IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2072 of 2009

Subramanian ...Appellant

.Vs.

1.Singaravel
2.The United Indian Insurance Co. Ltd.,
Having Office at No:2 road,
Mayiladuthurai,
Nagapattinam District ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 27.02.2009 passed in MCOP.No.107 of 2006 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar
For Respondents : No appearance for R1
Mr.C.Paranthaman for R2

JUDGMENT

The appellant is the claimant in MCOP.No.107 of 2006 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Mayiladuthurai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 30.06.2005.

2. The case of the claimant is that on 30.06.2005, at about 10.30 am, when he was travelling as a passenger in an auto bearing Registration No. TN 51 V 7371 belonging to the first respondent and insured with the second respondent on Seerkali - Semmangudi road, the driver of the auto drove the vehicle rashly and negligently, as a result of which, the auto toppled on the road and he sustained injuries all over his body. According to the claimant, he was immediately rushed to the Government Hospital at Seerkali from where he was referred to RajaMuthaiah Medical College Hospital, Annamalai Nagar, Chidhambaram, where he was admitted as an inpatient from 30.06.2005 to 02.08.2005.

3. The first respondent, owner of the auto bearing Registration No. TN 51 V 7371 remained absent before the

Tribunal and therefore, he was set ex-parte. The second respondent, United India Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / Principal Subordinate Judge, Mayiladuthurai after analysing the evidence on record, awarded a compensation of Rs.59,100/- 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.

4. Mr.S.Sounthar, learned counsel appearing for the appellant/ claimant contended that though the claimant was a Carpenter by profession and Dr.Rajasekaran (PW2) has assessed the partial permanent disability as 39%, a meagre amount of Rs.39,000/- was awarded by the Tribunal towards partial permanent disability. He would further contend that as per the partial permanent disability certificate issued by Dr.Rajasekaran (PW2), the claimant has malunion of ulna bones and median nerve injury with loss of sensation over lateral three fingers on molar aspect and therefore, he is not able to continue his profession as a Carpenter. He therefore contended that multiplier method should be adopted in the instant case. He also pointed out that the Tribunal has not awarded any amount towards pain and sufferings, loss of amenities and damage to clothes. Therefore, he prayed for enhancement of compensation.

5. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent / United India Insurance Company Limited contended that the accident took place in the year 2005, the Tribunal had rightly awarded a sum of Rs.1,000/- per percentage of disability. His specific contention is that in the absence of any documentary evidence, to prove, that there is a functional disability, multiplier method should not be adopted in the instance case.

6. 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.

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."

7. Admittedly in the instant case, the claimant is a Carpenter by profession and he has sustained a fracture of his right hand and as per the medical reports, there is a malunion of bones with loss of sensation over the lateral three fingers on the molar aspect. In the facts and circumstances of the present case, adopting multiplier method is very much warranted. Since the age of the claimant was 38 years on the

date of the accident, the proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Dr.Rajasekaran (PW2) had assessed the partial permanent disability suffered by the claimant as 39% including 10% for pain and sufferings. Therefore, 29% 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 2005. On account of the accident, the claimant would not have been in a position to attend to his work for three months and therefore, a sum of Rs.9,000/- (Rs.3,000/- X 3 months) is awarded towards loss of income.

Loss of earning capacity
= Rs.3,000/- x 12 x 15 x 29/100
= Rs.1,56,600/-

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

S. No.	Head	Amount granted
1.	Loss of income	Rs.9,000/-
2.	Loss of earning capacity	Rs.1,56,600/-
3.	Pain and sufferings	Rs.10,000/-
5.	Transportation	Rs.5,000/-
6.	Extra nourishment	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Loss of amenities	Rs.5,000/-
9.	Damage to clothes	Rs.500/-
Total		Rs.1,93,100/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.59,100/- to Rs.1,93,100/- which would carry interest at the rate of 7.5% per annum.

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.59,100/- to Rs.1,93,100/-.

(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, United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,93,100/- (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.107 of 2006 on the file of the Motor Accidents Claims Tribunal / Principal Subordinate Court, Mayiladuthurai 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.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Court,
Mayiladuthurai.

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to M/s.C.Paranthaman, Advocate,sr.77322

+1 cc to M/s.S.Sounthar, Advocate,sr.77311.

rp(co)
krd 28/9