IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1346 & 32 of 2018

C.M.A.No.1346 of 2018

IFFCO - TOKIO
General Insurance Company Ltd.,
No.28, 2nd Floor, North Usman Road,
T.Nagar, Chennai - 600 017. ... Appellant/2nd Respondent

Vs

1.K.Prakash ..1st Respondent/Petitioner

2.M/s.Credential Technologies Pvt. Ltd.,
R.S.No.5/13 & 5/15 Road,
Mylam Road, Sedarpet,
Pondicherry - 605 111.
(Set Ex.Party before the Trial Court)
...Respondents

C.M.A.No.32 of 2018

K.Prakash
...Appellant/Petitioner

Vs.

1.M/s.Credential Technologies Pvt. Ltd.,
R.S.No.5/13 & 5/15 Road,
Mylam Road, Sedarpet,
Pondicherry - 605 111.

(Since 1st respondent remained exparte before
the tribunal its presence may be dispensed with)

2.IFFCO - TOKIO General Insurance Company Ltd.,
No.28, 2nd Floor, North Usman Road,
T.Nagar,
Chennai - 600 017. ... Respondents

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.1355 of 2010 dated 20.09.2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court

No.2, Motor Accident Claims Petitions), Small Causes Court, Chennai.

For Appellant in C.M.A.No.1346 of 2018 : Mrs.K.Saraswathi for Mr.C.R.Krishnamoorthy

For 1st Respondent in C.M.A.No.1346 of 2018 : Mr.F.Terry Chellaraja

For Appellant in C.M.A.No.32 of 2018 : Mr.F.Terry Chellaraja

For 2nd Respondent in C.M.A.No.32 of 2018 : Mrs.K.Saraswathi for Mr.C.R.Krishnamoorthy

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeals have been preferred by both the Insurance Company as well as the claimant aggrieved over the quantum of compensation of Rs.14,56,088/- for the disability sustained by the claimant, 27 year old boy, working as a Manager, allegedly earning about a sum of Rs.20,000/- per month, in the accident occurred on 26.09.2009, when the claimant was travelling as an occupant in a car from Pondicherry to Thindivanam which was hit by a lorry insured with insurance company driven rash and negligently.

2.Heard Mrs.Saraswathi and Mr.F.Terry Chellaraja, learned Counsel for the parties and perused the records. Since the negligence aspect has not been questioned, this Court has not gone into the negligence aspect.

3.Though the learned Counsel for the insurance company would submit that the amount awarded by the tribunal is on the higher side, Mr.F.Terry Chellaraja, learned Counsel for the claimant would submit that the amount awarded is very low. Regarding the disability, the tribunal has given the details elaborately which are as follows;

> "In this petition, and as P.W.2 in his evidence, the petitioner has stated as to the injuries sustained by him in detail. In the Discharge summary issued by Jipmer Hospital, Pondicherry has been marked as Ex.P.4, in which it has been stated that the Petitioner has sustained closed distal radius fracture (R), communited displaced intra articular with ? head injury. In the C.T. Scan report issued by Sri Ramachandra Medical

