IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.2895 of 2013
and
M.P.No.1 of 2013

The Oriental Insurance co. Ltd.,
Divisional Office, Tiruppur ... Appellant/ III Respondent

Vs.

1. Sakthivel ... I respondent/ Petitioner

2. Thenraj ... II respondent/ I respondent

3. Bagyalakshmi ... III respondent/II respondent

Prayer: Civil Miscellaneous Petitions filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 27.04.2012 passed in M.C.O.P.No.1245 of 2010 by the V Additional District cum Sessions Judge, Motor Accident Claims Tribunal, Tirupur.

For appellant : Mr.M.Krishnamoorthy

For Respondents : Ms. Rajashama Gayathri for R1
Notice dispensed with against R2 and R3

JUDGMENT

Aggrieved over the Award passed by the Tribunal, the Insurance company has filed the present appeal to set aside the same.

2. The first respondent/ Claimant has filed a claim petition seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 26.06.2010.

3. The brief case of the claimants is as follows:
On 26.06.2010, at about 8.00 hours the claimant along

with three others has travelled in a car bearing registration No.TN-39-AB-1513, driven by the first respondent to go to Kanniyakumari and while the car was nearing a Bridge at Kurusadi, Panagudi in the Tirunelveli-Nagarcoil N.H.Road, the driver of the car, driven the vehicle rashly and negligently and dashed against the bridge, thereby, the car capsized and inview of the same, the claimant and others had sustained grievous injuries and were taken to Manuel Orthopaedic Hospital, Therekalputhur, Thirupathisaram , Nagercoil and had admitted as inpatients and had taken treatment. According to the claimant, the rash and negligent driving of the driver of the car was the cause of accident and since the owner of the car insured his vehicle with the insurance company, both of them are liable to pay compensation to him.

4. The respondents have contested the claim petition by filing their respective counter affidavit.

5. Before Tribunal, the claimant and another claimant namely Antony Savior have filed claim petitions in MCOP No.1245 of 2010 and MCOP PNo.1246 of 2010 respectively and on the side of the claimants, four witnesses were examined as PW1 to PW4 and Ex.P1 to Ex.P29 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.5,63,360/- under various heads, which is extracted here under.

Sl No	Heads	Amount in Rs.
1	Loss of future earning capacity 5500x12=66000x42%=27720x13	3,60,360
2	Pain and sufferings	25,000
3	Medical expenses	1,78,000
4	Total	5,63,360

Aggrieved over the above said order, the insurance company has filed the present appeal challenging the quantum of compensation.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent. I have perused the materials on record.

8. The learned counsel appearing for the appellant/ insurance company submitted that the Tribunal has awarded a excessive amount as compensation to the claimant. He further submitted that the without considering the fact as to whether the claimant had suffered any loss of earning capacity, the Tribunal has applied multiplier method for the alleged disability of 42%, is unfounded. It is contended by him that the Tribunal has fixed huge amount of Rs.5,500/- as monthly income of the claimant and hence, he prayed to set aside the orders passed by the Tribunal.

9. The learned counsel appearing for the first respondent/ claimant submitted that the Doctor, who assessed the disability of the claimant has examined as PW3 and he had given disability certificate Ex.P14 assessing the disability suffered by the claimant as 45.3%. He also deposed that, on examination he came to know that treatment was given to the claimant for the fracture sustained by him on his right thigh and left hand wrist by fixing rod and due to the accident, he is unable to sit, stand or walk as done before. Therefore, the Tribunal has rightly determined that the appellant is entitled to get compensation for the loss of earning capacity and has awarded a just and reasonable compensation and the same does not warrant any interference by this court.

10. Now the point for consideration is whether the 42% disability suffered by the claimant would lead to 100% disability for adopting multiplier method in calculating the loss of earning capacity in future?

11. Point:

In order to solve the above issue of permanent disability, this court expressed its view that the claimant shall appear before the Medical Board for assessing his disability and after getting report from the Medical Report, the issue of adoption of multiplier method will be decided.

12. To reply the same, the learned counsel appearing for the first respondent/claimant submitted that based on the available records and the evidence adduced by the claimants, this appeal may be decided.

13. Accordingly, this appeal is taken for disposal based on the available records.

14. The contention of the learned counsel for the appellant is that without considering the fact as to whether the claimant had suffered any loss of earning capacity, has applied multiplier method for the alleged disability of 42%, which is not for the whole body. 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.

15. In the present case on hand, Dr.Senthilkumar was examined as PW3 on the side of the claimant and he deposed that he has not given treatment to the claimant and based on the medical records and on examination, he came to know that the claimant is uncomfortable while sitting and standing due to the fracture on the left hand and left leg. But the doctor has not deposed that whether the claimant is permanently disabled to walk, sit and stand and is not able to do any other work due to the said ability for his livelihood. Therefore, the above said assessment is only a partial permanent disability of 45%.

16. 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.

Coming to the facts of the present case on hand, there is no evidence to prove that due to the fracture, the claimant completely could not able to sit, stand, walk and do any work and hence the disability of 45% cannot be treated as 100% disability. Therefore, in the light of the above decision, adoption of multiplier method would not arise in this case.

17. No doubt, due to the disability suffered by the claimant, it is difficult for him to do his job, especially he is a cutting master by profession in a private concern. Though the Doctor has assessed the disability suffered by the claimant as 45.3%, the Tribunal has fixed the same at 42%, without any basis. Hence, it is appropriate for this court to fix the disability of the claimant as 45%. Considering the nature of fracture and injuries sustained by the claimant and the evidence of PW3 and also taking into account the surgeries done on the claimant for his fracture and also considering the avocation of the claimant, it is appropriate for this court to award Rs.4,000/- per percentage. Accordingly, a sum of Rs.1,80,000/- (45 x4000 = 1,80,000) is awarded towards "Permanent Disability". Apart from the compensation awarded by the Tribunal under the heads " Pain and sufferings", this court is inclined to award Rs.15,000/-, Rs,15,000, Rs.10,000/- and Rs.10,000/- towards "Attender's charges", "Loss of amenities", " Extra Nourishment" and Transportation Charges" respectively. Accordingly, the revised compensation is extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Permanent disability	3,60,360	1,80,000
2	Pain and sufferings	25,000	40,000
3	Medical expenses	1,78,000	1,78,000
4	Attender charges	-	15,000
5	Loss of amenities	-	15,000
6	Extra nourishment	-	10,000
7	Transportation charges	-	10,000
8	Total	5,63,360	4,48,000

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

18. In the result,

(i) The civil miscellaneous appeal is partly allowed and the compensation awarded by the Tribunal is scaled down from Rs.5,63,360/- to Rs.4,48,000/- No costs. The connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.4,48,000/- along with interest at the rate of of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six months from the date of receipt of a copy of this order, less the amount if already deposited.

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

Sd/-
Deputy Registrar(P & A)

//True Copy//

Sub Assistant Registrar

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To

1. The V Additional District cum Sessions Judge,
   Motor Accident Claims Tribunal,
   Tirupur.

2. The Oriental Insurance co. Ltd.,
   Divisional Office, Tiruppur

3. The Section Officer,
   V.R.Section, Madras High Court,
   Chennai-104.

+1cc to Mr.K.Govi Ganesan, Advocate SR.No.17715

CMA No.2895 of 2013 and
M.P.No.1 of 2013

SSN(CO)
GN(25/11/2021)