IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.1044 of 2009

The Branch Manager,
National Insurance Co. Ltd.,
Branch Office, 2nd floor,
Opp. to Thanthai Periyar Market Complex,
Old Bus Stand,
No.1 Govindasamy Pillai Street,
Salem 636 001. ...Appellant/2nd Respondent

Vs.

1.Murugan ..1st Respondent/Petitioner

2. Padmanabhan ...2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 31.01.2008 passed in MCOP No.464 of 2007 by the Chief Judicial Magistrate No.2, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.S.Vadivel

For Respondents : No appearance

J U D G M E N T

The National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act against the orders passed in MCOP No.464 of 2007 by the Chief Judicial Magistrate No.2, Motor Accident Claims Tribunal, Krishnagiri.

2. The first respondent/claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 31.07.2006 at about 7.00 p.m., when he was having tea with his friends in a tea shop at Jagadap Junction, Kavaripattinam to Dharmapuri Road. According to the claimant, a speeding car

bearing registration No.TN-37-V-7906 belonging to the 2nd respondent herein and insured with the appellant hit the claimant and others, who were having tea, as a result of which, the claimant sustained injuries all over his body. The contention of the claimant is that the rash and negligent driving of the driver of the car was the cause of accident and that since the 2nd respondent insured his vehicle with the appellant herein, both of them are jointly and severally liable to pay compensation.

3. The owner of the car remained absent before the Tribunal and therefore, he was set exparte. The insurance company/ appellant contested the claim petition.

4. After analysing the evidence on record, the Tribunal awarded a compensation of Rs.3,00,000/- together with interest at the rate of 7.5% p.a. to the claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the National Insurance Company Limited filed the present appeal.

5. No appearance on behalf of the respondents.

6. Mr.S.Vadivel, learned counsel appearing for the appellant contended that the Tribunal was wrong in applying multiplier method for the following reasons.

(i) The wound certificate (Ex.P3) shows that except injury No.1, all other injuries are simple in nature.

(ii) The claimant was hospitalised only for 9 days.

(iii) There was no permanent disability.

(iv) The claimant was a student studying in the Government Arts College, Krishnagiri, on the date of accident.

7. He would further contend that the Tribunal has awarded an exorbitant amount of Rs.1,00,000/- for pain and sufferings and a sum of Rs.27,000/- for medical expenses, especially when the claimant has produced medical bills only for a sum of Rs.24,907/-. He stressed that since there is no permanent disability, multiplier method should not have been adopted by the Tribunal.

8. It is true that the claimant was admitted as an inpatient on 01.08.2006 and discharged on 09.08.2006, as evidenced by the discharge summary Ex.P6 and no operation was performed on him. In the decision in Raj Kumar Vs. Ajay Kumar reported in 2011(1) SCC 343, the Honourable Supreme Court 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. ....

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 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. 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. The award of Rs.3,00,000/- passed by the Tribunal is not commensurate with the nature of injuries suffered by the claimant. The manner in which the Tribunal has decided upon the quantum of compensation suffers from logical reasoning. Arbitrariness is glaringly visible in the instant case. This court totally disapproves the decision of the Tribunal and deprecates such practice.

10. It is admitted fact that the claimant was a student studying in a Government Arts College, Krishnagiri and there was no permanent disablement. Therefore, application of multiplier method is totally unwarranted as far as the present case is concerned. Since Dr.Gandhi (PW2) assessed the permanent disability of the claimant as 30%, as evidenced by Ex.P8, a sum of Rs.2,000/- is awarded per percentage which would come to Rs.60,000 (2,000x30). Apart from this amount, the claimant is also entitled to compensation under other heads, which is extracted here under.

Partial Permanent disability(2000 x 30)	-	60,000
Attender's charges	-	5,000
Pain and sufferings	-	10,000
Transportation	-	5,000
Extra Nourishment	-	5,000
Medical bills (Rs.24,907 rounded off to)	-	25,000
Total	-	1,10,000

This amount would carry interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit. It is pertinent to note that the appellant/insurance company has not questioned their liability to pay compensation. Hence, the appellant is liable to pay the said amount of Rs.1,10,000/- with interest as compensation to the claimant. It is represented by the counsel for the appellant that a sum of Rs.2,25,000/- with interest at 7.5% per annum was already deposited by the insurance company. They are at liberty to withdraw the amount deposited by them over and above the award passed by this court.

11. In the result,

(i) The civil miscellaneous petition is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is scaled down from Rs.3,00,000/- to Rs.1,10,000/-.

(iii) The appellant/Insurance company is directed to deposit a sum of Rs.1,10,,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The appellant is at liberty to withdraw the excess amount, deposited by them, over and above the compensation awarded by this court.

(iv) On such deposit being made by the appellant/Insurance Company, the first respondent/claimant is at liberty to withdraw the entire award amount, after following necessary procedures.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

mst
To
1. Chief Judicial Magistrate No.II,
   Motor Accident Claims Tribunal,
   Krishnagiri.

+1 CC to Mr.S.Vadivel, Advocate sr 76948.

CMA No.1044 of 2009

SSD(CO)
SP(08/06/2020)