



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A. No. 1104 of 2017

S.Raghu

... Appellant/ Petitioner

Versus

1.Raghu.M

2.Shiram General Insurance Co.Ltd.,
No.66, Thirumalaipillai Road,
T.Nagar,
Chennai - 600 017.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2013 and made in M.A.C.T.O.P. No.1306/2012 on the file of the Motor Accident Claims Tribunal and III Court of Small Cause, Chennai.

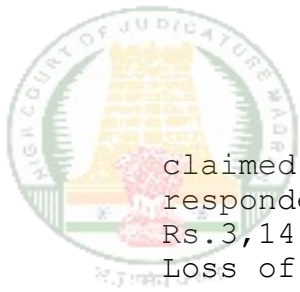
For Appellant	:	Mr. A.Subadra Devi
For Respondent : 1	:	Ex-parte
2	:	Mr. S.Dakshinamoorthy

JUDGMENT

This appeal is directed against the award of Motor Accident Claims Tribunal, Chennai (III Court of Small causes, Chennai) in M.A.C.T.O.P. No.1306 of 2012 for enhancement of compensation for the injury sustained by the appellant.

2. Brief facts that are necessary for the disposal of the appeal are as follows:

The petitioner while travelling in the van belonged to the first respondent which is insured with the second respondent, dashed against a bus. As a result of the accident, the appellant sustained injuries. Stating that the driver of the van is responsible for the accident, the claim petition was filed by impleading the first respondent, the owner of the van and the second respondent, the insurance company. Though the appellant



claimed a sum of Rs.6,00,000/- as compensation from the respondents, the Tribunal fixed the total compensation of Rs.3,14,000/- under the following heads.

Loss of income	: Rs.28,000/-
Transport to Hospital	: Rs.10,000/-
Extra nourishment	: Rs.10,000/-
Damage to clothing	: Rs.1,000/-
Medical expenses	: Rs.70,000/-
Future medical expense	: Rs.40,000/-
Attender charges	: Rs.5,000/-
Loss of amenities	: Rs.15,000/-
Pain and sufferings	: Rs.35,000/-
Permanent disability	: Rs.1,00,000/-
Total	: Rs.3,14,000/-

Aggrieved by the quantum of compensation, the appellant namely the injured claimant has preferred the above appeal.

3. Learned counsel for the appellant submitted that the Motor Accident Claims Tribunal unnecessarily restricted the award mainly by refusing to adopt the multiplier method. Since the appellant was aged 49 years and was working as Store Officer, it is contended by the learned counsel for appellant that the income of the appellant should be taken at Rs.15,000/- per month. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the cases of Sandeep Khanuja Vs. Atul Dande reported in [2017(1) TN MAC 410 (SC)] and Raj Kumar Vs. Ajay Kumar reported in [2010(2) TN MAC 581 (SC)].

4. In the case of Sandeep Khanuja Vs. Atul Dande where the multiplier method was adopted, the Hon'ble Supreme Court held as follows:

"...

9. We may note in this behalf that the MACT, though accepted the aforesaid injuries and physical incapacity suffered by the Appellant, was of the opinion that even when it was not possible for the Appellant to do work like a healthy person, looking to the nature of the said injuries, insofar as work of a Chartered Accountant is concerned, he could still perform it properly and there was no impairment therein. For this reason, the MACT refused to award Compensation to the Appellant by applying the Principle of Multiplier based on Permanent Disability and granted a lump sum amount of 270,000. The High Court has not gone into this aspect specifically.



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10. In this conspectus, the only argument advanced by the learned Counsel for the Appellant was that the Appellant was entitled to the Compensation on the basis of Multiplier, as per the provisions of the Act, for suffering Permanent Disability to the extent of 70% and there was no reason not to apply the said Multiplier.

...

