IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A. No.967 of 2011
and
M.P.No.1 of 2011

Branch Manager,
National Insurance Company Limited,
Gobi. ..Appellant/Respondent

Versus

1. A.Alagan
   S/o.Arthonam

2. T.Venkidusamy
   S/o.K.Thirumalai

3. A.M.Munusamy
   S/o.A.R.Maniyamuthu ..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 04.12.2009 made in MCOP No.563 of 2007 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Erode.

For appellant : Mr.K.Padmanabhan

For R1 : Mr.S.Kaithamalai kumaran

For R2 and R3 : Ex-parte

J U D G M E N T

This appeal is laid as against the judgment and decree dated 04.12.2009 made in MCOP No.563 of 2007 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Erode.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 08.03.2007, when the claimant was riding his two wheeler in a careful manner, at that

time, a bus, which was belonged to the second respondent insured with the third respondent, driven in a rash and negligent manner by the first respondent and dashed against the two wheeler and caused the accident. As a result, the claimant was thrown away and sustained multiple grievous injuries all over the body. He sustained two fracture injuries in his right hand. Thereafter, he was admitted in the hospital on 08.03.2007 and taken treatment till 16.03.2007. Hence the claimant filed claim petition seeking compensation at Rs.4,00,000/-.

4. Resisting the same, the third respondent filed a counter stating that the accident was took place only on the rash and negligent driving of the claimant and not on the fault of the first respondent vehicle's driver. Therefore, the third respondent is not held to be liable to pay any compensation as claimed by the claimant and sought for dismissal of the claim petition.

5. On the side of the claimant, he examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.17. On the side of the respondent no one was examined and no exhibits were marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal found that on the first respondent driver's negligence alone, the accident was took place and awarded a sum of Rs.1,80,107/- as compensation payable by the third respondent with interest at the rate of 7.5% per annum from the date of claim petition till the deposit of the award amount. Aggrieved by the same, the third respondent preferred the present appeal.

6. The learned counsel appearing for the appellant/third respondent would submit that the claimant sustained 22% of permanent disability as assessed by P.W.2-doctor. Admittedly, the injured fracture sustained by the claimant is not on his whole body. The injury was in a particular place on the right hand and it is only a partial disability and not a permanent one. Even then, the Tribunal adopted the multiplier method for the disability and assessed at 22% and awarded the compensation. He relied upon a judgment reported in 2015 (2) TANMAC 626 (National Insurance Co. Ltd Vs. Lakshmikanthan).

7. Per contra, the learned counsel for the claimant would submit that the claimant was doing puffed rice business on the two wheeler. Because of the injury sustained by him, he is not able to continue his business and he had permanent disability on his right hand. P.W.2-Doctor, who had given disability certificate categorically deposed that because of the injury sustained by the claimant, the movements of right hand are restricted and it would be difficult for him to carry any object

or to ride a two wheeler. Therefore, the P.W.2 had assessed his permanent disability at 22%. Hence, the Tribunal rightly awarded a compensation by adopting the multiplier method and prayed for dismissal of the appeal.

8. The only point raised by the learned counsel for the appellant/third respondent is that the Tribunal ought not to have adopted the multiplier method when the claimant sustained injury only on his right hand and the injury was not on his whole body. Therefore, it cannot be a functional disability or a partial disability. Therefore, because of the injury, there is no loss of his earning capacity. In this regard, he also relied upon a judgment reported in 2015 (2) TANMAC 626 in the case of National Insurance Co. Ltd Vs. Lakshmikanthan and the relevant portion is extracted hereunder:-

