

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1564 of 2015

and

M.P.No.1 of 2015

The Oriental Insurance Company Ltd
Rep.by its Branch Manager,
No.73/B-1, Salai Road, Lakshmi Complex,
Thillai Nagar, Tiruchirappalli Town,
Tiruchirappalli Taluk and D.M.,
Tiruchirappalli District. ..Appellant /2nd Respondent

/versus/

1.S.Thiyagarajan ...1st Respondent/Petitioner
2.S.Senthilkumar ...2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 24.09.2014 made in M.C.O.P.No.71 of 2013 on the file of the Motor Accident Claims Tribunal (Sub Court), Tiruvarur.

For Appellant : M/s.Elveera Ravindran

For Respondents: Mr. N.S.Nageswaran for R1
No appearance for R2

J U D G M E N T

(The case has been heard through video conference)

The Insurance Company has filed this appeal challenging the award dated 24.09.2014 passed in M.C.O.P.No.71 of 2013 on the file of the Motor Accident Claims Tribunal (Sub Court), Tiruvarur.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. It is a case, where the respondent herein while riding his two wheeler and proceeding on the Thiruthuraipoondi-Velankanni ECR Road, the Indica car coming from the opposite direction rash and negligently driven by its driver hit him and

caused injury on his head, left elbow and ribs. For the said injury, he was taken to the Government hospital, Nagapattinam. Later, he was treated as in-patient on 08.04.2012 at Vinothagan hospital, Tanjore. Claiming that he was employed in District Procurement Centre as clerk and earning Rs.15,000/- per month. For the 46% of the disability compensation of Rs.13,20,750/- was claimed.

4. The Tribunal after considering the material evidence placed by the claimant found that the claimant has not submitted any proof for his income. Therefore, a notional income of Rs.100 per day was taken as fundamental income. Recording that the claimant would have gone for work at least 20 days in a month his monthly income was calculated at Rs.2,000/- per month. 1/3rd of it was deducted towards personal expenditure and for the balance applying the multiplier, the Tribunal has fixed a sum of Rs.2,71,932/- as loss of income for the life. Besides another sum of Rs.92,000/- was awarded for the permanent disability of 46%. Taking into account the medical bill submitted by the claimant and the other loss under the non-conventional head, the Tribunal has awarded a total sum of Rs.5,52,041/- with interest at the rate of 7.5% per annum.

5. The Insurance Company, who is the appellant before this Court aggrieved by the manner in which the multiplier is applied, has filed this appeal stating that without proof for any loss of earning power, the Tribunal has awarded Rs.2,71,932/- in addition has also awarded a sum of Rs.92,000/- for permanent disability, thereby an exorbitant amount has been awarded to the claimant.

6. The learned counsel for the appellant relying upon the judgment of this Court in United India Insurance Company Ltd., Vs. Veluchamy and another reported in 2005 ACJ 1483 would submit that in all cases of injury or permanent disablement 'multiplier method' cannot be applied. Only in case where the claimant proves that the injury sustained by him in the accident has caused impediment to the earning capacity permanently. The learned counsel would submit that the Tribunal had erred by applying multiplier without any evidence to prove the loss of earning capacity of the claimant.

7. The learned counsel appearing for the respondent would submit that the Tribunal in fact failed in not granting additional compensation under the head of future prospects. In an injured case, deduction under the personal expenditure is not permissible. The Tribunal failed to consider that the claimant was employed as clerk in the District Procurement Centre and the accident occurred while proceeding to his job. He was paid a consolidated sum of Rs.9,000/- per month with additional allowance of Rs.6,000/-. Though it was a seasonal temporary

employment, the fixation of notional income at the rate of Rs.100/- per day and taking only 20 days in a month as an effective employment days is unreasonable low. The Tribunal has estimated the earning capacity of the claimant very low and deducted 1/3rd towards personal expenditure instead of giving additional compensation for future prospects.

8. This Court, after hearing the learned counsels on both sides and perusing the records finds that, in the accident the claimant has sustained femur fracture near neck, a fracture in his left elbow and fracture of left rib. Surgery has been conducted for the fracture of head and plates in elbow were fixed. The doctor who was examined as PW.2 has deposed that the injury sustained by the claimant will cause him difficulty in his function. The head injury will prevent him sitting for a long time. The elbow injury on the left hand will impairs his working capacity. Therefore, the Tribunal has applied multiplier method and this Court concur with, the view of the Tribunal.

9. As pointed out by the learned counsel for the appellant the Veluchamy judgment or any other judgments of the Hon'ble Supreme Court and the High Courts do not deprive or bar applying multiplier in injury case. If the records are sufficient to indicate that the injury is of that nature that the working capacity of the person impaired, it is appropriate to just to apply multiplier method.

10. Having said that a look at the manner in which the Tribunal has applied the multiplier method, it expose the Tribunal failed to understand the concept of applying the multiplier method and when to apply the same.

