IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.199 of 2009

S.Parameswari

...Appellant/Claimant

.Vs.

1.S.Natarajan
2.HDFC CHUBB General Insurance Co. Ltd.,
5th Floor, Express Towers,
Nariman Point, Mumbai - 400 021. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.01.2008 passed in MCOP.No.589 of 2004 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai.

For Appellant : Mr.K.Ayyadurai for N.M.Muthurajan

For Respondents : Mrs.R.Sreevidhya for R2
R1 - set exparte

JUDGMENT

The appellant is the claimant in MCOP.No.589 of 2004 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rules 3 of M.A.C.T. Rules praying to award compensation of Rs.20,00,000/- for the injuries sustained by her in a road accident on 17.12.2003.

2. The case of the claimant is that on 17.12.2003, at about 9.30 p.m, when she was crossing Kamarajar Salai, opposite to PWD Office, Chennai, a speeding motorcycle bearing Registration No. TN 07 AB 1170 belonging to the first respondent and insured with the second respondent, hit her, as a result of which, she fell down and sustained grievous injuries all over her body.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 07 AB 1170 belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with the second respondent, HDFC CHUBB General Insurance Company Limited, the owner and the insurer of the motorcycle are jointly and severally liable to pay compensation.

4. The first respondent, owner of the motorcycle remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, HDFC CHUBB General Insurance Company Limited, contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / II Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,10,302/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.K.Ayyadurai, learned counsel appearing for the appellant / claimant would contend that even though Dr.K.J.Mathiazhagan (PW2) had assessed the partial permanent disability of the claimant as 70%, the Tribunal had awarded a meagre compensation of Rs.1,10,302/- for the injuries sustained by the claimant. His specific contention is that the claimant was engaged in the business of preparing and selling snacks earning a sum of Rs.250/- per day and that the Tribunal did not consider the fact that the claimant had a Central Cord Syndrome on account of the accident, therefore he would contend that the award amount passed by the Tribunal has got to be enhanced.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent, HDFC CHUBB General Insurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

7. No appearance on behalf of the first respondent.

8. A perusal of the discharge summary issued by Government General Hospital and Madras Medical College (Ex.P2) shows that the claimant was admitted as an in-patient on 18.12.2003 and discharged on 09.01.2004. The claimant suffered Scicvaria c quadripartite (Central Card Syndrome) on account of the accident. Dr.K.J.Mathiazhagan (PW.2) also stated that the claimant is unable to do her routine work and had assessed the partial permanent disability as 70%. In order to ascertain the present condition of the claimant this Court directed the claimant to appear before this Court. As per orders, the claimant is appeared before this Court and it is seen that she is unable to mover her right hand and find it difficult to stand. In fact she was standing on her left leg.

9. 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 in 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."

10. Admittedly in the instant case, the claimant was engaged in the business of preparing and selling snacks and she had suffered Scicvaria c quadripartite (Central Card Syndrome). In the facts and circumstances of the present case, adopting multiplier method is warranted. Since the age of the claimant was 32 years on the date of the accident, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Dr.K.J.Mathiazhagan (PW2) had assessed the partial permanent disability suffered by the claimant as 70%. However it cannot be taken in respect of the whole body disability. Therefore, 30% of disability is taken up for calculating partial permanent disability. Since no proof showing the income of the claimant is filed, the notional income is fixed at Rs.3,500/-, considering the year of accident. On account of the accident, the claimant would not have been in a position to attend to her regular work for atleast six months and therefore, a sum of Rs.21,000/- (Rs.3,500/- X 6 months) is awarded towards loss of income.

Calculation
= Rs.3,500/- x 12 x 16 x 30/100
= Rs.2,01,600/-

11. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Partial permanent disability	Rs.2,01,600/-
2.	Pain and sufferings	Rs.25,000/-
3.	Extra nourishment	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Loss of income	Rs.21,000
7.	Damage to clothes	Rs.1,000/-
8.	Medical expenses	Rs.5,302/-
Total		Rs.2,70,902/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,10,302/- to Rs.2,70,902/- which would carry interest at the rate of 7.5% per annum.

13. In the result,
(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,10,302/- to Rs.2,70,902/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, HDFC Chubb General Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.2,70,902/- (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 MCOP.No.589 of 2004 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

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

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal,
The II Judge,
Small Causes Court,
Chennai.

2.The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.R. Sreevidya, Advocate sr 86998.
+1 Cc to Mr.N.M.Muthurajan, Advocate sr 86622.

CMA.No.199 of 2009

VBA(CO)
SP(10/03/2020)