

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2020

PRONOUNCED ON : 01.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2720 of 2016 and

C.M.P.No.19639 of 2016

(Heard through video conferencing)

M/s.United India Insurance Company Ltd.,  
134, Greams Road, UTL Building,  
4<sup>th</sup> Floor, Chennai - 6. ....Appellant/Respondents 2

Vs

1.G.Perumal (35 years) (died),  
S/o Ganesan,  
No.42, 3<sup>rd</sup> Street,  
Tiruvalluvar Nagar,  
Korukkupet, Chennai - 600 021.

2.C.Santhosh Kumar,  
No.430/26, Tiruvalluvar Nagar,  
Ondipudur,  
Coimbatore - 641 016.

3.P.Kokila, W/o G.Perumal

4.P.Daivanai D/o G.Perumal

5.P.Kutty W/o G.Perumal

6.Vanaja M/o G.Perumal  
(RR3 to 6 are residing at No.42,  
3<sup>rd</sup> Street, Tiruvalluvar Nagar,  
Korukkupet,  
Chennai - 600 021.)  
(RR3 to 6 brought on record as LRS  
of the deceased R.1 vide order  
dated 19.08.2020 made in  
CMP No.22678, 22682 and 22686 of 2019  
in CMA No.2720 of 2016)

...Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under  
Section 173 of Motor Vehicles Act, 1988, against the decree and

judgment dated 1<sup>st</sup> August 2015, passed in M.C.O.P.No.4537 of 2012 on the file of the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai.

|               |                     |
|---------------|---------------------|
| For Appellant | : Mr.G.Udayasankar  |
| For R1        | : Died              |
| For RR2 to 5  | : Mr.A.A.Venkatesan |
| For R.6       | : Exparte           |

#### JUDGMENT

This appeal is preferred by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.No.4537 of 2012 dated 01.08.2015 to the first respondent who sustained fracture on his right patella in a motor accident.

2.The facts of the case is that, on 10.08.2012, at about 6.00 pm, when the claimant was riding in a motorcycle in C.B Road, Dr.Ambedkar Nagar, Korukkupet, a motorcycle from the opposite side rash and negligently dashed against the claimant vehicle. The claimant was thrown out from the vehicle and he sustained injuries all over the body. The owner cum Driver of the offending vehicle is arrayed as first respondent and the insurer of that vehicle is arrived at second respondent before the Tribunal in the claim petition filed by the claimant.

3.The case of the claimant is that, at the time of accident, he was 35 years old, working as an Electrician earning Rs.500/- per day. Due to the closed comminuted fracture on his right patella, he has sustained 55% partial permanent disability. He is not able to walk or stand for long time. Hence, sought for a compensation of Rs.6 lakhs.

4.The Tribunal on considering the materials placed by the claimant has awarded Rs.8,49,600/- with the following break - up.

|                                      |   |               |
|--------------------------------------|---|---------------|
| (i)Medical Expenses                  | : | Rs. 5,000/-   |
| (ii)Loss of income for 3 months      | : | Rs. 27,000/-  |
| (iii)Transportation                  | : | Rs. 5,000/-   |
| (iv)Extra nourishment                | : | Rs. 5,000/-   |
| (v)Attender Charges                  | : | Rs. 5,000/-   |
| (vi)Damages to clothes               | : | Rs. 5,000/-   |
| (vii)Loss of future earning capacity | : |               |
| (9000 + 3500+12x13x30%)              | : | Rs.7,77,600/- |

(viii) Pain & Suffering : Rs. 20,000/-

Total Rs. 8,49,600/-

5. The Insurance Company being aggrieved by the award passed by the Tribunal over and above the claim made by the claimant without any rhyme or reason but on hypothetical assumption, has laid the present appeal before this Court on the following grounds:-

(i) The Tribunal ought to have taken into consideration that there is no total permanent disability and went wrong in concluding that the nature of the injury which has been caused to the claimant is 30% disability based on the evidence of P.W.3 - Dr.K.J.Mathialagan, who has clinically examined the claimant before the Tribunal. The Tribunal has considered 30% towards loss of future earning capacity, which disability is not of permanent, but whereas is said disability is partial and temporary in nature and instead of awarding a sum of Rs.90,000/- @ 3,000/- per percent of disability (30%) instead awarded a sum of Rs.7,77,600/-, towards loss of earning capacity.