13. While applying the Multiplier method, Future Prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, Multiplier method is applied after taking into consideration the Loss of Income to the family of the deceased that resulted due to the said demise. Thus, the Multiplier method involves the ascertainment of the Loss of Dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate Multiplier. The choice of the Multiplier is determined by the age of the deceased or that of the Claimant, as the case may be. In injury cases, the description of the nature of injury and the Permanent Disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of U.P. State Road Transport Corporation &ors. v. Trilok Chandra &ors., 1996 (4) SCC 362, justified the application of Multiplier method in the following manner:

"13. It was rightly clarified that there should be no departure from the Multiplier on the ground that Section 110-B, Motor Vehicles Act, 1939 corresponding to the present provision of Section 168, Motor Vehicles Act. 988) envisaged payment of just' Compensation since the Multiplier method is accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the Awards made all over the country."

The Multiplier system is, thus, based on the Doctrine of Equity, Equality and Necessity. A



departure therefrom is to be done only in rare and exceptional cases.

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14. In the last few years, law in this aspect has been straightened by this court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of Compensation in the case of Permanent Partial Disablement has been exhaustively dealt with after referring to the relevant case law on the subject in the case of *Raj Kumar v. Ajay Kumar & ors.*, 2010 (2) TN MAC 581 (SC): 2011 (1) SCC 343, in the following words:

"Assessment of Future Loss of
Earnings due to Permanent Disability:

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 entire period of treatment and recuperation. Permanent partial or total. Partial Permanent Disability refers Disability can be 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 some gainful activity. Total



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Permanent Disability refers to a person's inability to engage in 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.

9. The percentage of Permanent Disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a Disability Certificate states that the injured has suffered Permanent Disability to an extent of 45% of the left lower limb, it is not the same as 45% Permanent Disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% Permanent Disability of the righthand and 80% Permanent Disability of left leg, it does not mean that h of Permanent Disability with reference to the whole body is 140 E excellent plus 60). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the Permanent Disability with reference to the whole body cannot obviously exceed 100%.



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10. Where the Claimant suffers a Permanent Disability as a result of injuries, the assessment of Compensation under the head of Loss of Future Earnings would depend upon the effect and impact of such Permanent Disability on his earnings capacity. The Tribunal should not mechanically apply the percentage Permanent Disability as the percentage of Economic Loss or Loss of Earning Capacity. In most of the cases, the percentage of economic loss, that is the percentage of Loss of Earning Capacity, arising from a Permanent Disability will be different from the percentage of Permanent Disability. Some Tribunals Wrongly assume that in all cases, a particular extent (percentage) of Permanent Disability would result in a corresponding Loss of Earning Capacity, and consequently, if the evidence produced show 45% as the Permanent Disability, will hold that there is 45% Loss of Future Earning Capacity. In most of the cases equating the extent (percentage) of Loss of Earning Capacity to the extent (percentage) of Permanent Disability will result in award of either too low or too high a Compensation.

11. What requires to be assessed by the Tribunal is the effect of the Permanent Disability on the Earning Capacity of the injured, and after assessing the Loss of Earning Capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future Loss of Earnings (by applying the standard Multiplier method used to determine Loss of Dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of Loss of Earning Capacity as a result of the Permanent



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Disability, is approximately the same as the percentage of Permanent Disability in which case, of course, the Tribunal will adopt the said Percentage for determination of Compensation."

15. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the Permanent Disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of the MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by the MACT in taking the view that 70% Permanent Disability suffered by the Appellant would not impact the Earning Capacity of the Appellant. The MACT thought that since the Appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the Appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by the MACT is that the Appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the Assessing Authorities and Appellate Authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various Authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person, who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the Appellant have been restricted to a large extent



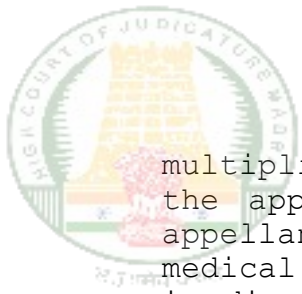
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and that too at a young age. Though the High Court recognised this, it did not go forward to apply the Principle of Multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the Appellant, there is a definite Loss of Earning Capacity and it calls for grant of Compensation with the adoption of Multiplier method, as held by this Court in *Yadava Kumar v. Divisional Manager, National Insurance Company Limited &anr.*, 2010 (2) TN MAC 356 (SC): 2010 (10) SCC 341:

"9. We do not intend to review in detail state of authorities in relation to assessment of all damages for Personal injury. Suffice it to say that the basis of assessment of all damages for Personal injury is Compensation. The whole idea is to put the Claimant in the same position as he was insofar as money can. Perfect Compensation is hardly possible but one has to keep in mind that the victim has done no wrong, he has suffered at the hands of the wrongdoer and the Court must take care to give him full and fair Compensation for that he had suffered.

