IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.10.2020
Pronounced On	11.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1630 & 1663 of 2016

(Through Video Conferencing)

C.M.A.No.1630 of 2016

The Branch Manager,
United India Insurance Company Ltd.,
Nagari Taluk, Chittoor District,
Andhra Pradesh. ...Appellant/2nd Respondent

Vs.

1.Jayakumar ...Respondents/Petitioner

2.S.N.Thiyagarajan ...Respondents/1st Respndent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the award and decree dated 09.11.2012 made in O.P.No.904 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Thiruvallur.

For Appellant : Mr.D.Bhaskaran
For 1st Respondent : Mr.R.Baranidharan
for Mr.Ma.P.Thangavel

C.M.A.No.1663 of 2016

Jayakumar ...Appellant/Petitioner

Vs.

1. S.N.Thiyagarajan

2. The Branch Manager,
United India Insurance Company Ltd.,
Nagari Taluk, Chittoor District,
Andhra Pradesh. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the compensation amount awarded in the Judgment and Decree dated 09.11.2012 and made in M.C.O.P.No.904 of 2009 on the file of MACT/Chief Judicial Magistrate Court at Thiruvallur with interest and cost.

For Appellant : Mr.R.Baranidharan
for Mr.Ma.P.Thangavel
For 2nd Respondent : Mr.D.Bhaskaran

COMMON JUDGMENT

C.SARAVANAN, J.

By this Common Judgment, both Civil Miscellaneous Appeals are being disposed.

2. Both Civil Miscellaneous Appeals arise out of the same Judgment and Decree dated 09.11.2012 passed by the Motor Accident Claims Tribunal, Thiruvallur (The Chief Judicial Magistrate, Thiruvallur) in M.C.O.P.No.904 of 2009.

3. By the impugned order, the Tribunal has awarded a sum of Rs.33,09,000/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs to the claimant as against the claim amount of Rs.18,00,000/-.

4. Aggrieved by the same, the Insurance Company has filed C.M.A.No.1630 of 2016 while the claimant has filed C.M.A.No.1663 of 2016 for enhancement of compensation. To avoid the confusion, the parties are referred as Insurance Company, claimant and the owner of the vehicle in this Common Judgment.

5. The impugned Judgment and Decree passed by the Tribunal is primarily assailed by the Insurance Company on the ground that the Tribunal erred in adopting multiplier for the injuries sustained by the claimant while computing the compensation under the head of loss of earning. It is stated that there is no loss of earning.

6. It is further submitted that P.W.2 had exaggerated the extent of physical disability as 65% even though the nature of injuries suffered by the claimant could not be more than 50% for amputation of leg as per the Schedule to the Workmen’s Compensation Act.

7. The learned counsel for the insurance company submits that the Tribunal has awarded the above compensation of Rs.33,09,000/- even though the claimant had prayed for a restricted compensation of Rs.18,00,000/- .

8. On behalf of the claimant, Mr.Bharanidharan, the learned counsel for Mr. Ma.P.Thangavel, the learned counsel appeared and submits that the impugned order passed by the Tribunal was well reasoned except for minor errors in calculation as a result of which the Tribunal has awarded lesser amount of compensation.

9. He further submits that the Tribunal has failed to award a just compensation even though the claimant had claimed lesser amount of Rs.18,00,000/- in the claim petition.

10. He further submits that even if a restricted claim was filed before the Tribunal, nothing precluded the Tribunal from awarding higher compensation. He submits that as per the decision of the Hon'ble Supreme Court in Nagappa vs. Gurudayul Singh (2003) 2 SCC 274, Tribunals, High Courts as also the Supreme Court are bound to award just compensation under the Act to the claimants.

11. We have considered the arguments advanced by the both side counsels. The owner of the vehicle was set exparte. The owner of the insured vehicle is the 2nd respondent in C.M.A.No.1630 of 2016 filed by the Insurance Company and the 1st respondent in C.M.A.No.1663 of 2016 filed by the claimant.