(ii) The Tribunal also went wrong in awarding an amount of Rs.5,000/- under the head of medical expenses but whereas the petitioner has spent only Rs.1,296.20 paise towards the medical expenses, and thereby the Tribunal went wrong in awarding the loss of future earning capacity of Rs.7,77,600/- which is highly disproportionate and unimaginable when compared the treatment taken by the first respondent herein and the claimant before the Tribunal and the injuries sustained, which requires revision.

(iii) The Tribunal has also awarded the loss of earning for three months Rs.27,000/- without any support of the income proof, instead of notional income.

6. The learned counsel for the appellant further submitted that the Tribunal erred in fixing 30% as loss of earning capacity purely based on the evidence given by P.W.3, the Doctor who only clinically examined the claimant but not treated him. In fact, the records indicate that for the injury the claimant was treated with plaster of paris and got discharged. Later, he fell down from cot and got injured on his knee only thereafter, a surgery was conducted. Furthermore, the claimant pending appeal died and his legal representatives now been brought on record. While so, the application of multiplier for the loss of future earning capacity awarded by the Tribunal is unwarranted.

7. In United India Insurance Co. Ltd., vs. Velusamy (CDJ 2004 MHC 1947 (DB)) in paragraph No.11, the Division Bench of this Court has held as follows:-

"11.The following principles emerge from the above discussion:

(a)In all case of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income or earning power.

(b)It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent ?

(c)(1)If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying "multiplier method" as provided under Second Schedule to the Motor Vehicles Act, 1988.

(2)Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d)Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

8.Relying upon the said judgment, the learned counsel for the appellant Insurance Company would submit that only in a fit case multiplier can be applied for injury. In this case, the claimant who sustained fracture at right patella with internal ligament injury got recovered. After treatment, the said accident injury, have no bearing in his earning capacity as an Electrician. The Tribunal not only erroneously fixed his income as Rs.9,000/- per month without even an iota of document but also provided 50% future prospects and applied the multiplier for loss of future earning capacity, when there is no basis for any of these factors, the Tribunal award has to be modified appropriately.

9.The learned counsel for the legal representatives of the deceased claimant would submit that the Tribunal at length, had discussed about the purpose of the act and the reason for

awarding more than what claimed in the petition. The injured claimant was initially admitted in Rajiv Gandhi Government Hospital, Chennai and was discharged. Later, he was again admitted in the Stanley Medical College and Hospital, Chennai for implant exit and Tension Band Wiring (TBW). Again he was treated as outpatient for the injury in the Stanley Medical College and Hospital, Chennai. Due to the complications, the Tribunal after making assessment has rightly awarded the compensation which requires no interference.

10. Heard the rival submissions.

11. Regarding the accident, case has been registered at Vannarapet Police Station in Crime No.198/S2/2012 dated 11.08.2012. The case has been registered against the owner of the motorcycle bearing registration No.TN 37 AK 5482 which is owned by the first respondent in the claim petition before the Tribunal. Therefore, to the registration of F.I.R., no contra evidence available. Hence, the negligence on the part of the offending vehicle Driver could be presumed and the liability of the Insurance Company to indemnify the claim is established.

12. Regarding the income of the injured claimant, he has not submitted any document though he claims to be Electrician. The Tribunal has fixed the monthly income of the claimant at Rs.9,000/- per month inspite of observing that there is no documentary proof for the income except the oral evidence.

13. Looking at the deposition of the claimant, this Court finds that the claimant has admitted that he is an unletter man learned only to sign. He did not have any document to show that he is a qualified Electrician. It is also been elucidated in the cross examination that he fell from cot on 03.10.2012 and for that, implant exist and Tension Bank Wiring (TBW) done on 11.10.2012. Dr.K.J.Mathialagan was examined as P.W.3 and he has deposed that the claimant sustained injury in the road accident on 10.08.2012 for the fracture at right patella. The injured was treated at Rajiv Gandhi Government Hospital, Chennai and TBW was done. In his assessment, the disability is 55%. In the cross examination, P.W.3 admits that he did not assess the disability for the whole body. He did not assess the claimant for his earning capacity. It is also admitted by the Doctor that the injury sustained by the claimant is not the schedule injury.

