



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.3.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3477 of 2013
Cross Obj.No.5 of 2016
and
M.P.No.1 of 2013, M.P.No.1 of 2015 &
C.M.P.No.2519 of 2020

National Insurance Company ltd.,
Attur, Salem District.

...3rd Respondent/Appellant in
C.M.A.No.3477 of 2013

3rd Respondent in Cross Obj.No.5/2016
..Vs..

1. A.Sathish Kumar ...Petitioner/Respondent-1 in
C.M.A.No.3477 of 2013 Cross Objector
in Cross Obj.No.5/2016

2. R.R.Chinnaswamy

3. A.K.Varadharajan ..Respondents-1&2/Respondents-2&3
Respondents 1 & 2 in Cross Obj.No.5/2016

(The Respondent 2&3 are already set exparte
before Tribunal hence notice are dispensed
with in this cross appeal)

Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the Judgment and decree dated 11.1.2013 made in
M.C.O.P.No.2229 of 2012 on the file of Special Sub Court (Motor
Accidents Claims Tribunal) Coimbatore.

Cross Objection filed under Order 41 Rules 22 of C.P.C.
against the judgment and decree, dated 11.1.2013 made in
M.C.O.P.No.2229 of 2012 on the file of Special Sub. Court (Motor
Accident Claims Tribunal), Coimbatore as claimed by the Cross
Objector / 1st Respondent herein with interest and cost by
allowing this Cross Appeal.

For Appellant/Ins. Company : Mr.G.Udhayshankar

For Respondent/Claimant : Mr.Parthi Kannan for R1

R2 & R3 : Notice Unserved



COMMON JUDGMENT

Both appeal and Cross objection filed against the award passed by the Motor Accidents Claims Tribunal (Special Sub Court), Coimbatore, dated 11.1.2013, in M.C.O.P.No.2229 of 2012, both are heard together and disposed of by common judgment.

2 Brief facts of the case is as follows:

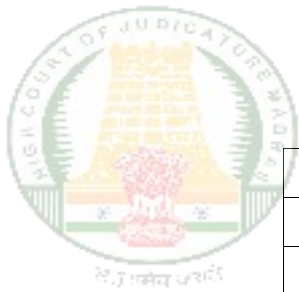
On 24.10.2009 at about 10.00 a.m. when the petitioner was riding his Yamaha motorcycle bearing registration No.TN-37-BB-1409 at Podhanur - Nanjundapuram road, second respondent herein drove a lorry bearing registration No. TN-27-T-8822 from opposite direction in a rash and negligent manner without adhering traffic rules and hit against the petitioner's motorcycle, thereby caused accident, resulting the petitioner fell down and sustained grievous injuries. A case has been registered in Cr.No.280 of 2009 under Section 279 and 338 of I.P.C. by T.I.W. (West) Police station. The petitioner has filed a claim petition before the tribunal claiming compensation of Rs.15,00,000/- against the appellant and the third respondent herein being the insurer and owner of the vehicle.

3. The appellant/Insurance Company has filed a counter statement denied the averments made in the claim petition and disputed negligence as well as liability against the Insurance Company.

4. The second and third respondent herein remained exparte before the tribunal. On the side of the claimants, P.W.1 to 4 were examined and Ex.P1 to P19 were marked. On the side of the Insurance Company/appellant, no witness was examined or any document marked.

5. Tribunal, based on the oral and documentary evidence and upon hearing both sides, found that due to rash and negligent driving of the lorry driven by its driver caused accident and fixed the liability as against the appellant/ Insurance Company and awarded a sum of Rs.13,96,445/- as compensation to the claimant along with interest at the rate of 7.5% per annum from the date of claim petition till realization. The award passed by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Partial Permanent disability 33% 7000 x 12 x 17 x 33%	4,71,240/-
Transport to hospital	5,000/-
Extra Nourishment	5,000/-



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Heads	Amount in Rs.
Pain & sufferings	40,000/-
Medical bills	8,43,500/-
Damages to the vehicle	31,705/-
Total :	13,96,445/-

6. Challenging the said award, the Insurance Company has filed the present appeal against the award passed by the tribunal fastening liability on the Insurance Company and also on the ground of quantum of compensation. The respondent/claimant also filed Cross Objection No.5 of 2016 for enhancement of compensation.

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

8. The respondent/claimant marked Ex.P1 to P19 especially Ex.P3 Wound certificate, Ex.P5 Medical bills, Ex.P6 Discharge summaries, Ex.P7 X-rays, Ex.P8 Scan reports, Ex.P10 Photograph of the wound and Ex.P13 disability certificate, etc. were produced before the tribunal and P.W.1 to 4 were examined. P.W.2 Dr.K.Gajendran deposed before the tribunal that based on the aforesaid document, he assessed 33% partial permanent disability sustained by the petitioner due to the accident. The tribunal also found that the petitioner has undergone three surgeries and his face was severely injured due to the accident. According to the learned counsel appearing for the appellant, the tribunal wrongly adopted multiplier method when there is no evidence placed before the tribunal to prove that the respondent/claimant suffered future earning capacity due to the said accident. P.W.2 Doctor who examined the victim, assessed 33% partial permanent disability. Therefore, award passed by the tribunal under the head partial permanent disability is excessive and same is liable to be modified. Insofar as other heads also, the appellant seeks modification.

