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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.2897 of 2013

and

M.P.No. 1 of 2013 & CMP.No. 1474 of 2018

Branch Manager,
The Oriental Insurance Co. Ltd.,
A.A.Complex, 159, Kumaran Road,
Tirupur.

... Appellant/2nd Respondent

..VS..

1.Easwaramoorthy.

... 1st Respondent/Petitioner

2.Bagyalakshmi

... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.03.2012 made in M.A.C.T.O.P.No.999 of 2010 on the file of the Additional District cum Sessions Judge, Fast Track Court No.V, (Motor Accidents Claims Tribunal), Tirupur.

For Appellant : Mr.M.Krishnamoorthy

For Respondent No.1 : Mr.M.A.P.Thangavel

Respondent No.2 : NDW vide order dated 20.09.2013

JUDGMENT

Dissatisfied with the judgment and decree, dated 30.03.2012, passed by the tribunal awarding compensation of Rs.7,11,400/- along with interest at the rate of 7.5% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.



2. It is the case of the claimant that on 26.06.2010 at about 8.00 a.m, the claimant was traveling in a car bearing no. TN-39-AP-1513 owned by the the 2nd Respondent herein and insured with the Appellant/Insurance Company, which was driven by its driver in rash and negligent manner from north to south in the N.H.Road, leffai quarters benaguru Village near Kurusadi and dashed against a bridge. Due to the accident the claimant sustained grievous injuries. The Claimant was taken to Manivel Hospital at Nagarkovil and admitted as inpatient for 2 months. The Claimant filed petition before the tribunal, claiming compensation of Rs.10,00,000/- for the injuries and permanent disability sustained by him.

3. Before the Tribunal, witnesses P.W.1 to P.W.3 were examined and Exhibits P1 to P8 were marked on the side of the claimants whereas No witnesses were examined and No documents were marked on the side of the respondents.

4. After analyzing both oral and documentary evidences, the Tribunal has held that due to rash and negligence on the part of the driver of the car bearing no. TN-39-AP-1513 the accident had occurred and awarded a sum of Rs.7,11,400/- as compensation. Being the insurer of the said vehicle, the insurance company is directed to pay the said compensation to the claimant. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Loss of Income due to Permanent Disability (Rs.5,000/- x 12 x 62%) x 17 Multiplier	6,32,400/-
Extra Nourishment	49,000/-
Medical Expenses	30,000/-
Total	7,11,400/-

5.The learned counsel for the appellant/insurance company submitted that the tribunal erred in awarding excessive sum of Rs.7,11,400/- as compensation for the fracture of legs, rami and humerus by considering the assessment of disability by PW2. The learned counsel for the appellant further submitted that the tribunal erred in awarding highly excessive amount of Rs.6,32,000/- towards loss of income for the disability of 62% by applying multiplier method mechanically. The sum awarded under other heads is also not proper and liable to be set aside.

6. On the other hand, the learned counsel appearing for the 1st respondent/claimant contented that the tribunal after



considering the detailed assessment of disability at 62% by PW2, has awarded the compensation towards loss of income by adopting multiplier method. The total compensation awarded by the tribunal is reasonable and fair and therefore, does not warrant interference by this Court.

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7. Heard the learned counsel appearing for the appellant/ Insurance Company and the learned counsel appearing for the 1st respondent/claimant and perused the materials available on record.

8. Admittedly, there is no dispute in respect of the negligence and liability fixed by the tribunal. The main contention raised by the learned counsel appearing for the appellant/insurance is with regard to the compensation awarded by the tribunal towards loss of income by applying multiplier method.

9. From a perusal of records, it is seen that the claimant has marked documents Ex.P3/C.T Scan report, Ex.P4/Medical Bills, Ex.P6/Disability Certificate, Ex.P7/X-ray and Ex.P8/Discharge summary to substantiate his claim for the injuries and disability sustained by him. Ex.P6/Disability Certificate issued by PW3-Doctor clearly reveals that due to the said accident, thighs of both legs were broken and undergone surgery, for which iron rods and screws were fixed. The doctor further observed that the claimant was given radial nerves treatment for his left hand injuries. The doctor further observed that due to the injuries and disability, it is difficult for the claimant to walk, step, kneel and stand for 30 minutes on both legs. It is also difficult for the claimant to perform his daily tasks due to chronic pain in both legs. 10Cm surgical scar is found on the left anterior head and surgery on the left arm. By considering all these aspects, the doctor/PW3 has assessed the disability at 67.2% as partial permanent disability. In view of the injuries and documents marked in support of the same, this Court confirms the disability taken by the tribunal at 62%.

10. As far as the compensation awarded by the tribunal is concerned, though no documents were filed to prove the avocation and salary, the tribunal by considering the age of the injured claimant who was 30 years at the time of the accident, has fixed the monthly income of the deceased at Rs.5000/- and calculated the loss of the income by applying multiplier 17, which comes to Rs.6,32,400/- (500 x 12 x 62).

The Hon'ble Supreme Court in the case of Rajkumar vs Ajay Kumar has held as follows;

"....For example, if the left hand of a claimant is amputated, the permanent physical or functional



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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 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 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 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. 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 the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

11. In the present case, the claimant was working as cutting master in a company and sustained injury on his left arm and he was given radial nerves treatment for his left hand injuries. The doctor has also observed that due to the injuries, he could not continue his daily work as before, hence assessed the disability at 67.2% as partial permanent disability. The tribunal has rightly considered the assessment made by the doctor and taken the disability at 62% for calculating the loss of income by applying multiplier method. This Court finds no error in the said calculation, the same is confirmed. Though, the tribunal has not awarded compensation towards loss of amenities as observed the Hon'ble Supreme Court above, the sum awarded under other heads viz., Extra Nourishment and Medical Expenses are found proper and reasonable. Therefore nothing



warrants for this Court to interfere with the award passed by the tribunal and the same is confirmed.

12. The appellant/Insurance company shall deposit the entire compensation amount, as awarded by the tribunal, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent /claimant is permitted to withdraw the compensation, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is dismissed to the aforesaid extent. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District cum Sessions Judge, FTC. No.V
(Motor Accidents Claims Tribunal),
Tirupur.

Copy to:-

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

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.16846

CMA.No.2897 of 2013
and M.P.No. 1 of 2013
and CMP.No. 1474 of 2018

SRA(CO)
SU(28/09/2021)