IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2979 of 2011

Muthusamy ... Appellant/Claimant

Vs.

1. P.Kaliammal

2. United India Insurance Company Limited,
   represented by its Divisional Office-I,
   104-A, Peramanoor Main Road,
   Salem-7 ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the orders passed by the Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem in MCOP No.247 of 2007 dated 18.03.2010.

For Appellant	:	Ms.R.Shase for Mr.R.Marudachalamoorthy
For 2nd Respondent	:	Mr.T.Ravichandran
First Respondent	:	No appearance

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.247 of 2007 on the file of the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Salem and he filed the said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident that took place on 12.12.2006.

2. The brief case of the claimant is as follows: On 12.12.2006, the claimant was riding his two wheeler bearing registration No. TN-34-C-6845 along with his daughter Meena as pillion rider on Erode-Sankagiri main road. At about 8.15 a.m., a speeding bus bearing registration No.TN-30-Y-4656, belonging to the first respondent hit the two wheeler bearing registration No.TN-34-C-6845, as a result of which, both the appellant/ claimant and his daughter sustained grievous injuries all over their body. According to the claimant, the rash and negligent driving of the driver of the bus bearing registration No.TN-30-Y-4656 was the cause of the accident and that since the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The first respondent, the owner of the bus remained absent before the tribunal and therefore, she was set exparte. The 2nd respondent, Insurance company contested the claim petition.

4. After analysing the evidence on record, the tribunal awarded a compensation of Rs.3,72,824/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of disposal. Not satisfied with the quantum of compensation, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation amount.

5. Ms.R.Shase, learned counsel appearing for the appellant would contend that the appellant /first claimant had become crippled on account of the accident and that though Dr.Sridar (PW2) has assessed partial permanent disability as 95%, the tribunal has fixed the percentage of disability as 60% and awarded a very meagre amount of Rs.1,56,000/- for loss of earning capacity. She would also contend that only a sum of Rs.10,000/- was awarded under the head "pain and sufferings" and that therefore, the award amount passed by the tribunal should be enhanced under all heads.

6. Per contra, Mt.T.Ravichandran, learned counsel appearing for the 2nd respondent, Insurance Company would contend that the tribunal after considering various aspects, has awarded a just compensation of Rs.3,72,824/- and therefore, it need not be disturbed at this juncture.

7. A perusal of the medical records (Ex.P7) shows that the appellant/ claimant sustained the following injuries.

Lacerated injury at right wrist and forearm i fracture bones protruding
outside.
Lacerated injury mid 1/3rd of Right forearm
Contusion i deformity at Right shoulder and upperarm
Contusion i deformity at Right knee i thigh
Lacerated injury i deformity upper 1/4th of right leg.
Abrasion at right knee
Abrasion at right ankle
Contusion i abrasion at right side chest
Contusion left thigh
Lacerated injury at right side forehead.
Contusion on right scapula region.
Xray Right Wrist: Communited fracture ulnar lower end i dislocation wrist and fracture bone.
Xray Right forearm: Fracture mid 1/3 of right radium
Xray Right Femur i knee/communited
Condylar and Supracondylar fracture right femur

Xray right leg i knee- Communited tricondylar fracture fibia right

Xray right shoulder - Communited fracture neck of humerus right.

Xray chest - Fracture 4th and 5th Rt. i Haemotherox.

8. Dr.Sridhar (PW2) has assessed partial permanent disability suffered by the claimant/appellant as 95%. However, the tribunal has fixed the percentage of disability as 50%. In fact, the tribunal has fixed the percentage, as extracted hereunder.

Fracture of fibula	-20 %
Fracture on right hand wrist	- 10%
nerves affected at right hand	- 5%
fracture of right leg knee	- 10%
Fracture of 4th and 5th Haemotherox at Chest	- 5%
Total	- 50%

The tribunal has not assigned any reason for fixing the percentage of disability as 50%. A perusal of Xrays clearly shows that several operations were performed and infact plates and screws were implanted almost on most of the bones.