14. The disability certificate issued by P.W.3 is marked as Ex.P.17. From this certificate and from the other documents relied by the claimant, it is clear that the claimant for the accident injury was admitted in Rajiv Gandhi Government Hospital, Chennai as inpatient from 10.08.2012 to 16.08.2012. He was re-admitted at Stanley hospital on 04.10.2012 when he fell down from the cot, his knee got injured again. So Tension Band Wiring done to the injury on 04.10.2012 and for that injury, he was taking treatment as outpatient.

15. In the said circumstances, applying the principles laid down in United India Insurance Co. Ltd., vs. Velusamy (cited supra), regarding the application of multiplier in case of non fatal accident, this Court finds that this is not a fit case for applying the multiplier. However, the Tribunal erroneously adopted the multiplier method when the accident injury per se is not a schedule injury or has caused any functional disability to the claimant. Further, this Court also finds that the Tribunal erred in fixing the monthly income of the claimant at Rs.9,000/- when no document is filed to prove his income or his earning capacity. The Tribunal ought to have fixed at the most Rs.6,500/- being the notional income for self employed without any qualification. Likewise, additional 50% towards future prospects is excessive. Hence, 40% is fixed as future prospects.

16. As pointed out by the learned counsel for the appellant, this is not a fit case to apply multiplier method. Even if the multiplier is applied, appropriate income and percentage for future prospects should have been applied. Besides the percentage of the disability in respect of earning capacity should have been proportionate to the nature of the claimant's avocation and the accident injury sustained.

17. The legal representatives of the injured claimant herein states that the injured claimant was an Electrician by profession. Fracture in the knee cap will have very less bearing in his earning capacity even if any. When the Doctor himself has assessed only 55% disability for that portion of the body, the Tribunal has awarded 30% for loss of earning capacity, moreso, when the claimant has not correlated the injury and his earning capacity. Hence, the same is reduced to 15%.

18. The claimant after taking treatment for the accident injury sustained injury from fell from cot which has aggravated his agony. Having pointed out the error in the Tribunal's award, it is also to be noted that pursuant to the order passed by this Court in CMP No.19639 of 2016, dated 09.12.2016, the appellant insurance company has deposited 50% of the award amount with accrued interest and costs. Therefore, the award of the Tribunal being very excessive and baseless, the same is being modified as below:-

|                                                      |   |              |
|------------------------------------------------------|---|--------------|
| (i) Medical Expenses                                 | : | Rs. 5,000/-  |
| (ii) Loss of income for 4 months<br>(Rs.6,500/- x 4) | : | Rs. 26,000/- |
| (iii) Transportation                                 | : | Rs. 5,000/-  |
| (iv) Extra nourishment                               | : | Rs. 5,000/-  |
| (v) Attender Charges                                 | : | Rs. 5,000/-  |
| (vi) Damages to clothes                              | : | Rs. 5,000/-  |

(vii) Loss of future earning capacity

6500+2600=9100 x 12 x 16 x 15%: Rs.2,62,080/-

(viii) Pain & Suffering : Rs. 20,000/-

Total Rs.3,33,080/-

19. The claimant is entitled for the above modified compensation of Rs.3,33,080/- with interest @ 7.5% per annum from the date of filing of claim petition (13.08.2012) till the date of deposit. The legal representatives of the claimant shall share the above modified award amount equally. After satisfying the award amount, if any excess amount is lying in the account, the same shall be withdrawn by the appellant Insurance Company, by filing appropriate petition before the Tribunal.

20. The Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jbm

To

1. The Motor Accident Claims Tribunal  
(VI Small Causes Court),  
Chennai.

2. The Section Officer,  
VR Section,  
Madras High Court.

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No. 28764

C.M.A.No.2720 of 2016

PVS (CO)  
GN(10/05/2021)