IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.660 of 2014 and
M.P.No.1 of 2014

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Tirupathi. .... Appellant/2nd Respondent

Vs.

1. Chitra ...1st Respondent/Petitioner

2. M/s Sri Venkata Balaji Transport,
Rep. by K.Y.Narasimma Rao,
No.17/45-1, Air Port Road,
Old Check Post, Renigunta, Chittoor District,
Andhra Pradesh .... 2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 19.04.2013 passed in MCOP No.501 of 2010 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.Mukund R. Pandian (for R1)
No appearance for R2

J U D G M E N T

The Divisional Manager, the Oriental Insurance Company Limited, Tirupathi who is the 2nd respondent in MCOP No.501 of 2010 on the file of the the Principal Subordinate Judge, Motor Accident Claims Tribunal, Krishnagiri has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The first respondent/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- from the 2nd respondent as well as the appellant for the injuries sustained by her in a road accident that took place on 01.05.2008. The further contention of the claimant is that she was travelling as a

passenger in APSRTC Bus bearing registration No.AP.28/Z-1991 from Chittor to Tirupathi and when the bus was nearing Guntha Gadanki Village, Pakala Mandal on Chitoor-Thirupathi Road, a speeding lorry bearing registration No.AP-03-W-3159, belonging to the 2nd respondent hit the bus, as a result of which, she sustained injuries all over her body. According to the claimant, the rash and negligent driving of the driver of the lorry was the cause of accident and that since the owner of the lorry/2nd respondent herein insured his vehicle with the present appellant/insurance company, both of them are jointly and severally liable to pay compensation to her.

3. The owner of the lorry remained absent before the Tribunal and therefore, he was set exparte. The appellant, the Oriental Insurance Company Limited contested the claim petition.

4. The Principal Subordinate Judge, Motor Accident Claims Tribunal, Krishnagiri, after analysing the evidence on record, awarded a compensation of Rs.7,50,960/- together with interest at the rate of 6% p.a. to the claimants. Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal.

5. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that 'determination of just compensation' cannot be equated to a 'bonanza' and the concept of the just compensation obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and courts.

6. His specific contention is that when the claimant had sustained a fracture on her left leg, the Tribunal was not right in adopting multiplier method. He would further contend that 50% of disability assessed by Dr.D.V.Gandhi (PW2) is also arbitrary and therefore cannot be the basis for calculating loss of earning capacity. He relied on a decision in Yadava Kumar Vs. The Divisional Manager, National Insurance Company Limited and another reported in 2010(2) TN MAC 356 (S.C) and contended that though Dr.D.Gandhi (PW2) had assessed partial permanent disability of the claimant as 50%, only 20% can be taken up as partial permanent disability in respect of the whole body.

7. In the decision in Yadava Kumar Vs. The Divisional Manager, National Insurance Company Limited and another reported in 2010(2) TN MAC 356 (S.C) (cited supra), the claimant sustained "fracture of distal end of left radius with fracture of left ulnar styloid process and fracture of distal end of right radius with mild diastosis and soft tissues swelling around wrist joint". The Doctor also assessed the disability at 33% in respect of right upper limb, 21% towards upper limb and

20% in respect of whole body. In the said case, the claimant was a painter by profession. In the circumstances, the Honourable Supreme Court fixed the percentage of disablement as 20%.

8. In the instant case, it is contended that the claimant is doing business in sarees and ready made garments and was aged 24 years on the date of accident. As already observed, Dr.D.V.Gandhi (PW2) assessed the partial permanent disability as 50%. He had further observed in his disability certificate that the claimant cannot walk without limbing and her left leg is shortened by one inch. Since it is contended by the claimant that she is doing business in buying and selling sarees, she may have to travel frequently and also walk a long distance. Therefore, adopting multiplier method is definitely warranted , as far as the present case is concerned.

9. In the decision in Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343, a Division Bench of the Honourable Supreme Court held thus.

> 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. 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.

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."

However, while adopting multiplier method, 50% of disability as contended by Dr.D.V.Gandhi (PW2) cannot be taken up as disablement of the whole body and as per the principles laid down in the decision in Yadava Kumar Vs. The Divisional Manager, National Insurance Company Limited and another reported in 2010(2) TN MAC 356 (S.C), 20% alone can be taken up as percentage of disablement. The Tribunal has committed an error by fixing the total disablement of the claimant as 50%.

10. As far as the income of the claimant is concerned, the Tribunal has fixed the monthly income of the claimant as Rs.4,500/- and no contra evidence was adduced and this was also not disputed seriously by the appellant herein. The claimant was aged 24 years on the date of accident and proper multiplier to be adopted in the instant case is '17', as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Percentage of disablement : 20%
Income : Rs.4,500/-
Proper multiplier : 17
Loss of earning capacity (4500x12x17x20%) : Rs.1,83,600/-

Apart from the above amount, the claimant is also entitled to the following amounts .

Sl.No	Heads	Amount
1	Loss of earning capacity (4500x12x17x20%)	1,83,600
2	Loss of income (4500 x 6)	27,000
3	Pain and sufferings	30,000
4	Transportation	30,960
5	Medical expenses	1,96,000
6	Attender's charges	10,000
7	Extra nourishment	10,000
8	Loss of amenities	20,000
	Total	5,07,560

This amount would carry interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

11 In the result,

(i) The appeal is partly allowed. No costs. The connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal is scaled down from Rs.7,50,960/- to Rs.5,07,560/-.

(iii) The appellant/insurance company is directed to deposit the revised compensation amount of Rs.5,07,560/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them) within 4 weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst
To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to

The Record Keeper,
VR Section, High Court, Chennai-104.

+1cc to Mr.Mukund A.Pandiyan, Advocate Sr.79434
+1cc to Mr.M.Krishnamoorthy, Advocate Sr.78602

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M.P.No.1 of 2014

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srg 19/11/2020