9. The specific contention of the appellant/claimant is that the appellant is a carpenter by profession. In the decision in Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343, it has been held thus:-

> 6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to

perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (`Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

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. Therefore, 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.

Therefore, in the instant case, applying multiplier method is very much essential. In fact, the tribunal has adopted the multiplier method. However, while fixing monthly income of the claimant, the tribunal did not consider the fact that the claimant/appellant is a carpenter by profession and he is totally disabled from doing his work. Though the appellant/claimant has contended that he was a carpenter earning a sum of Rs.7,000/- per month, no documentary evidence was adduced to substantiate his contentions. Hence, in the absence of proof of income, notional income is fixed at Rs.4,500/- since the accident took place in the year 2006. The tribunal has not also awarded any amount towards future prospects. As per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects, which comes to Rs.5625 (4500+1125=5625). The proper multiplier to be adopted in the instant case is 13, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, since the claimant was aged 48 years on the date of accident. Though Dr.Sridar (PW2) assessed the disability as 95%, considering the facts and circumstances of the present case, this court fixed the partial permanent disability as 80% Thus, Loss of earning capacity is calculated as follows.

Loss of Earning capacity
Notional Income - Rs. 4,500
Furture prospects 25% - Rs. 1,125
Total -Rs. 5,625
Proper multiplier - 13
Partial permanent disability fixed - 80%
Loss of earning capacity
5125 x 12 x 13 x 80/100 = Rs.7,02,000/-

10. On account of accident, the appellant would not have been in a position to attend to his work continuously atleast for one year. Thus, a sum of Rs.54,000/- (4500 x12 = 54,000) is awarded towards loss of income. Apart from the above amounts, the appellant is also entitled to a sum of Rs.25,000, Rs.10,000, Rs.10,000, Rs.5,000, Rs.1,91,824, Rs.25,000 and Rs.20,000/- towards "pain and sufferings", "transportation charges", " extra nourishment" "attender's charges" , "medical bills", "loss amenities" and "future medical expenses" respectively. The following is the tabular column which would show the enhanced award under various heads.

Sl No	Heads	Amount in Rs.
1	Loss of earning capacity	7,02,000
2	Pain and sufferings	25,000
3	Transportation charges	10,000

Sl No	Heads	Amount in Rs.
4	Extra nourishment	10,000
5	Attender's charges	5,000
6	Medical bills	1,91,8 24
7	Loss amenities	25,000
8	Loss of income	54,000
9	Future medical expenses	20,000
	Total	10,42,824
	Rounded off	10,43,000

The claimant is entitled to interest at the rate of 7.5% per annum on Rs.10,23,000/- from the date of claim petition till the date of deposit and Rs.20,000/- (future medical expenses) will not carry any interest.

11. In the result,

(i) The appeal is allowed. No costs. The quantum of compensation awarded by the tribunal is enhanced to Rs.10,43,000/- from Rs.3,72,824/-

(ii) The appellant is entitled to the compensation of Rs.10,43,000/- with interest at the rate of 7.5% per annum on Rs.10,23,000/- from the date of claim petition till the date of deposit and no interest is awarded towards future medical expenses of Rs.20,000/-.

(iii) the appellant is directed to pay necessary court fee for the enhanced compensation amount.

(iv) The Insurance Company is directed to deposit the enhanced compensation of Rs.10,43,000/- along with interest, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the Insurance Company, the appellant is entitled to withdraw the entire amount together with interest, after following due process of law.

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

True Copy

Sub-Assistant Registrar

mst
To
1 The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal, Salem

2. United India Insurance Company Limited,
represented by its Divisional Office-I,
104-A, Peramanoor Main Road,
Salem-7

+1 CC to Mr.T.Ravichandran, Advocate sr 6076.
+1 CC to Mr.M.Guruprasad, Advocate sr 6262.

CMA.No.2979 of 2011

RR(CO)
SP(23/04/2019)