IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No2232 of 2013

Srinivasan Reddy ...Appellant/Petitioner

Vs.

1. S.Pannerselvam

2. The Divisional Manager,
   United India Insurance Company Limited,
   M.M.Reddy Complex, Old Bangalore Road,
   Hosur (PO), Krishnagiri District.

...Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.06.2008 passed in MCOP No.1268 of 2006 by the Additional District Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan for Mr.K.Prasanna

For respondents : Mrs I.Malar for R2 Notice served to R1

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal seeking enhancement of compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 01.02.2005.

3. The brief case of the claimants is as follows: On 01.02.2005 at about 1.00 a.m., the claimant was riding his TVS XL motorcycle bearing registration No.TN-29-L-9573 along Bangalore-Hosur Road and while nearing Hosur Trafic police station, the driver of a Jeep bearing registration No.TCI

9696 had overtaken the motorcycle, at that time, right side hook of the Jeep caught the left hand of the petitioner, thereby he fell down from the motorcycle and sustained injuries and he was admitted to the Government Hospital, Hosur, wherein, he had taken treatment as patient from 01.02.2005 to 20.02.2005. According to the claimant, the rash and negligent driving of the driver of the jeep was the cause of accident and since the first respondent/ owner of the vehicle insured his Jeep with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the Insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and Ex.P1 to Ex.P8 were marked and on the side of the respondents, one witness was examined as RW1 and one document was marked as Ex.R1.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.64,637/- along with interest at the rate of 7.5% per annum as compensation to the claimants under various heads, which is extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of earning capacity 2000x12 x 8 x10%	19,200
2	Medical bills	39,437
3	Transportation charges	1,000
4	Extra Nourishment	1,000
5	Attender's charges	2,000
6	Pain and sufferings	2,000
	Total	64,637

Not satisfied with the quantum of compensation, the present appeal has been filed seeking enhancement of the compensation.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent/ insurance company. I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that the claimant was doing milk business and agricultural work and was earning a sum of rs.5000/- per month and due to the said accident, he is unable to do his work, as done earlier and the

Doctor, who was examined as PW2, has given disability certificate assessing the disability suffered by the claimant at 40%, however, without any basis, the Tribunal has reduced the same to only at 10%. He further submitted that the Tribunal has fixed very meagre amount of Rs.2,000/- as monthly income of the claimant and has awarded a sum of Rs.19,200/- towards loss of earning capacity and the amounts awarded under the other heads are also very meagre and hence, he prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted that after considering the various factors and the facts of the case, the Tribunal has awarded a just and reasonable compensation, however, he submitted that multiplier method is not required to this case and hence, the findings of the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced.

11. Point

It is the contention of the learned counsel appearing for the insurance company that, no multiplier method required in this case to award loss of future earning capacity, however, the Tribunal has adopted multiplier method. As per the decision of the Honourable Supreme Court of India in Raj Kumar Vs. Ajay Kumar & Anr. reported in 2011(1) SCC 343, the Tribunal has to ascertain the actual extent of permanent disability of the claimant based on the medical evidence and it has to determine whether such permanent disability has affected or will affect his future earning capacity.

12. In the present case on hand, the Doctor Mr.Gandhi was examined as PW2 on the side of the claimant and he deposed that the claimant had sustained injury on his right hand and he assessed the disability at 40%, based on the medical records, x-ray and other documents and also by examination of the claimant. The above evidence was not rejected by the Tribunal. However, the Tribunal has fixed the disability at 10% and for such assessment, no reason has been stated by the Tribunal. Therefore, as per the evidence of PW2 and the Ex.P7 disability certificate, this court fixed the disability suffered by the claimant at 40%.

13. At this juncture, it is necessary to extract the relevant portion of the decision rendered by the Honourable Supreme Court in Rajkumar Vs. Ajakumar reported in 2011(1) SCC 343, which is held thus.

13. We may now summaries 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 proceedings 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 percentage of loss of earning capacity is the same as 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 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.

14. In the light of the above decision in Raj Kumar Vs. Ajay Kumar & Anr. reported in 2011(1) SCC 343, the claimant has to prove that due to the accident, he is not able to his work as done earlier and his future earning capacity also affected. But, no material has been placed before the Tribunal to prove that his earning capacity is totally affected due to the accident. Therefore, adoption of multiplier method does not arise in this case to award compensation under loss of future earning capacity. However, the claimant is entitled to get compensation under the head "permanent disability". As already decided, the disability suffered by the claimant is fixed at 40%. Considering the nature of work done by the claimant and also taking into account the injuries sustained by the claimant, it is appropriate for this court to award a sum of Rs.1500/- per percentage. Accordingly, a sum of Rs.60,000/- is awarded towards "permanent disability" is awarded per percentage. Further, the Tribunal has not awarded any amount towards " Loss of amenities" and " Loss of income during treatment period" and hence a sum of Rs.10,000/- and Rs.6,000/- is awarded respectively for the above said heads. The compensation awarded under the other heads are also needed some enhancement.

Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of earning capacity 2000x12x 10%	19,200	-
2	Medical bills	39,437	39,437
3	Transportation charges	1,000	2,000
4	Extra Nourishment	1,000	5,000
5	Attender's charges	2,000	9,000
6	Pain and sufferings	2,000	20,000
7	Hospital expenses	-	5,000
8	Loss of amenities	-	10,000
9	Loss of income during treatment period	-	6,000
10	Permanent disability	-	60,000
	Total	64,637	1,56,637
	Rounded off to		1,56,700

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

15. It is to be noted that the claimants have not filed the appeal in time and there is a delay of 381 days in filing the appeal. Therefore, the claimant is not entitled to get interest for the delayed period.

16. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs and the compensation awarded by the Tribunal is enhanced from Rs.64,637/- to Rs.1,56,700/-.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.1,56,700/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, excluding the period of delay in filing the appeal, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
   Motor Accident Claims Tribunal,
   Krishnagiri.

2. The Divisional Manager,
   United India Insurance Company Limited,
   M.M.Reddy Complex, Old Bangalore Road,
   Hosur (PO), Krishnagiri District.

3. The Section Officer,
   V.R.Section, Madras High Court.

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.19392

CMA. No2232 of 2013

AD(CO)
RGA(15/11/2021)