Centre, Chennai marked as Ex.P.5, it has been stated that the petitioner has sustained comminuted fracture of the roof and posterior lip of the left acetabulum. In the Discharge Summary (28.09.2009 - 14.10.2009) issued by Sri Ramachandra Medical Centre, Chennai marked as Ex.P.6, it has been stated that the petitioner has sustained Frymann's type VIII fracture of distal radius with posterior lip fracture left acetabulum with intra articular fragment and has undergone with the procedure of Orif with cancellous screw of posterior lip lef acetabulum and Ligamentotaxis with K-wire fixation of right distal radius and SSG of ra area over right cheek. It has been further stated page 3 of Ex.P.6 discharge summary, debridement and SSG for the facial wounds was done on 09.10.2009 and it was found 1) Right upper eyelid skin loss present, 2) Right eyebrow middle 3rd loss present, 3) Notching in the middle 3rd of the upper eyelid present and 4) 3cm square skin loss present in the cheek with abrasion present. In the Discharge Summary (from 18.11.2009 - 20.11.2009) issued by Sri Ramachandra Medical Centre, Chennai marked as Ex.P.7, it has been stated that the Petitioner has sustained 6 weeks old fracture right distal radious with fracture left acetabulum and has undergone with the procedure of Ex-Fix Removal from the distal radious done under local anesthesia. Physiotherapy record issued by Sri Ramachandra Medical Centre, Chennai marked as Ex.P.8, shows that the petitioner undergone physiotherapy for the complaints of difficulty in holding objects by using right wrist for past three months. In the disability certificate marked as Ex.P.34 through P.W.4 Doctor, the said Doctor has assessed the disability due to the injury to the right forearm lower third causing fracture of the distal raidous at 30% and the disability due to the fracture of left hip joint with posterior lip of the acetabulum with intra articular extension at 35% and in totalling at 65% as partial and permanent. In the disability certificate marked as Ex.P.35 issued by P.W.5 Doctor, the Doctor has assessed the loss of earning capacity due to scarring on the middle of RUL extending to eyebrow and Logophthalamos and not able to close the right eye and vision right eye 6/18 nigh., at 35% as permanent. But, in his cross examination, P.W.5 Doctor has clearly deposed that he has assessed the phsycial disability and not the loss of earning capacity. Therefore, this Tribunal considers that 35% given in Ex.P.35 disability certificate is relating to the phsycial disability of the petitioner. From the above documents including the treatment records and the disability certificcates, the petitioner has proved that he has sustained partial and permanent disability at 30% due to the fracture of distal radius and 35% due to fracture of left hip portion and 35% due to injuries in the eyelid. As per the Disability (Permanent Physical Impairment) Assessment & Certification based on Guidelines & Gazette Notification Regd. No. DL33004/99 (Extraordinary) Part II, Sec. 1, June 13, 2001, the total % of multiple disabilities have to be arrived at by using the formula a+b(90-a)/90, and 'a' will be the higher score and 'b' will the lower score. Hence, in this case the total disability would be 39.72 percentage. (35+30(90 minus 35)/90). Now, we should take into consideration that as per the above Ex.P.34 Disability Certificate, the disabilities due to distal radius and hip portion are partial and permanent. Further, as P.W.2, the petitioner has deposed in his cross examination that he used to attend the advertisemnt works temporarily in other advertisement companies as and when required. The disabilities suffered by the petitioner herein should affect to some extent in his work, which is relating to advertisement. Considering all these apects, this Tribunal determines the loss of earning capacity at 30%.

(ii) In the petition, the petitioner has stated that he is working as Senior Executive Operation in Enrich Events and as Senior Executive Manager in Spectrum in and earning Rs.20,000/- per month. The petitioner has marked the offer letter with effective date as 30.05.2006 issued by Enrich as Ex.P.13, wherein, the petitioner has been offered for the senior operation Executive in the said company with the salary of Rs.16,000/- per month plus incentives. The petitioner has also marked the appointment letter issued by Spectrum for appointment of the petitioner as Senior Event Manager from July 1 2001 with a remuneration of Rs.2,22,000/- per annum as Ex.P.14. Both Exs.P.13 and P.14 have been under-signed by one and same person as authorized signatory. But, as P.W.2 the petitioner has deposed in his chief examination that he had worked as Senior Operation Executive in Enrich and as Senior Event manager in Spectrum Events & Entertainment and had received a remuneration of Rs.20,000/- per month. Therefore, his evidence as P.W.1 chief examination, defers with the remunerations mentioned in Ex.P.13 and Ex.P.14, in which the total remuneration would be Rs.16,000/- per month and Rs.2,22,000/- per annum respectively. Further, P.W.2 would deposed in his cross examination that he attended the work in Spectrum along with the work in Enrich from 10.07.2009 and he received salary only from Sepctrum and not Enrich. But, except Ex.P.14 appointment order, there is no other document to show that he was working in Spectrum. On the other hand, Ex.P.24 Bank Statement Account relating to Enrich, would show his name till 12.08.2009. Therefore, we have to consider the salary mentioned in Ex.P.13 offer letter issued by Enrich, namely, Rs.16,000/- as the salary of the petitioner. Though the learned advocate appearing for the second respondent strenuously argued that the petitioner's evidence both in oral and documentary regarding his avocation and income will not be acceptable one, there is no contra evidence on this aspect. Further, Ex.P.13 the offer letter issued by Enrich and the bank statement accounts of Enrich and Spectrum marked as Ex.P.24 would hsow that he was working in the said company. Therefore, relying upon Ex.P.13 offer letter issued by enrich and Ex.P.24 bank statement account of enrich, this tribunal comes to the conclusion that the petitioner's income at the time of accident was Rs.16,000/-