12. The claimant has asked for re-quantification of compensation to Rs.65,27,796/-. The details of enhancement claimed by the claimant in this appeals are as follows:-

Head	Amount
Loss of earning capacity:- (Rs.17,960 + 8,980 (50% F.P) = Rs.26,940/-) [26,940 x 12 x 17 x 85/100)	Rs.46,71,396/-
Medical Bills as per Ex.P8 series	Rs. 4,56,400/-
Pain and Sufferings	Rs. 2,00,000/-
Transportation	Rs. 50,000/-
Attender Charges (18.03.2009 to 16.05.2009)	Rs. 50,000/-
Artificial Limb (Min. once 5-year must change) For atleast 35 years of longevity - Ex.P13	Rs. 5,00,000/-
Future Medical Expenses	Rs. 3,00,000/-

Head	Amount
Loss of income during the period of treatment (6 months)	Rs. 1,00,000/-
Loss of Amenities & Disfigurement	Rs. 1,00,000/-
Extra Nourishment	Rs. 1,00,000/-
Total	Rs.65,27,796/-

13. There is no dispute regarding the accident that took place on 18.03.2009 and the injuries suffered by the claimant in the accident. The nature of the injuries suffered by the claimant as per the declaration in the claim statement are as follows:-

i. Fracture of both Bone Distal 3rd of Right Leg,

ii.Fracture of right femur,

iii.Middle third fracture of right humerass, and

iv.Below Amputation forright lower limb.

14. The claimant was aged about 28 years. At the time of the accident, the claimant was working as an operator with Cater Pillar Limited which later merged with Hindustan Motors Pvt. Ltd. As per his claim petition, the claimant was earning a sum of Rs.16,139/- per month at the time of the accident through later he produced Exhibit P12 to substantiate him monthly income is Rs.17,960/-. The claimant continued to be employment with Hindustan Motors Pvt. Ltd. and later voluntarily resigned and took up employment with Bharat Heavy Electricals Ltd. (BHEL) from 01.03.2012.

15. In the present case, the disability of claimant was assessed as 65% by the physician who deposed evidence as P.W.2 on account of amputation and 70% on account of non-schedule injury in the Ex.P14 Permanent Disability. The PW2 Doctor has confirmed that the claimant was having disability of 65%. The Tribunal has considered the disability of the claimant as 60% for awarding the compensation.

16. The claimant has also been issued with a Disability Certificate by the District Disabled Rehabilitation Officer, Vellore, Government of Tamil Nadu. It is however of no relevance for enhancing compensation under the said heading.

17. This certificate entitles the claimant to claim concession/benefits provided by the Central Government, State Government, Statutory Bodies and other Local Authorities in

accordance with the Act/Rules. It also bears a photograph of the claimant and shows that the right leg of the claimant has been amputated. The nature of disability has been certified as 60% in the said certificate. This Certificate also states the nature of injury suffered by the claimant.

18. The claimant has indeed suffered a partial permanent disability considering the nature of the injury suffered by the claimant which leaded to amputation of his right legs below the knee. It would have compromised his earning capacity if he had been employed in a smaller private company. However, while in employment with Hindustan Motors Pvt. Ltd. the previous employer of the claimant, the claimant has not shown any loss of income on account of the injury or amputation.

19. It is to be noted that both employments and the income of the claimant was statutorily protected under the provisions of the Persons with Disabilities (Equal opportunity, protection of rights and full participation) Act, 1995 as it stood then and thereafter under the provisions of The Rights of Person with Disabilities Act,2016.

20. Since the claimant was employed with a Multinational Company his employment and income were protected by them, lest the claimant’s former employer would have violated the provisions of the Persons with Disabilities (Equal opportunity, protection of rights and full participation) Act, 1995 which was in force at that time. Though the Tribunal had misconstrued that the claimant was serving as an Assistant General Manager (HR) with the Hindustan Motors Pvt. Ltd., it has no bearing as the claimant was indeed an operator. Assistant General Manager (HR), Hindustan Motor Pvt. Ltd. was the address of his previous employer. The said erroneous finding is of no relevance for the purpose of these appeals.

