man and his right hand was amputated. She would further contend that when Dr.Saichandran (PW2) has assessed the partial permanent disability as 90%, the tribunal did not adopt multiplier method in the instant case and therefore, the award passed by the tribunal is liable to be enhanced.

9. A perusal of the records shows that the claimant was a load man and the medical records shows that his right hand was amputated. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

> "8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent

(percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010 (10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9.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 a 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 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. As already observed, the claimant is a load man and his right hand was amputated and therefore, adopting multiplier method is warranted in the instant case. Though, it is contended that the claimant was earning a sum of Rs.300/- per day, no income proof was adduced by him. Therefore, the notional income of the claimant is fixed at Rs.3,000/- per month. The claimant was aged 25 years on the date of the accident and therefore, 40% has got to be added towards the future prospects of the claimant as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation:

Notional Income = Rs.3,000/-
40% Future Prospects = Rs.1,200/-
Total = Rs.3,000/- + Rs.1,200 = Rs.4,200/-

Loss of earning capacity
= Rs.4,200 /- x 17 x 12 x 90/100
= Rs.7,71,120/-

The amount awarded by this Court under various heads are extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.7,71,120/-
2.	Pain and sufferings	Rs.30,000/-
3.	Medical expenses	Rs.2,369/-
4.	Extra nourishment	Rs.10,000/-
5.	Transportation	Rs.5,000/-
6.	Attender's charges	Rs.5,000/-
7.	Loss of amenities	Rs.20,000/-
8.	Loss of marital prospects	Rs.1,00,000/-
9.	Future medical expenses	Rs.25,000/-
10.	Loss of income	Rs.36,000/-
Total		Rs.10,04,489/-

Thus the claimant is entitled to a sum of Rs.10,04,489/- together with interest at the rate of 7.5% per annum.

11.In the result,

(i) The C.M.A.No.2015 of 2005 is dismissed. No costs.

(ii) The C.M.A.No.1860 of 2006 is allowed. No costs.

(iii) The quantum of compensation awarded by the tribunal is enhanced from Rs.9,00,000/- to Rs.10,04,489/-.

(iv) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(v) The United India Insurance Company Limited, the second respondent in MCOP.No.5574 of 2001 is directed to deposit the enhanced compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 5574 of 2001, dated 10.08.2004, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(vi)Thought the tribunal has awarded interest at the rate of 9% per annum, it is made clear that the claimant is entitled to interest for the enhanced compensation amount only at the rate of 7.5% per annum.

(vii) On such deposit being made by the United India Insurance Company, the claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mbi

To
The Motor Accident Tribunal,
II Court of Small Causes,
Chennai.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.7188

C.M.A.No.2015 of 2005 and
C.M.A.No.1860 of 2006

GK(CO)
GMY(03/06/2019)