(iii) This Tribunal has, in the previous paragraphs, come to the conclusion that the disabilities suffered by the Petitioner herein should affect to some extent his work, which is relating to advertisement and that the loss of earning capacity of the petitioner would be at 30%. Considering the petitioner's age given in the petition and in Ex.P.6 and Ex.P.7 Discharge Summaries as 27 years and Ex.P.4 and Ex.P.9 Medical records as 29 years, the multiplier to be applied as per Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (2009) 4 MLJ (SC) 997 is M-17. Therefore, by Multiplier method, this Tribunal comes to the conclusion that the petitioner is entitled to the Rs.9,79,200/- (Rs.16,000/- X 30% X 12 X 17) towards the head under "loss of earning power"."

4.From the above it is clear that the claimant sustained serious injuries which lead the claimant to undergo two surgeries. Based on doctor's evidence and Ex.P.34, disability certificate, the tribunal rightly determined the disability at 39.72 percentage and however, it determined the loss of earning capactiy at 30%. The disability sustained and arrival of 30% loss of earning capacity is very reasonable as the disability sustained by the claimant is partial and a permanent one.

5.The tribunal determined the monthly income at Rs.16,000/- as per Ex.P.13 and Ex.P.14 viz., offer letters and Ex.P.24 viz., Bank Statement of Accounts. The said determination is as per the evidence available on record and therefore, the same cannot be interfered with. Therefore, the said amount of Rs.16,000/- determined by the tribunal as monthly income of the claimant is confirmed.

6.Since, serious injuries have been sustained resulting in partial and permanent disability, multiplier method was rightly adopted by the tribunal. Taking the monthly income at Rs.16,000/- and loss of earning capacity at 30% and adopting multiplier '11', the loss of income determined by the tribunal as, Rs.16,000/- x 30% x 12 x 17 = Rs.9,79,200/- is confirmed.

7.For continuing permanent disability, the tribunal awarded a sum of Rs.90,000/- taking Rs.3,000/- per percentage of disability and the same is confirmed. The said determination is based on the Judgment in "National Insurance Co.Ltd., Vs. G.Ramesh" reported in "2013 (2) TN MAC 583" and the Judgment in "S.Manickam Vs. Metropolitan Transport Corp. Ltd.," reported in "2013 (2) TN MAC 88 (SC)" .

8.Rs.50,000/- awarded towards Pain and sufferings and Rs.64,000/- awarded towards loss of income during the treatment period and Rs.10,000/- awarded towards transportation, Rs.50,000/- awarded towards Extra Nourishment and Rs.1,000/- awarded towards Damages to clothes and Rs.43,388/- awarded towards Medical expenses as per Ex.P.11 viz., medical bills and Rs.20,000/- awarded towards attendant charges and Rs.40,000/- awarded towards loss of amenities and Rs.75,000/- towards disfigurement and Rs.33,500/- awarded towards future medical expenses as per Ex.P.12 are reasonable and the same are confirmed.

9.Therefore, Rs.14,56,088/- awarded by the tribunal is confirmed. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

10.Hence, the Insurance company is directed to deposit the entire award amount as per the order of the Tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the entire award amount to the claimant's account through RTGS within a period of one week .

11. In the result, the appeals filed by both the insurance company as well as the claimant are dismissed by confirming the award passed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Special Sub Court No.2,
Small Causes Court,
Chennai.

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.C.R.Krishnamoorthy, Advocate sr 58457
+1 CC to Mrs.M. Malar, Advocate sr 58678.

C.M.A.Nos.1346 & 32 of 2018

CNR(CO)
SP(13/10/2020)