IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2136 of 2008

The New India Assurance Co. Ltd.,
Rep. By its Assistant Manager,
Chennai.

...Appellant/2nd respondent

.Vs.

1.Gopal ..1st respondent/ Petitioner

2.M/s.Dharmapuri District Central
Cooperative Bank, Bye Pass Road,
Dharmapuri – 636 701.

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 25.02.2005 in M.C.O.P.No.1598 of 2003 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Krishnagiri.

For Appellant : Mr.P.V.Vasanth
for Mr.V.Soundararaja

For Respondents: Mr.D.Shivakumaran for R1
Mr.M.S.Palanisamy for R2

JUDGMENT

The appellant, New India Assurance Company Limited is the second respondent in M.C.O.P.No.1598 of 2003 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Krishnagiri. The first respondent filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 25.04.2002.

2. The case of the claimant is that on 25.04.2002, he was riding his two wheeler TVS 50 XL bearing Registration No. TN 29 S 6305 on Denkanikotni - Kelamangalam road. At about 04.00 pm, when he was nearing Kavuthalam Village, a speeding jeep bearing Registration No.TN 29 1914 belonging to the second

respondent and insured with the appellant, hit his two wheeler, as a result of which, the claimant fell down and sustained injuries all over his body.

3. According to the claimant, the rash and negligent driving of the driver of the jeep bearing Registration No.TN 29 1914 belonging to the second respondent was the cause of the accident and that since the said jeep was insured with the present appellant, both of them are jointly and severally liable to pay a sum of Rs.5,00,000/- as compensation.

4. The second respondent, the owner of the jeep remained absent before the Tribunal and therefore, he was set ex-parte. The appellant, New India Assurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal / I Additional District Judge, Krishnagiri after analysing the evidence on record, awarded a compensation of Rs.2,76,896/- together with interest at the rate of 9% per annum. Aggrieved over the quantum of compensation awarded by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.P.V.Vasanth, learned counsel appearing for the appellant would contend that even though Dr.Ashok kumar (PW2) had assessed the partial permanent disability as 30%, the Tribunal had fixed the percentage of disability as 65% and awarded an exorbitant amount of Rs.2,76,896/- and therefore, the same should be scaled down.

6. Per contra, Mr.D.Shivakumaran, learned counsel appearing for the first respondent contended that the learned I Additional District Judge after considering the injuries sustained by the claimant had fixed the partial permanent disability as 65% and that he has also given cogent reasons for arriving at the disability, in Paragraph 8 of his order and therefore, the same need not be disturbed at this stage. He also contended that the Tribunal has fixed the notional monthly income of the claimant only at Rs.2,000/-, even though in the claim petition it is stated that the claimant was earning a sum of Rs.7,000/- per month.

7. A perusal of the medical records (Ex.P3) shows that the claimant has sustained dislocation of his hip and fracture on his left leg and he was admitted in Sanjay Gandhi Hospital and Research Institute, Bangalore as an in-patient from 24.05.2002 to 30.06.2002. An operation was also performed on 18.06.2002.

8.A Division Bench of the Hon'ble Supreme Court of India in the decision in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 has held that where the claimant suffers permanent disability as a result of injuries, the assessment of compensation under the head loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity and that the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. It is further observed that in most of the cases, the percentage of economic loss ie., percentage of loss of earning capacity arising from a permanent disability would be different from the percentage of permanent disability. The paragraph nos. 9 and 10 of the said Judgment are extracted hereunder:

> "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.
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> 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."

9. Admittedly in the instant case, the claimant is a flower vendor by profession and he has sustained dislocation of his hip and fracture on his left leg. In the facts and circumstances of the present case, adopting multiplier method is warranted. Since the age of the claimant was 30 years on the date of the accident, 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. Dr.Ashokumar (PW2) had assessed the partial permanent disability suffered by the claimant as 30%. However, the Tribunal without any basis had fixed the percentage of disability as 65% and he is not an expert to assess the permanent disability. It is also not stated in his order whether he has examined the claimant before coming to the conclusion that there is a partial permanent disability of 65%, especially when Dr.Ashok kumar (PW2) had assessed the partial permanent disability of the claimant as 30%. Therefore, 30% of disability is taken up for calculating loss of earning capacity. Since no proof showing the income of the claimant is filed, the notional income is fixed at Rs.3,000/-, since the accident took place in the year 2002. On account of the accident, the claimant would not have been in a position to attend to his work for six months and therefore, a sum of Rs.18,000/- (Rs.3,000/- X 6 months) is awarded towards loss of income.

Loss of earning capacity
= Rs.3,000/- x 12 x 17 x 30/100
= Rs.1,83,600/-

10. The award passed by the Tribunal under various heads is modified as stated below:

S. No.	Head	Amount granted
1.	Loss of income	Rs.18,000/-
2.	Loss of earning capacity	Rs.1,83,600/-
3.	Pain and sufferings	Rs.50,000/-
4.	Transportation	Rs.6,800/-
5.	Extra nourishment	Rs.6,000/-
6.	Medical expenses	Rs.12,496/-
Total		Rs.2,76,896/-

The above mentioned amount would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is disposed of. No costs.

(ii) The appellant, New India Assurance Company Limited is directed to deposit the compensation amount i.e., Rs.2,76,896/- (less the amount already deposited) 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.1598 of 2003 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the 1st respondent / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl

To
The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Krishnagiri.

+1cc to Mr.V.Soundararaja , Advocate SR.No. 84707
+1cc to Mr.D.Shivakumaran , Advocate SR.No. 84206

CMA.No.2136 of 2008

KJ
A.SK(03/03/2020)