IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2510 of 2009

Senthilkumar ..Appellant/Claimant

.Vs.

1.Sivaraj
2.The Branch Manager
Iffco Tokio General Insurance Co. Ltd.,
Thulsi Chambers, III Floor,
No.195, T.V.Swamy Road (W),
R.S.Puram, Coimbatore - 2. ..Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 03.06.2009 passed in MCOP.No.62 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagapattinam.

For Appellant : Mr.A.N.Viswanatha Rao
For Respondents : Mr.C.R.Krishnamoorthy for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP.No.62 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagapattinam. He filed the claim petition under Section 140 & 166 of the Motor Vehicles Act, 1994 praying to award compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 07.07.2007.

2. The case of the claimant is that on 07.07.2007, at about 05.30 pm, when he was travelling in a car bearing Registration No.TN-51-C-0010 belonging to the first respondent and insured with the second respondent on Thiruthuraipoondi - Tiruvarur road, the driver of the car drove the car, rashly and negligently and lost control over the car, as a result of which, it went berserk and fell in to a paddy field abutting the road and he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the first respondent was the cause of the accident and that since the first respondent's vehicle was insured with the second respondent, Iffco Tokio General Insurance Company Limited both

of them are jointly and severally liable to pay compensation to him.

3. The first respondent, owner of the car and the second respondent, Iffco Tokio General Insurance Company Limited contested the claim petition and after analysing the evidence on record, the learned Chief Judicial Magistrate, Nagapattinam awarded a compensation of Rs.2,89,000/- 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 preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.A.N.Viswanatha Rao, learned counsel appearing for the appellant / claimant would contend that even though Dr.Angathakumar (PW2) issued a partial permanent disability certificate (Ex.P13) stating that the claimant has suffered disability of 90%, the Tribunal had awarded only a sum of Rs.2,00,000/- for the injuries sustained by the claimant. He would further contend that the Tribunal awarded meagre amounts under the heads pain & suffering, loss of amenities and extra nourishment. Therefore he would contend that the award amount passed by the Tribunal has got to be enhanced.

5. No appearance on behalf of the first respondent.

6. Mr.C.R.Krishnamoorthy, learned counsel appearing for the second respondent, Iffco Tokio 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. A perusal of the discharge summary shows that the claimant has sustained "compression fracture of second lumbar vertebra, cauda equina conus distruption with paraplegia and bladder incontinence". Further he was operated on 27.07.2007 for decompression with screw stabilisation. Dr.Angathakumar (PW2) while assessing the partial permanent disability as 90% had also opined that there is no chance for recovery and the claimant who have to confine himself to a two wheeler chair throughout his life. In order to ascertain the present condition of the claimant, this Court directed the claimant to appear before this Court on 26.09.2019 and he complied with the same. The medical officer attached to the High Court Dispensary was requested to examine the claimant. Accordingly, Dr.B.Prabakaran (Reg.No.78046) examined the claimant and sent a note stating that the claimant cannot perform his normal physical activities and he is found to be paraplegia.

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 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."

9. In the instant case the claimant has suffered permanent disability and therefore the compensation under the head of loss of future earning would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal has mechanically awarded a sum of Rs.2,00,000/- without assigning any reason, especially, when PW2 had assessed the partial permanent disability as 90%. In the circumstances by applying the principles laid down "Raj Kumar vs. Ajay Kumar & Anr" (cited supra) multiplier method is adopted. In the claim petition, it is contended that the claimant is doing business of buying and selling old iron earning a sum of Rs.6,000/- per month. Since no proof of income is adduced by the claimant, his notional monthly income is fixed as Rs.4,500/-. As per the decision rendered in constitution bench of the Hon'ble Supreme Court of India in National Insurance Co. vs. Pranay Sethi and Others reported in 2017 (2) TNMAC 601 (SC) 40% should be added towards his future prospects. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarla Verma and Others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, since the age of the claimant was 29 years on the date of the accident.
Calculation of loss of income:-
[(Rs.4,500 + Rs.1,800/- (Rs.4,500/- of 40%) x 12 x 17 = Rs.12,85,200/-)]

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

S. No.	Head	Amount granted
1.	Loss of income	Rs.12,85,200/-
2.	Pain and sufferings	Rs.40,000/-
3.	Loss of amenities	Rs.40,000/-
4.	Extra nourishment	Rs.25,000/-
5.	Medical bills	Rs.41,300/-
6.	Attender charges	Rs.50,000/-
7.	Transportation	Rs.25,000/-
8.	Loss of martial prospects	Rs.50,000/-
9.	Future medical expenses	Rs.50,000/-
	Total	Rs.16,06,500/-

Thus the compensation awarded by the Tribunal is enhanced from

Rs.2,89,000/- to Rs.16,06,500/-. It is made clear that future medical expenses would not carry any interest and the amount of Rs.15,56,500/- shall carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,89,000/- to Rs.16,06,500/-.

(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, Iffco Tokio General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.16,06,500/- (less the amount already deposited) with interest at the rate of 7.5% per annum, on Rs.15,56,500/- from the date of claim petition till the date of deposit to the credit of MCOP.No.62 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagapattinam 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

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate, Nagapattinam.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.C.R.Krishnamoorthy,Advocate Sr.No. 82695
+2 cc to M/s.A.M.Packianathan Esaki, Advocate SR.No.82720

AKM/14.11.19/6P- 6C /

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