IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1602 of 2020

The Manager - Claims,
Cholamandalam MS General
Insurance Company Limited,
Dare House, 2nd Floor,
No.2, N.S.C. Bose Road,
Chennai 600 001.

C/o
The Branch Manager,
Cholamandalam MS General
Insurance Company Limited,
No.9, 1st Floor, Rajaji Road,
State Bank of Travancore Upstairs,
Peramnur, Salem 636 007.

... Appellant/2nd Respondent

-Versus-

1.Nagaraj ... 1st Respondent/Petitioner

2.R.Krishna Moorthy ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 11.12.2019 made in M.C.O.P.No.404 of 2018 by the Motor Accidents Claims Tribunal (Additional District Judge), Hosur, Krishnagiri District.

For Appellant : Ms.Harini
for Mr.N.Vijayaraghavan

For Respondents : Mr.P.A.Sudesh Kumar for R1
No Appearance for R2

JUDGEMENT

Challenging the compensation granted by the tribunal as exorbitant, the Insurance Company, who is the 2nd respondent in the claim petition has come forward with the instant appeal.

2. It is a case of injury. The 1st respondent herein is the injured claimant and the 2nd respondent herein is the insured of the tractor involved in the accident which was insured with the appellant insurance company.

3. It is the case of the 1st respondent/claimant that on 19.01.2015 at 04.00 p..m. while he was riding his motor cycle on Thally - Jawalagiri Road, near Sollepuram, a Mahindra Swaraj Tractor owned by the 2nd respondent and insured with the appellant insurance company, which was being driven by its driver in a rash and negligent manner, dashed against his two wheeler as a result of which, he sustained serious injuries. He was immediately taken to a private hospital at Hosur where he had undergone surgery for fracture of tibial plateau on his left leg over a period of one month. He was an agriculturist by profession. The District Medical Board assessed his disability at 40%. Therefore, he filed the claim petition seeking compensation of Rs.30,00,000/-

4. The 2nd respondent, who is the owner of the tractor, was remained absent before the tribunal and therefore he was set ex parte. The appellant/2nd respondent contested the claim petition inter alia contending that the accident was taken place dueto the negligent riding of the two wheeler by the 1st respondent. No liability could be fixed on the driver of the tractor. More over, at the time of accident, the injured did not wear helmet. The tractor did not have valid permit and Fitness Certificate and due to the violation of policy conditions, the appellant insurance company is not liable to compensate the injured.

5. Before the tribunal in order to prove his case, the 1st respondent/claimant examined himself as P.W.1 and and marked 10 documents as Exs.P.1 to P.10. On the side of the appellant insurance company, its official was examined as R.W.1 and four documents were marked as Exs.R.1 to R.4. On considering the available materials, the tribunal came to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the tractor. However, considering the fact that the tractor did not have a valid permit and fitness certificate on the date of accident and finding that it is a violation of policy condition, the tribunal has fastened the liability on the owner of the tractor, but, directed the appellant insurance company to pay the compensation at first to the injured and thereafter, recover the same from the owner of the tractor. So far as the quantum of compensation is concerned, the tribunal assessed the monthly income of the injured at Rs.11,000/- and on considering percentage of disability assessed by the medical board at 40%, the tribunal concluded that due to the disability suffered on account of the injuries sustained in the accident, the income of the injured has been considerably reduced and

therefore, by adopting adopting the multiplier of 15, the tribunal has proceeded to assess and award compensation towards future loss of earning capacity as Rs.11,000 x 12 x 40/100 x 15 = 7,92,000/- . Apart from the above, the tribunal awarded a sum of Rs.10,000/- towards transportation charges, a sum of Rs.10,000/- towards nutrition charges, a sum of Rs.10,000/- towards attender charges, a sum of Rs.50,000/- towards pain and sufferings, a sum of Rs.10,000/- towards discomfort, frustration and loss of social enjoyment, a sum of Rs.1,28,562/- towards medical expenses and a sum of RS.20,000/- towards future medical expenses. In all the tribunal awarded a sum of Rs.10,30,562/- to the 1st respondent and directed the appellant to pay the compensation at first to the 1st respondent and recover the same thereafter from the 2nd respondent. Challenging the award of compensation as exorbitant, the insurance company is before this court.

6. The learned counsel appearing for the appellant submitted that, no doubt, the claimant had suffered fracture on tibial plateau, but, he had completely recovered from the injury and he did not suffer any permanent disability. Absolutely, there is no evidence available on record to show that the claimant is unable to perform his duties as before. The tribunal without any basis has proceeded to adopt the multiplier method and thereby arrived at a sum of Rs.7,92,000/- as compensation towards loss of earning capacity.