21. Before the Tribunal, the claimant has stated that due to the amputation, he was unable to walk freely and was using crutches and Artificial Leg. The claimant submitted that amputation of his right leg below the knee lead to his resignation from his previous employer, i.e, Hindustan Motor Limited and therefore he had to take up the employment with BHEL under the quota meant for disabled persons.

22. The learned counsel for the claimant was directed to produce an affidavit of the claimant giving particulars of his employment with BHEL and the salary currently drawn by the claimant. Relevant portion from the said affidavit is extracted as under:-

3) It is pertinent to submit that, I am working as an operator in earlier company and earned a sum of Rs.17,960/- p.m as gross pay. I further submit that, though the earlier company provided alternative job that also heavy nature and necessitated me to give up the work. Hence, I was constrained to prepare for the many competitive examinations "under the Disability Quota" and I wrote various examinations for Banking Recruitments, Railway Recruitments and also in BHEL. I state that due to the injury/amputation and due to mental agony and social stigma inspite of best efforts though I failed several attempts. Moreover in the examination to the BHEL, I failed twice and ultimately got through as a Trainee fro lighter work under the Physically Disabled Quota. Accordingly, the appointment given with very specific condition that after qualifying probation for period of 1-1/2 years, only I made permanent for lighter work as Artisan Grade-4 worker on humanitarian grounds.

4) I further humbly submit that, my basic pay at the time of joining in BHEL company's a Temporary Artisan (01.03.2012) is Rs.11,000/- PM and after completion of training the probation period (01.03.2013 to 28.02.2014) my basic is a sum of Rs.11,700/- and gross pay is Rs.24,000/- PM and at present (September 2020) my basic pay is Rs.36,940/- PM and Gross salary is Rs.51,480/- PM, based on my sincere efforts with severe pain due to impact of amputation with continues wounds, swellings in order to survive of my family.

5) I further submit that if the accident would not have happened, I would have been in a better position in the old company, since I joined as welder in the year of 1999 as a Trainee and after completed 3 years successful training and confirmed as an operator in Hindustan Motors Pvt. Ltd., from the year 2002 and earned Rs.17,960/- PM at the time of accident in the year 2009 itself. If the untold incident had not happened I would have earned more than 1 Lakh in my earlier company with many promotions as skilled labour along with accumulates, increments, incentives other perks, which is higher then what I am earning now in BHEL Company and attained better position in my field being a technician.

23. It is noticed that the claimant voluntarily resigned from the Hindustan Motor Limited and took up the employment with BHEL. In absence of any proof to show that there was any loss of income on account of the amputation while working in Hindustan Motors Limited, the Tribunal ought not to have awarded a sum of Rs.23,27,600/- as compensation towards loss of earning.

24. The Hon'ble Supreme Court in Dinesh Singh Vs. Bajaji Allianz General Insurance Company Limited and Another, (2014) 9 SCC 241 relied by the learned counsel for the claimant, also held that "Once the permanent disability is fixed, taking into consideration, its impact on the employment/profession of the claimant, the compensation has to be awarded." Relevant paragraph for the said decision is extracted below:-

> 10. We have considered the material placed before us, particularly the evidence of the doctor, who stated that the appellant suffered 60% disability of the total body, and in his cross-examination denied the suggestion that the appellant does not require any further treatment. The fact that the appellant has resigned as Quality Engineer from Hospet Steels Ltd. and took up desk job in Industrial Development Bank of India because of his permanent disability, suffered by him in the accident is not in dispute. Obviously, because of the permanent disability suffered by the appellant, who is an Engineer by profession, he cannot take up such profession, which requires moving from one place to other place. Therefore, the reasoning of the High Court that the appellant has not suffered any financial loss because of permanent disability having regard to the fact that subsequently he took up employment in Industrial Development Bank of India as Grade B officer, cannot be sustained. Once the permanent disability is fixed, taking into consideration, its impact on the employment/profession of the claimant, the compensation has to be awarded. Since the disability suffered by the appellant, which is fixed at 60% and which is permanent in nature, impacted his employment and future prospects, we are of the considered opinion that the Tribunal has rightly determined the compensation Rs 12,840 × 12 × 17 = Rs 26,19,360 towards loss of future earnings, and taking into consideration the 60% permanent disability suffered by the appellant, awarded him the actual compensation

