IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2111 of 2013

Syed Ibrahim
.. Appellant/Petitioner

vs.

1.S.Venkidusamy

2.United India Insurance Company Ltd.,
At Big Bazar Street,
Dharapuram,
Now Tirupur District.
..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 17.12.2012 passed in MCOP.No.1092 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Tirupur.

For Appellant : Mr.N.S.Sivakumar
For Respondents : Mrs.I.Malar for R2
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.1092 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Tirupur. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 12.08.2010.

2. The case of the claimant is that on 12.08.2010, he was riding his motorcycle bearing Registration No.TN 39 E 9945 along Avinashi road. At about 6.30 am, when he was nearing Valampalayam bridge, a speeding lorry bearing Registration No.TN 33 AE 1555 belonging to the first respondent and insured with the second respondent hit his two wheeler, as a result of which, he was thrown out and sustained multiple injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the said lorry was

insured with the second respondent, United India Insurance Company Limited both of them are jointly and severally liable to pay compensation.

3. The first respondent, owner of the lorry bearing Registration No.TN 33 AE 1555 remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, United India Insurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tirupur after analysing the evidence on record, awarded a compensation of Rs.3,06,000/- 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 has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.S.Sivakumar, learned counsel appearing for the appellant/ claimant would contend that though the claimant was a cutting master in Banian Company and he had sustained major crush injury on right upper limb and deep abrasive injury with friction burns dorsum of left upper limb extending from distal 1/3rd left forearm to the PIP joint region of index, middle and ring finger with comminuted fracture PPX left ring finger, the Tribunal did not adopt multiplier method while calculating loss of earning capacity.

5. Per contra, Mrs.I.Malar, learned counsel appearing for the second respondent, United India Insurance Company Limited contended that as per discharge summary (Ex.P4), there is no functional disability and hence adopting multiplier method is not warranted as far as the present case is concerned.

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, in paragraph nos. 9 and 10 has held thus:

> "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. In the instant case it has been pointed out in the discharge summary that there is no functional loss and finger extension is 30% on his left side and he has good grip on his right hand. Since there is no functional disability, adopting multiplier method is not warranted in the instant case.

8. As far as the quantum of compensation is concerned, the learned counsel appearing for the appellant did not advance any arguments and in the facts and circumstances, the present appeal is liable to be dismissed.

9. In the result,
(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The orders passed by the Tribunal is upheld.

(iii) Both the first respondent as well as the second respondent, United India Insurance Company are directed to deposit the compensation awarded by the Tribunal i.e., Rs.3,06,000/- (less the amount already deposited), jointly and severally, 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.1092 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Tirupur within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-
Asst.Registrar (CS V )

/true copy/
Sub Asst. Registrar

mtl

To
The Chief Judicial Magistrate
The Motor Accidents Claims Tribunal,
Tirupur.

+1 cc to Mr.N.S.Sivakumar Advocate sr84433
+1 cc to Mr.I.Malar Advocate sr85188

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