



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD)No.73 of 2014

Nandagopal @ Murugan

... Appellant

versus

1. S.Shanmuganathan

2. M/s.New India Assurance Co. Ltd.,
Rep. by its Divisional Manager,
Divisional Office,
248-B, Rekha Towers,
Kamarajar Salai,
Madurai - 625 009.

... Respondents

Civil Miscellaneous Appeal filed under Section 173(i) of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.12.2012 passed in M.C.O.P.No.1524 of 2009 on the file of the learned VI Additional District Judge, Madurai.

For Appellant : Mr.A.Theethar
For R1 : No appearance
For R2 : Mr.I.Robert Chandrakumar

JUDGMENT

The claimant Nandagopal @ Murugan, aged about 50 years, an Estate Supervisor, earning a sum of Rs.5,000/- p.m. met with an accident on 15.03.2009 and sustained greivous injuries all over the body, for which, he filed a petition in M.C.O.P.No.1524 of 2009 before the Motor Accident Claims Tribunal (VI Additional District Judge), Madurai, claiming compensation of Rs.2,00,000/-. The Tribunal, after considering the oral and documentary evidence, has awarded the compensation under the following break up details:

Disability	-	Rs.40,000/-
Pain and Suffering and Extra Nourishment	-	Rs.10,000/-
Medical Expenses	-	Rs.38,000/-
Transport Charges	-	Rs. 2,000/-
Total	-	<u>Rs.90,000/-</u>

Challenging the quantum of compensation awarded by the Tribunal as inadequate, the claimant has filed the present Civil Miscellaneous Appeal.



2. The learned counsel appearing for the claimant/appellant submitted that the Doctor, who issued the disability certificate, was examined as P.W.3, wherein, the Doctor has categorically stated that the claimant has suffered 83% disability and his right leg was shortened by one inch. Due to the shortening of right leg, the claimant, who was working as an Estate Supervisor, was unable to stand for a long time and perform his normal activities as before, as a result, his avocation got fully affected and hence, his functional disability should have been taken as 83%. But, the Tribunal, without considering the same, has taken the disability at 40% instead of 83%. It is further submitted that when the claimant suffered 83% disability, the Tribunal ought to have applied multiplier method while quantifying the compensation towards disability as held by the Hon'ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121**, but, the Tribunal awarded Rs.1,000/- per percentage of disability and totally, awarded a sum of Rs.40,000/- for 40% disability. Moreover, the claimant was aged about 50 years at the time of accident. Considering the age of the claimant and also considering the disability sustained by the claimant, the Tribunal ought to have added 25% future prospects while determining compensation towards disability, as held in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **AIR 2017 SC 5157**. Therefore, the compensation awarded by the Tribunal is very low and the same has to be enhanced. The learned counsel further submitted that the Hon'ble Apex Court, in the case of **Raj Kumar vs. Ajay Kumar and another**, reported in **2010 (2) TN MAC 581 (SC)**, held as follows:

"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 disability (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."

But, the said guidelines have not been followed by the Tribunal.

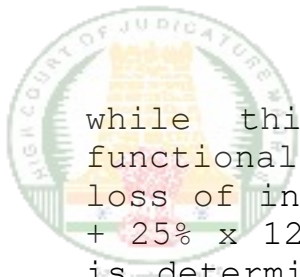
3. The learned counsel appearing for the second respondent submitted that it is not a case for awarding compensation by applying the multiplier method, therefore, the Tribunal has rightly awarded the compensation, which does not require any interference.

4. As the guidelines given by the Hon'ble Apex Court in the case of **Raj Kumar vs. Ajay Kumar and another**, reported in **2010 (2) TN MAC 581 (SC)**, it is the duty of the Courts to follow the same while determining the compensation towards disability. In the present case, the claimant has sustained 83% disability, for which, a disability certificate has also been produced before the Tribunal, which was marked as Ex.P9. Though the disability certificate has been produced ascertaining the disability as 83%, the Tribunal has taken the disability at 40% and awarded a sum of Rs.1,000/- per percentage of disability and totally, awarded a sum of Rs.40,000/- towards disability.

5. In order to ascertain the disability sustained by the claimant, this Court has also directed the claimant to appear in person before this Court. Pursuant to the said direction, the claimant appeared before this Court and this Court has also analysed the disability sustained by the Claimant. No doubt, the claimant/appellant, due to the disability sustained by him, is fully restricted from discharging his normal activities and functions as before. Considering the same, it is a fit case for enhancement of compensation by applying the multiplier method and also by adding future prospects.

6. Though the claimant has claimed that he was earning a sum of Rs.5,000/- p.m. at the time of accident, there was no document to prove the same. The Hon'ble Apex Court, in **Syed Sadiq's** case (reported in **2014 (2) SCC 735**) has fixed the notional income for a Vegetable Vendor at Rs.6,500/-. Therefore, this Court is inclined to take the income of the claimant at Rs.5,000/-. Since this case is a fit case for adopting the multiplier method, this Court adopts the correct multiplier of 13. Further, as held by the Hon'ble Apex Court in **Pranay Sethi's case**, this Court, by considering the age of the claimant as 50 years at the time of accident, is inclined to add 25% future prospects.

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while this Court inclined to apply the multiplier method, functional disability is fixed at 25%. By applying the same, the loss of income of the claimant would be as Rs.2,43,750/- (Rs.5,000 + 25% x 12 x 13 x 25%). The Loss of Income due to the disability is determined in addition to the amount awarded by the Tribunal towards permanent disability. In respect of other heads, the compensation awarded by the Tribunal stands confirmed.

Loss of Income		
due to the Disability-		Rs.2,43,750/-
Pain and Suffering and		
Extra Nourishment -	Rs.	10,000/-
Medical Expenses -	Rs.	38,000/-
Transport Charges -	Rs.	2,000/-
Disability -	Rs.	40,000/-
Total -		<u>Rs.3,33,750/-</u>

7. In the result, the Civil Miscellaneous Appeal is allowed, by modifying the amount from Rs.90,000/- to Rs.3,33,750/-, which is payable by the second respondent Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. Hence, the second respondent Insurance Company is directed to deposit a sum of Rs.3,33,750/- less the amount already deposited, if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the claimant's Bank Account directly through RTGS, within a period of three weeks thereafter. The claimant shall pay the court fee for the enhanced amount of compensation, before obtaining copy of Judgment. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



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The VI Additional District Judge
Motor Accident Claims Tribunal
Madurai.

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+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-98903[F] dated 18/11/2019)

+1 CC to Mr.A.THEETHAR, Advocate (SR-99174[F] dated 18/11/2019)

CMA (MD) No.73 of 2014
15.11.2019

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