7. Per contra, the learned counsel appearing for the 1st respondent contended that the injured is an agriculturist. He suffered a fracture on his left tibial plateau. Although a surgery was conducted, he did not recover fully and he could not discharge his duties effectively. Still he suffers with permanent disability. Considering all these aspects of the matter, the tribunal rightly adopted the multiplier method to assess the loss of future earning capacity and no irregularity or infirmity could be attached to the same. In respect of other heads also, the tribunal has awarded just and reasonable compensation and therefore, the same do not require any interference at the hands of this court.

8. I have considered the rival submissions carefully.

9. The provision of the Motor Vehicles Act makes it clear that compensation must be just, which means that the compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding compensation is to make good the loss suffered by the claimant as a result of injuries sustained by him as far as money can do so, in a fair, reasonable and equitable manner.

10. The injured is not only to be compensated for the physical injury, but, also for the loss which he suffered as a result of such injury. In other words, an injured is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. Disability sustained in a road accident may be permanent total disablement or permanent partial disablement. 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. 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.

11. In a case where the claimant suffered permanent disability as a result of the injuries suffered in a road accident and he is not able to discharge any of his duties as before, he could be awarded compensation under the head of loss of future earning power depending upon the impact of the permanent disability on his earning capacity.

12. While awarding compensation, the tribunal should assess the permanent disability on the earning capacity of the injured person and after assessing the permanent disability in terms of a percentage of the income, the tribunal should arrive at a compensation towards future loss of earnings.

13. It is to be borne in mind that a permanent disability assessed to a particular limb is not the same with reference to the whole body. The tribunal should 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 and thereafter, the tribunal should consider the nature of avocation of the injured claimant and also his age and finally, the tribunal should also find as to whether the claimant is totally disabled from earning any kind of livelihood and in spite of the permanent disability, the claimant could still effectively carry on some other activities and functions to earn his livelihood. There may not be any need to award any compensation under the head of loss of future earnings, if the

claimant continues to discharge his duties effectively after treatment.

14. In Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343, the Hon'ble Supreme Court at paragraphs 13 and 14 has held as follows:-

> "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."

15. In the instant case, the claimant had suffered only a fracture on tibial plateau and absolutely there is no evidence available on record to show that he suffers permanent disability due to the fracture suffered by him and he is not totally disabled him to discharge any of his duties. Even the tribunal has held that the monthly income of the claimant has been considerably reduced and he was not permanently disabled from discharging his regular duties. In the above circumstances, the tribunal ought not to have adopted multiplier method and awarded a sum of Rs.7,92,000/- towards loss of future earnings for the simple fracture on tibial bone. However, considering the fact that the tribunal has assessed the disability suffered by the claimant at 40% partial permanent, this court is of the view that the claimant is entitled to get compensation for the injuries suffered by him. The accident had taken place in the year 2015. Therefore, a sum of Rs.4,000/- could be awarded for each percentage of disability and thus, he is entitled to a sum of Rs.4,000 x 40 = Rs.1,60,000/-

16. So far as the compensation awarded by the tribunal under the other heads, this court does not find any perversity or infirmity in the same and they appear to be just and reasonable and the same do not call for any interference of this court. The award of compensation passed by the tribunal stand modified accordingly as detailed below:-

Serial No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of Earning Capacity/Future Earnings [Rs.4,000 x 40]	7,92,000	1,60,000	Reduced
2.	Transportation charges	10,000	10,000	Confirmed
3.	Nutrition charges	10,000	10,000	Confirmed
4.	Attender charges	10,000	10,000	Confirmed

Serial No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
5.	Pain and Sufferings	50,000	50,000	Confirmed
6.	Discomfort, frustration and loss of social enjoyment	10,000	10,000	Confirmed
7.	Medical Bills	1,28,562	1,28,562	Confirmed
8.	Future Medical Expenses	20,000	20,000	Confirmed
	Total	10,30,562	3,98,562	Reduced by Rs.6,32,000

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.10,30,562/- awarded by the Tribunal is hereby reduced to Rs.3,98,562/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to deposit the award amount directed above along with interest and with proportionate costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The 1st respondent is entitled get refunded the excess court fee paid, if any, as per rules. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-
Assistant Registrar(CS V)
Dt 15/04/2021

//True Copy//

Sub Assistant Registrar

kmk

To
1. The Motor Accidents Claims Tribunal
   (Additional District Judge),
   Hosur, Krishnagiri District.
2. The Section Officer,
   VR-Section, High Court,
   Madras.

MG(CO)
HS(17/08/2021)