11. Having fixed the monthly income of the claimant as Rs.2,000/- it should not have deducted 1/3rd for the personal expenditure. Since it is a case of injury, the impairment in earning capacity alone is considered instead of considering the percentage of impairment of the Tribunal has applied multiplier 17% and awarded a sum of Rs.2,91,732/- towards loss of earning capacity which is the opinion of this Court is totally erroneous. Hence it requires modification.

12. Accident took place on 25.03.2012, the notional income of the claimant is fixed as Rs.3,000/- per month. Due to the injury sustained, the doctor has certified 45% disability. This is in respect of the whole body and when the doctor was cross examined, he admits that it may vary by 5%. But on considering the earning capacity or functional disability, the same cannot be applied as held in judgment laid down by the Rajkumar case in Supreme Court, it all based on the nature of injury and avocation of the injured.

13. In this case, the below injuries have direct impact of the personal disability of the claimant.

(1) the injury sustained by him in his rib and head

(2) the fracture injury sustained by him of his left elbow.

For the said physical disability, this Court fix 15% functional disability. Therefore, the loss of earning capacity of the claimant has to be fixed as Rs.1,28,520/- ((3000+1200) x12x17x15%).

14. Accordingly, the compensation payable is reconstructed as below:

Loss of earning capacity (3000+1200) x12x17x15/100)	Rs.1,28,520/-
For pain and sufferings	Rs.30,000/-
Loss of income during the treatment period	Rs.12,000/- (3000x4)
For disability	Rs.80,000/- (40,000x2)
Transport charges	Rs.5,000/-
Nutritious Food	Rs.10,000/-
Damage of clothing	Rs.750/-
Medical Expenses	Rs.1,48,759/-
Attender Charge	Rs.2,000/-
Total	Rs.4,17,029/-

15. After modification, the compensation awarded for the claimant stands reduced to Rs.4,17,029/-, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The amount shall be deposited within a period of eight weeks from the date of receipt of copy of this order, less the amount already deposited if any. The claimant/1st respondent is permitted to withdraw the modified award amount, less the amount already withdrawn by him, on filing appropriate application before the Tribunal.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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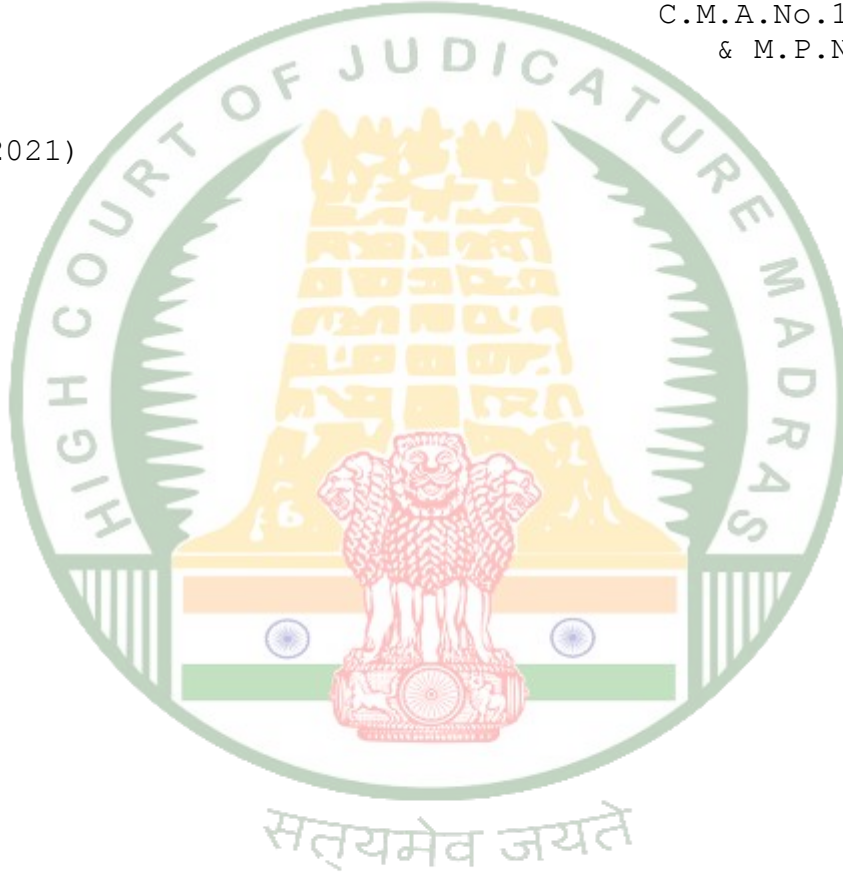
To

1.The Motor Accident Claims Tribunal (Sub Court),
The Sub Judge, Tiruvarur.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

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& M.P.No.1 of 2015

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