IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.329 of 2011

(Through Video Conferencing)

E.Arumugam ... Appellant/Claimant

Vs.

1.D.Subramani

2.The United India Ins. Co. Ltd.,
No.15, Anna Salai,
Chennai - 2. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed by the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Chengalpattu in M.C.O.P.No.163 of 2003 dated 21.07.2010 and enhance the award amount.

For Appellant : M/s.Y.Jayanthi for Mr.J.Mahalingam

For R1 : No appearance

For R2 : Mr.A.Dhiraviyanathan

J U D G M E N T

The claimant is the appellant in this appeal and is aggrieved by the impugned Judgment and Decree dated 21.07.2010 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge,Chengalpattu),in M.C.O.P.No.163 of 2003 (hereinafter referred to as the “impugned award” and the “Tribunal”).

2. By the impugned award, the Tribunal has awarded a sum of Rs.2,35,555/-together with interest at 7.5% p.a from the date of the claim petition till the date of realization, to the appellant/claimant. The amount claimed by the appellant/claimant and awarded by Tribunal are as follows:-

Head	Compensation claimed by the appellant before the Tribunal	Compensation awarded by the Tribunal
Loss of Earning from 15.08.2000 to 15.08.2002	Rs.2,16,000/-	Rs.30,000/-
Transport to Hospital	Rs. 25,000/-	Rs.5,000/-
Extra Nourishment	Rs. 20,000/-	Rs.2,000/-
Medical Expenses	Rs.1,00,000/-	Rs.63,555/-
Medical attendance	Rs.50,000/-	Rs. 5,000/-
Loss of earning profit upto the date of trail for one year	Rs.1,08,000/-	-
Damaged for mental agony	Rs.1,00,000/-	
Damages for the loss of expectation of life (i.e., on account of injury, the normal longevity of the person concerned is shortened)	Rs.1,00,000/-	Rs.30,000/-
Inconvenience, hardship, discomfort, disappointment frustration and mental stress in life	Rs.1,00,000/-	
Compensation for pain and sufferings	Rs.1,50,000/-	
Damages of compensate for loss of amenities of life due to permanent disablement	Rs.1,00,000/-	-
Compensation for continuing of permanent disability	Rs.3,00,000/-	Rs.1,00,000/-
Compensation for the loss of earning power	Rs.4,00,000/-	-
Total	Rs.17,69,000/-	Rs.2,35,555/-

3. The appellant/claimant met with an accident on 15.08.2000 when he was allegedly pushing a motorcycle bearing registration No T.N.01-H-1981, when the insured Van bearing registration No.T.N.22-A-0738 belonging to the 1st respondent insured with the 2nd respondent Insurance Company is said to have hit the appellant/claimant, as a result of which, the appellant/claimant sustained the following injuries:-

Grade-1, Compound Communitted fracture of right leg, fracture acetabulam right with minimal displacement, crush injuries over right leg foot and other serious multiple injuries all over the body.

4. A FIR was registered against the owner of the vehicle. The 1st respondent owner of the insured van remained exparte both before the Tribunal and before this Court. The appellant/claimant claimed that he was a carpenter aged about 26 years at the time of accident and was earning a sum of Rs.300/- per day. Under these circumstances, the appellant/claimant calculated an amount of Rs.17,69,000/- as the total compensation payable to him. However, the claim was restricted Rs.7,00,000/- before the Tribunal.

5. Heard the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent Insurance Company. I have also perused the impugned order and evidences adduced before the Tribunal by the appellant/claimant.

6. The Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343 has given some guidelines and has observed as follows:-

> 8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities

enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

12.Therefore, 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.

13. 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.

17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

7. The Court thereafter further summarized as follows:-

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20.The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration A.— The injured, a workman, was aged 30 years and earning Rs. 3000 per month at the time of accident. As per doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in paremployment, but in a lower grade. Calculation of compensation will be as follows:

(a) Annual income before the accident : Rs.36,000
(b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5,000
(c) Multiplier applicable with reference to age : 17
(d) Loss of future earnings : (5400 x 17) : Rs.91,800

Illustration B.— The injured was a driver aged 30 years, earning Rs. 3000 per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

(a) Annual income prior to the accident : Rs.36,000
(b) Loss of future earning per annum (75% of the prior annual income) : Rs.27,000
(c) Multiplier applicable with reference to age : 17
(d) Loss of future earnings (27000 x 17) : Rs.4,59,000

Illustration C.— The injured was aged 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

(a) Minimum annual income he would have got if had been employed as an engineer : Rs.60,000
(b) Loss of future earning per annum (70% of the expected annual income) : Rs.42,000
(c) Multiplier applicable (25years) : 18
(d) Loss of future earnings (42,000 x 18) : Rs.7,56,000

[Note.— The figures adopted in Illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298].

21. After the insertion of Section 163-A in the Act (with effect from 14-11-1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the Second Schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation:
"5. Disability in non-fatal accidents.— The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:
Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks. PLUS either of the following:-
(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or
(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under Item (a) above.
Injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workmen's Compensation Act, 1923."

(emphasis supplied)

8. Though the Tribunal has awarded the aforesaid compensation to the appellant/claimant, in my view, the appellant/claimant deserved to get a slightly higher compensation as just compensation in view of the assessment assessed by the PW2 Doctor as 60% permanent disability for the injuries suffered by the appellant/claimant. However, the compensation on 50% or 60% of permanent partial disability as the case may be will result in unjust compensation to the appellant/claimant. It has to be with reference to functional disability due to the partial permanent disability. Same is assessed as 30% for awarding just compensation. The Tribunal has not awarded the compensation towards future prospectus. Therefore, the future prospectus is awarded at 40% of the income of the appellant/claimant as per the decisions of the Hon'ble Supreme Court in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

9. As per the above decisions, the compensation awarded by the Tribunal is re-quantified as follows:-

Heads and Calculation	Amount of compensation re-quantified by this Court
# Monthly Income : Rs.3,000/- # Annual Income before the accident (3,000 x 12) : Rs.36,000/- # Loss of future earnings per annum at 30% (36,000 x 30/100) : Rs.10,800/- Add: Future Prospectus at 40% ** (10800 x 40/100) : Rs.4,320/- ----------------- : Rs.15,120/- ----------------- * Multiplier applicable with reference to the age : 18 (15,120 x 17) : Rs.2,57,040/-	Rs.2,57,040/-
Pain and Sufferings and Mental agony	Rs. 25,000/-
Medical Attender Charges	Rs. 5,000/-
Loss of amenities	Rs. 15,000/-

Heads and Calculation	Amount of compensation re-quantified by this Court
Transportation	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-
Medical Expenses	Rs. 63,555/-
Total	Rs.3,75,595/- Rounded off to Rs.3,76,000/-.

As per the decision in Raj Kumar's case (supra).
* As per the decision in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.
** As per the decision of the in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

10. Thus, a sum of Rs.2,35,555/- awarded as compensation to the appellant/claimant is enhanced to Rs.3,76,000/-.

11. Therefore the 2nd respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.1,40,445/- (3,76,000 - 2,35,555) together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. If the 2nd respondent Insurance Company has not deposited the amount of compensation awarded by the Tribunal, it is directed to deposit the same together with interest and proportionate costs as directed by the Tribunal, less any amount already deposited, within the aforesaid period.

13. On such deposits, the appellant/claimant is permitted to withdraw the same together with interest, less any amount already withdrawn, by filing suitable applications before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost .

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To:-
The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpattu.

+1cc to Mr.A.Dhiraviyanathan , Advocate SR.No. 25802

C.M.A.No.329 of 2011

A.SK(04.01.2021)