9. The claimant/respondent in the Cross objection contended that the claimant suffered 33% partial permanent disability, he was admitted in hospital for five times and undergone three surgeries and due to the grievous injuries, he suffered future earning capacity. Doctor assessed permanent disability of 33% itself is very low and due to the grievous injuries, it will affect 100% future earning capacity. Therefore, tribunal ought to have taken Rs.12,000/- as monthly income of the petitioner and the petitioner is entitled 50% towards future prospects, whereas tribunal has not awarded any amount towards future



prospects. Further, no amount was awarded towards future medical expenses. The tribunal ought to have awarded Rs.1,00,000/- for pain and sufferings instead of Rs.40,000/. Therefore, the respondent/claimant seeks enhancement of compensation.

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10. Admittedly, the claimant suffered 33% partial permanent disability. He produced Ex.P3 Wound certificate, Ex.P5 Medical bills, Ex.P6 Discharge summaries, Ex.P7 X-rays, Ex.P8 Scan reports, Ex.P10 Photograph of the wound and Ex.P13 disability certificate, etc. On perusal of the award as well as records, no material has been placed before the tribunal to prove that the petitioner has lost his future earning capacity due to the said accident. There is no discussion in the award that the appellant lost his future earning capacity. However, the tribunal has stated that the claimant has undergone three surgeries and therefore, adopted multiplier method. There is no oral or documentary evidence to prove that the petitioner lost his future earning capacity.

11. In RAJ KUMAR VS. AJAY KUMAR AND OTHERS reported in (2011) 1 SCC 343 the Hon'ble Supreme Court explained that 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 right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% 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%.

12. In the said judgment, the Hon'ble Supreme Court further held that 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 earning capacity. The Tribunal should not mechanically apply the percentage of 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, 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. What requires to be assessed by the Tribunal is the effect of the permanently 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 percentage of loss of earning capacity as a result of the permanent 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.

13. Insofar as assessment of permanent disability, the Hon'ble Supreme Court has held as under:

'13. We may now summarise 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 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 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.''

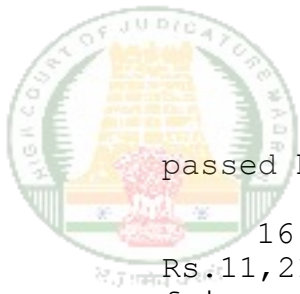
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14. Reverting to the case on hand, the respondent/claimant has to prove by evidence that he would suffer loss of future earning capacity and therefore, in the light of the principles laid down by the Hon'ble Supreme Court, the appellant has not let in evidence to prove that the petitioner suffered loss of future earning capacity. Therefore, this Court disagree with the finding of the tribunal by adopting multiplier method.

15. Therefore, no doubt, the respondent/claimant is entitled for compensation for permanent disability. By considering percentage of disability and also taking into account the respondent/claimant was admitted in the hospital for five time and undergone three surgeries, it is appropriate for this Court to fix Rs.4000/- per percentage to be fixed for permanent disability. Further, the appellant is also entitled for compensation for loss of amenities, Attendant charges, future medical expenses. Considering the aforesaid discussion and the decision cited supra, the compensation awarded by the tribunal is modified as under:

Heads	Compensation Awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Partial Permanent disability 33% 4000 x 33%	4,71,240/-	1,32,000/-
Transport to hospital	5,000/-	10,000/-
Extra Nourishment	5,000/-	10,000/-
Pain & sufferings	40,000/-	40,000/-
Medical bills	8,43,500/-	8,43,500/-
Damages to the vehicle	31,705/-	31,705/-
Future medical expenses	--	30,000/-
Loss of amenities	--	15,000/-
Attendant charges	-	9,000/-
Total :	13,96,445/-	11,21,205/-
Rounded of		11,21,000/-

The compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modification, the award



passed by the tribunal is confirmed.

16. Accordingly, the respondent/claimant is entitled for Rs.11,21,000/- (Rupees eleven lakhs twenty one thousand only) as fair and reasonable compensation along with interest at the rate of 7.5% p.a. The appellant/Insurance Company shall deposit the entire compensation amount less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of the judgment. On such deposit, the respondent/claimant is entitled to withdraw the same by filing appropriate application.

17. In fine, the Civil miscellaneous appeal is partly allowed. No cost. Cross Objection No.5 of 2010 is also partly allowed. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Sub Court
(Motor Accidents Claims Tribunal)
Coimbatore.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.13256/21

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Cross Obj.No.5 of 2016 and
M.P.No.1 of 2013, M.P.No.1 of 2015 &
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RLD (CO)
RGA (07/10/2021)