under the head “loss of future earnings” at Rs 15,71,616 by rounding off the same to Rs 15,72,000.

11. The appellant, admittedly, was in hospital as an in-patient for a long time. He was operated upon for two times, and presently he is able to move with the assistance of an artificial limb, and he still has to take treatment, as is evident from the evidence of the doctor, and considering the fact that loss of limb causes lot of pain to any living being, we are of the considered opinion that compensation payable to the appellant under the head “pain and agony”, should be reasonable. The Tribunal has awarded Rs 70,000, and we feel it appropriate to enhance it by another Rs 50,000, and upon such enhancement, the appellant would be entitled to Rs 1,20,000 under the head “pain and agony”. Therefore, we hold that the High Court erred in reducing the compensation payable to the appellant under the head “pain and agony”.

25. In fact, in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343 the Hon’ble Supreme Court has given a detailed guidelines to be followed by the Tribunal while awarding compensation in case of permanent disability and permanent partial disability. They are reproduced below:-

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.

14. 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 per cent, 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 be 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.

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.

26. The affidavit filed by the claimant also does not indicate any loss of income on account of the disability suffered by the claimant or on account of the amputation while he was working with his former employer, namely Hindustan Motors Pvt. Limited.

27. The claimant has taken up the employment with BHEL w.e.f. 01.03.2013 voluntarily. He was under probation for a period of one year from 01.03.2013 to 28.02.2014 as a Temporary Artisan and was reportedly given a monthly salary of Rs.11,000/- per month during the aforesaid period. The claimant is currently drawing a monthly basic pay of Rs.36,940/- and gross salary of Rs.51,480/-per month.

28. Sine qua non for claiming compensation under the head of "loss of income" there should be actual loss of income. The claimant has also not produced any evidence to substantiate there was indeed loss of income while in employment with his former employer.

29. The affidavit filed also indicates that the claimant has not suffered any loss of income after he took up employment with BHEL barring the period when he was in probation.

30. We therefore find considerable force in the submission made behalf of the Insurance Company by Mr.D.Bhaskaran, the learned counsel that the Tribunal ought not to have awarded the compensation towards loss of income by adopting multiplier as the injuries neither impacted the earning capacity of the claimant nor the claimant was sent out from the employment by Hindustan Motor Limited. Therefore, in our view, the Tribunal erred in awarding a sum of Rs.23,27,600/- towards "loss of income".

31. However, considering over all facts and circumstances of the case, we are inclined to award a limited amount towards "loss of income" to the claimant. It can be calculated on the difference between the last drawn salary of Rs.17,960/- at the time of the accident and the basic salary of Rs.11,000/- of the claimant with effect from 01.03.2013 during the period probation on his fresh employment with BHEL.

32. Therefore, we are awarding compensation under the head of loss of income the on difference in the income of the claimant between the income of the accident and at the time of probation. The loss of income if any of the claimant is

therefore Rs.6,960/- per month (i.e., 17,960 – 11,000). This is rounded off to Rs.7,000/- per month for awarding compensation to the claimant.

33. As per the decisions of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121 and in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, it is the income on the date of the accident that is relevant for the purpose of determining the compensation.

34. Though these decisions were rendered in the context of death, they are still relevant for determining the compensation to be paid while awarding a just compensation to a victim or their dependants. For determining the correct multiplier in case of permanent disability or permanent partial disability also, reference has to be made to the decisions of the Hon'ble Supreme Court in Sarla Verma's case, and in Pranay Sethi's case referred to supra.

