IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.695 of 2012

C.Pandiyan ... Appellant/Claimant

Vs.

1. Raja Raja Chozhan

2. National Insurance Company Limited,
No.751, Anna Salai, Chennai-2. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 29.04.2004 passed by the Additional District Judge, Motor Accidents Claims Tribunal, Fast Track No.IV, Poonamallee in MCOP No.165 of 2003.

For Appellant : Mrs.K.Vasanthamala

For 2nd Respondent : Ms.N.B.Surekha

First Respondent : No appearance

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.695 of 2012 on the file of the Additional District Judge, Motor Accidents Claims Tribunal, Fast Track Court No.IV and he filed the said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 29.04.2004.

2. The brief case of the claimant is as follows: On 04.11.2002, the claimant was riding his bi-cycle near Adaikalam Kathar Temple, Killanur. At about 1.30 p.m. a speeding TVS 50 bearing registration No.TN-55-F-8647, ridden by the first respondent, hit the claimant, as a result of which, he sustained grievous injuries . According to the claimant, the rash and negligent riding of the two wheeler by the first

respondent was the cause of the accident and that since the first respondent had insured his two wheeler with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The first respondent remained absent before the tribunal and therefore, he 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.82,500/- together with interest at the rate of 9% 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.K.Vasanthamala, learned counsel appearing for the appellant would contend that though Dr.S.Gopalan(PW2) assessed partial permanent disability suffered by the claimant as 75%, the tribunal has awarded a very meagre amount of Rs.55,000/- towards "partial permanent disability". She would further contend that the claimant was admitted in Tanjavurur Government Medical College Hospital as an inpatient for 11 days and subsequently, took treatment as an out patient in Pudukottai Government Hospital and that, however, no amount was awarded towards "Transportation charges", "attender's charges" "loss of income" and hence, the award amount passed by the tribunal should be enhanced .

6. Per contra, Ms.N.B.Surekha, learned counsel appearing for the 2nd respondent, Insurance Company would contend that the tribunal after considering various aspects, has awarded a just compensation and that the same need not be disturbed at this juncture.

7. A perusal of discharge summary (Ex.P2) shows that an operation was performed on the right head of the claimant and Dr.Gopalan (PW2) has issued Disability Certificate (Ex.P8) assessing the partial permanent disability suffered by the appellant/claimant as 75%. However, the tribunal awarded only a sum of Rs.55,000/- towards "partial permanent disability".

8. 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.

In the instant case, the contention of the appellant/claimant is that he was a painter by profession earning a sum of Rs.200/- per day and therefore, applying multiplier method is very much essential. In the absence of proof of income, notional income is fixed at Rs.3,000/- per month, since the accident took place in the year 2002. 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 (3000+750=3750). The proper multiplier to be adopted in the instant case is 14, 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 45 years on the date of accident. As per the disability certificate (Ex.P7) issued by Dr.Gopalan (PW2), this court fixed the partial permanent disability as 75% Thus, Loss of earning capacity is calculated as follows.

Loss of Earning capacity
Notional Income - Rs. 3,000
Future prospects 25% - Rs. 750
Total - Rs. 3,750
Proper multiplier - 14
Partial permanent disability fixed - 75%
Loss of earning capacity
3750 x 12 x 14 x 75/100 = Rs.4,72,500/-

9. On account of accident, the appellant would not have been in a position to attend to his work atleast for six months. Thus, a sum of Rs.18,000/- (3000 x12 = 18,000) 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.20,000/-, Rs.18,000/-, and Rs.500/- towards "pain and sufferings", "transportation charges", "extra nourishment" "attender's charges", "loss of amenities", "loss of income" and "medical bills" 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	4,72,500
2	Pain and sufferings	25,000
3	Transportation charges	10,000
4	Extra nourishment	10,000
5	Attender's charges	5,000
6	Loss amenities	20,000
7	Loss of income	18,000
8	Medical bills	500
	Total	5,61,000

The said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

(i) The appeal is allowed. No costs. The quantum of compensation awarded by the tribunal is enhanced to Rs.5,61,000/- from Rs.82,500/-

(ii) The appellant is entitled to the compensation of Rs.5,61,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the appellant is directed to pay necessary court fee for the enhanced compensation amount.

(iii) The 2nd respondent is directed to deposit the enhanced compensation of Rs.5,61,000/- 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.

(iv) On such deposit being made by the 2nd respondent, the appellant is entitled to withdraw the entire amount together with interest forthwith, after following the due process of law.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mst

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.IV. Poonamallee.

+1cc to Ms.N.B.Surekha, Advocate SR.No.6762

+1cc to Mr.UM.Ravichandran, Advocate SR.No.6129

CMA.No.695 of 2012

VBA(CO)
GMY(28/05/2019)