10. In some cases for Personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing Compensation in Personal Injury cases--and that is now recognised mode as to the proper measure of Compensation is taking an appropriate Multiplier of an appropriate multiplicand."

Even in the case of *Rajkumar Vs. Ajay Kumar*, the Hon'ble Supreme Court while summarising the principles made a note that the loss of earning capacity should be determined depending upon the nature of profession, occupation and job, education and other factors. The Tribunal in the present case, refused to adopt the



multiplier method even though accepting the monthly income of the appellant at Rs.7,000/- per month. It is stated that the appellant was working as Store Officer (Store Keeper) in a medical college hospital. When the nature of employment is not in dispute, this Court can approve Rs.7,000/- as monthly income which will be the minimum income of an unskilled labour. It is stated that the appellant has got additional qualification for getting better employment in future.

5. The nature of injury suffered by the appellant as seen from the medical report is that the appellant sustained Displaced depressed cleavage fracture (Type II) Lateral Tibial condyle Right Knee. Considering the evidence of P.W.1 and P.W.2 and the doctor certificate, the future medical expenses was also assessed at Rs.40,000/-. Hence, this Court is of the view that the injury cannot be ignored and there will be certainly loss of earning capacity. Though the lower Court considered the age of the deceased and granted compensation at the rate of Rs.2,000/- per percentage and arrived at a sum of Rs.1,00,000/- towards loss of income due to permanent disability, this Court is unable to see any logic in fixing a sum of Rs.2,000/- for each percentage of disability. Instead, the Tribunal must have adopted a rational method. Even though, this Court in several cases has accepted the same calculation or formula to find out loss of earning capacity due to permanent disability, I am unable to approve the method adopted as there is no logic or rational behind such method being adopted.

6. As suggested by the Hon'ble Supreme Court in the two cases cited by the learned counsel for the appellant, this Court is of the view that the multiplier method can be adopted provided there is acceptable evidence indicating the functional disability. Since the income of the appellant at the time of accident can be safely arrived at Rs.7,000/- per month, this Court is of the view that the petitioner is entitled to get compensation by taking the permanent disability at 25%. Though the petitioner was given a sum of Rs.1,00,000/- towards permanent functional disability, a further sum of Rs.28,000/- towards loss of income, this Court is of the view that the appellant is entitled to a sum of Rs.2,73,000/- by taking income at Rs.7,000/- and disability at 25%. In view of the total sum of Rs.2,73,000/- towards the loss of earning capacity on account of permanent disability, a sum of Rs.1,28,000/- as awarded by the Tribunal need not be given to the appellant. Hence, the appellant is entitled to the difference of Rs.1,45,000/-. In all, the appellant is entitled to a sum of Rs.4,59,000/- (Rupees Four Lakh Fifty Nine Thousand Only) as compensation instead of Rs.3,14,000/- as awarded by the Tribunal. The respondents are liable to pay a sum of Rs.1,45,000/- (Rupees One Lakh Forty Five Thousand Only) jointly, in addition to a sum of



Rs.3,14,000/- along with interest at the rate 7.5% per annum from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to withdraw the same.

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7. The Civil Miscellaneous Appeal is allowed and the award of Motor Accident Claims Tribunal (III Court of Small Cause, Chennai) in M.A.C.T.O.P. No.1306/2012, dated 17.12.2013, is modified to the extent indicated above. No costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

bkn
To

The Judge,
(Motor Accident Claims Tribunal),
III Court of Small Cause,
Chennai.

Copy to:

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

+1cc to Mr.V.Velu , Advocate SR.No. 40463

+1cc to Mr.S.Dhakshanamoorthy, Advocate SR.No. 40467

C.M.A. No.1104 of 2017

BS(CO)

A.SK(08.09.2021)