35. In this case, the accident took place on 18.03.2009 at about 5 p.m. The claim petition was filed before the Tribunal on 03.08.2009. At the time of the accident, the claimant was only aged about 28 years. The Tribunal has applied the multiplier 18. The correct multiplier that was to be applied was 17 and not 18. Therefore, there has to be re-computation of compensation by applying the 17 multiplier on the aforesaid amount of Rs.7000/-. The Tribunal has not awarded any amount towards loss of amenities. Therefore, a sum of Rs.6,00,000/- is awarded towards the same. The compensation awarded towards Future Medical Expenses appears to be low considering the nature of injuries suffered by the claimant. Therefore, the compensation awarded towards Future Medical Expenses is enhanced to Rs.5,00,000/-. However, there shall be no interest on the Future Medical Expenses. Similarly, the compensation awarded towards pain and sufferings also appears to be low and the same is enhanced to Rs.3,00,000/-.

36. In the light of the above discussion, we are inclined to modify the amount awarded by the Tribunal as follows:-

Heads and Calculation	Amount
Towards Permanent Disability:- # Difference in the Monthly Income of the claimant for the purpose of awarding compensation : Rs.7,000/- # Annual loss of income before the accident (7,000 x 12) : Rs.84,000/- # Loss of future earnings per annum on account of functional disability at 40% (84,000 x 40/100) : Rs.33,600/- * Applicable multiplier with reference to the age : 17 (33,600 x 17) : Rs.5,71,200/-	Rs. 5,71,200/-
Transportation Charges	Rs. 25,000/-
Extra Nourishment	Rs. 50,000/-
Pain and Sufferings	Rs. 3,00,000/-
Future Medical Expenses	Rs. 5,00,000/-
Loss of Amenities	Rs. 6,00,000/-
Medical Expenses	Rs. 4,56,400/-
Total	Rs.25,02,600/- Rounded off to Rs.25,03,000/-

As per the decision in Raj Kumar's case (supra).

* As per the decision inNational Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

37. Thus, the compensation of Rs.33,09,000/- awarded by the Tribunal is reduced to Rs.25,03,000/-. It is noticed that by an order dated 09.08.2016 in C.M.P.No.12530 of 2016, this Court had directed the Insurance Company (the appellant in C.M.A.No.1630 of 2016) to deposit the 50% of the award amount to the credit of the M.C.O.P.No.904 of 2009. Pursuant to the said order, the Insurance Company deposited a sum of Rs.23,60,008/- less the statutory deposit and same stood recorded vide order dated 06.06.2017 of this Court in C.M.P.Nos.7290 and 12350 of 2016. This Court also permitted the claimant (the appellant in C.M.A.No.1663 of 2016) to withdraw a sum of Rs.13,60,008/- considering the medical expenses incurred by the claimant.

38. The Insurance Company (the appellant in C.M.A.No.1630 of 2016) is therefore directed to deposit a sum of Rs.25,03,000/-, less the amount already deposited pursuant to the order of this Court, within a period of eight weeks from the date of receipt of a copy of this Judgment, before the Tribunal. The Insurance Company shall also deposit the proportionate interest at 7.5% per annum on Rs.20,03,000/- (25,03,000 - 5,00,000, ie. Future Medical Expenses) from the date of claim petition till the date of deposit, less any amount already deposited, within the aforesaid period.

39. On such deposit, the claimant (the appellant in C.M.A.No.1663 of 2016) is permitted to withdraw the same, together with interest accrued thereon, less the amount already withdrawn pursuant to the order of this Court, by filing suitable application before the Tribunal.

40. Accordingly, C.M.A.No.1630 of 2016 filed by the Insurance Company is Partly allowed and C.M.A.No.1663 of 2016 filed by the claimant is dismissed. No cost.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate Court),
Thiruvallur.

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