> "8. The Hon'ble Supreme Court in the Judgment above cited has elaborately dealt with Permanent Disability and Partial Disability and what is Permanent Disability with reference to whole body and the assessment of Compensation and the mode of assessment of Compensation under the head of Loss of Future Earnings depending upon the effect and impact of such Permanent Disability on his Earning Capacity and what are the aspects to be considered while assessing the Permanent Disability and the manner of evaluating the Medical evidence and the three steps to be taken for ascertaining the defect of the Permanent Disability on the actual earning capacity.
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> 9. The observation of the Hon'ble Supreme Court in Paragaraph 10 of the above cited Judgment is as follows :
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> > "10. Ascertainment of the effect of the Permanent Disability on the actual earning capacity involved 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. For example, if he 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 mat virtually be hundred percent, 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 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 of job which he was earlier holding, on account of his disability, and may, therefore, be shifted to some other suitable but lesser emoluments, in which case thre should be a limited award under the head of Loss of future earning capacity, taking not of the reduced Earning Capacity. It may be noted that when Compensation is awarded by treating the Loss of Future Earning Capacity as 100% (or even anything more than 50%), the need to award Compensation separately under the head of Loss of Amenities or Loss of Expectation of Life may disappear and as a result, only a token or nominal amount may have to be awarded under th ehead of Loss of Amenities or Loss of Expectation of life, as otherwise there may a a duplication in the award of

Compensation. Be that as it may".

10. In paragraph 13 of the above cited Judgment, the Hon'ble Supreme Court has summarized the discussion as follows "

"13. We may now summarise the principle 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 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. The Loss of Earning Capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirely.

(iv) The same Permanent Disability may result in different percentage of Loss of Earning Capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors".

11. By applying the principles laid down by the Hon'ble Supreme Court and Division Bench of our High Court, this Court is of the view that considering the nature of the fracture sustained by the Claimant, the percentage of disability of a particular organ cannot be having regard to the nature of the avocation of the injured herein considered as the Functional Disability of the whole body and the percentage of 50% cannot be taken as the percentage of Function Disability of the whole body for assessing Loss of Earning Capacity. In that event, the determination of the Loss of Earning Capacity at 50% which is only the percentage of disability of the forearm and brain is totally erroneous and it if factually and legally unsustainable.

12. In this case, considering the percentage of disability of the fore arm, the disability is fixed at

20% for fixing Loss of Earning Capacity. As the total monthly income of the injured is Rs.4,000/-, the Loss of Earning Capacity is taken as only Rs.800/- per month which works out to Rs.9,600/- per year and the total Loss of Income is by applying '13' Multiplier assessed at Rs.1,24,800/-"

9. This Court on citing the above Judgment of the Hon'ble Supreme Court of India held that all injuries (or Permanent Disabilities arising from injuries), do not result in Loss of Earning Capacity. 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.

10. Admittedly, in the case on hand, the claimant injured fracture on the right hand and assessed disability at 22%. This injury do not affect any earning capacity. When the injury is permanent disability with reference to the whole body and the assessment of compensation and mode of assessment of compensation under the head of loss of future earnings depending upon the effect of permanent disability on his earning capacity. In those cases, the multiplier method can be adopted, whereas in the case on hand, disability sustained by the claimant cannot be a functional disability on his whole body and no loss to his earning capacity. Therefore, the Tribunal ought not to have adopted the multiplier method for awarding compensation. Therefore, this Court modified the award for a sum of Rs.2,000/- per percentage for his disability. Accordingly, the loss of disability assessed at 22% (Rs.2,000*22%) = 44,000/-. Insofar as the other heads are concerned, this Court is inclined to modify the award passed by the Tribunal as follows

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Permanent Disability	1,34,640.00	44,000.00
Pain and Suffering	10,000.00	15,000.00
Extra Nourishment	5,000.00	5,000.00
Transport Charges	5,000.00	10,000.00
Medical Expenses	19,567.00	19,567.00
Future Medical Expenses	6,000.00	8,000.00
Loss of income	-	15,000.00
Attendant charges	-	10,000.00
TOTAL	1,80,207.00	1,26,567.00

12. In the result, the Civil Miscellaneous Appeal is

Allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.1,26,567/- from Rs.1,80,207/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the Appellant/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The Insurance Company is also at liberty to get the refund of the excess amount, if it had already deposited the entire amount awarded by the Trial Court.

Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   I Additional District Judge, Erode.

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

+1cc to M/s.Kaithamalai Kumaran, Advocate, S.R.No.26069

C.M.A. No.967 of 2011
and M.P.No.1 of 2011

SSV(CO)
RGA(18/11/2021)