IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:16.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.34 of 2014

G.Ramasamy
...Petitioner / Appellant
vs.

1. S.Kamban
(R1 remained exparte
before the Tribunal his presence
may be dispensed with).

2. National Insurance Company Limited,
No.751, Anna Salai,
Chennai 600 002.
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.09.2013 made in MCOP.No.1328 of 2012 on the file of the Motor Accident Claims Tribunal / III Small Causes Court, Chennai.

For Appellant : Mrs.A.Subadra
For Respondent : Mrs.N.B.Surekha for R2
R1 - No appearance

J U D G M E N T

The appellant is the claimant in MCOP.No.1328 of 2012 on the file of the Motor Accident Claims Tribunal / III Small Causes Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident on 09.03.2012.

2. The case of the claimant is that on 09.03.2012, he was riding his motor cycle bearing Registration No.TN-05-AC-4652 on MGR Road, Kandhanchavadi and at about 6.30 a.m, a speeding motor cycle bearing Registration No. TN-63-F-7227 belonging to the 1st respondent and insured with the 2nd respondent hit him, as a result of which, he sustained grievous injuries all over his body. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN-63-F-7227 was the cause of the accident and that since the said motorcycle was insured with the National Insurance Company Limited, the owner and the insurer

are jointly and severally liable to pay compensation.

3. The owner of the motorcycle remained absent before the Tribunal and therefore, he was set exparte. The second respondent / National Insurance Company Limited contested the claim petition. The learned III Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,70,000/- 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. Mrs.A.Subadra, learned counsel appearing for the appellant/ claimant contended that though the claimant was a Mason, earning a sum of Rs.500/- per day, the Tribunal has fixed the notional income of the claimant is Rs.5,000/- per month. She further contended that very meager amount was awarded towards partial permanent disability especially when Dr.Saichandran/PW2 had assessed the partial permanent disability as 50% and she therefore, prayed for enhancement of compensation.

5. Per contra, Mrs.N.B.Surekha, learned counsel appearing for the second respondent / National Insurance Company Limited contended that the Tribunal after considering all the aspects of the case, had awarded a just compensation of Rs.1,70,000/- together with interest at the rate of 7.5% per annum and the same need not be disturbed at this stage.

6. No appearance on behalf of the 1st respondent.

7. In the instant case, the appellant / claimant was aged 48 years on the date of the accident and in the claim petition, it is stated that he is a Mason by profession earning a sum of Rs.500/- per day. Since no income proof is adduced, the Tribunal had fixed the notional monthly income as Rs.5,000/- per month. Since the income fixed by the Tribunal is very low, the notional monthly income of the claimant is fixed as Rs.7,500/- per month, considering the year of accident.

8. A perusal of the discharge summary (EX.P2 to Ex.P4) shows that the claimant has suffered fracture of both bones on his right leg and on three occasions, he was hospitalized and an operation was also performed on 19.05.2012. The claimant is a Mason by profession and definitely there would be an impact on his earning capacity on account of the accident. Dr.Saichandran had assessed his partial permanent disability as 50%.

9. 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 has held that where the claimant

suffers permanent disability as a result of injuries, the assessment of compensation under the head loss of "future earnings", would depend upon the effect and impact of such permanent disability on his earning capacity and that the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity arising from a permanent disability would be different from the percentage of permanent disability. The 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."

10. Admittedly in the instant case, the claimant is a Carpenter by profession and he has sustained fracture of both bones on his right leg. In the facts and circumstances of the present case, adopting multiplier method is very much warranted. Since the age of the claimant was 48 years on the date of the accident, the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Though, Dr.Saichandran (PW2) had assessed the partial permanent disability suffered by the claimant as 50%, it cannot be considered for the whole body, therefore, 20% of disability is taken up for calculating loss of earning capacity.

Loss of earning capacity
= Rs.7,500/- x 12 x 13 x 20/100
= Rs.2,34,000/-

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

S. No.	Head	Amount granted
1.	Loss of income	Rs.45,000/-
2.	Loss of earning capacity	Rs.2,34,000/-
3.	Pain and sufferings	Rs.25,000/-
5.	Transportation	Rs.5,000/-
6.	Extra nourishment	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Actual Medical bills	Rs.4,200/-
9.	Damage to clothes	Rs.500/-
Total		Rs.3,20,700/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,70,000/- to Rs.3,20,700/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,70,000/- to Rs.3,20,700/- .

(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, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.3,20,700/- (less the amount already deposited) 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.1328 of 2012 on the file of the Motor Accidents Claims Tribunal / III Judge, Small Causes Court, Chennai 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(CS VIII)

//True Copy//

Sub Assistant Registrar

rka
To

The Motor Accidents Claims Tribunal,
III Small Causes Court, Chennai

+1cc to M/s.M.Malar , Advocate SR.No. 86842
+1cc to Mrs.N.B.Surekha, Advocate SR.No. 86624

CMA.No.34 of 2014

A.SK(15/07/2020)