IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM:

THE HONOURABLE DR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2050 of 2017

Sarasvathi ...Appellant

Vs

1.Balu

2.The Divisional Manager,
The Oriental Insurance Company Limited,
No.32/312, Vijayalakshmi Complex,
1st Floor, Sathuvachery,
Vellore – 9 ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.07.2015 made in M.A.C.T.O.P.No.104 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja
For R.1 : Ex-parte
For R.2 : Mr.K.Vinod

JUDGMENT

The appeal is filed by the accident victim for enhancement of compensation.

2. According to the claim petition, on 16.12.2012, at about 02.30 p.m in Morappur to Harur Road, near Ettipatti Village Junction Road, when the appellant along with her relatives were travelling as passengers in a TATA Sumo Car bearing Registration No.TN-25-B-5184, which belonged to first respondent herein and insured with the second respondent/Insurance Company, the driver of the vehicle drove it rash and negligently and dashed against a tamarind tree. As a result, the claimant sustained multiple fractures in her hip, left thigh, left knee, left ankle head and her left leg was not activated. Initially she was admitted in the Government Hospital, Harur for first aid treatment and later admitted in Ganga Hospital, Coimbatore. She was treated as inpatient from17.12.2012 to 01.02.2013. Again she was admitted in the same hospital as inpatient from 09.01.2014 to 20.01.2014

and once again she was admitted in the same hospital as inpatient from 22.05.2014 to 03.06.2014. Thus, totally she was in the hospital as inpatient for 71 days. Even after discharge, she is not in a position to walk without anybody's assistance and she is not able to do her day-today works and she is not in a position to go for employment as 'construction labourer' due to fracture in her hip. She has lost 100% earning capacity. Therefore, she has filed the claim petition against the owner of the vehicle and the insurer, seeking compensation of Rs.5,00,000/-.

3.The Insurance Company has filed a counter stating that 1st respondent's vehicle was driven by its driver in a slow and cautious manner, but, suddenly, a stranger crossed the road without seeing the 1st respondent's vehicle and thereby caused the accident. Hence, the Insurance Company is not liable to pay any compensation.

4. Before the Tribunal, the claimant was examined as P.W.1 and P.W.2 to P.W.5 were examined. The Doctor, who gave the Disability Certificate was examined as P.W.5. Twenty four exhibits were marked.

On behalf of the respondents, no witnesses were examined and no documents marked.

5. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.6,13,500/- as compensation. Not satisfied with the quantum of compensation, the present appeal is filed.

6. Learned counsel for the appellant would submit that fracture in hip bone is total permanent disability and she was in the hospital as inpatient for 72 days. Even after discharge, she is not able to walk without anybody's assistance and to do day-today activities and she has lost 100% of her earning capacity. Learned counsel further submitted that the doctor determined disability at 75%, however, the Tribunal has taken disability only at 45% and awarded a sum of Rs.2,000/-per percentage of disability. When the claimant suffered severe injuries and is not able to look after the day-today functioning and even lost her earning capacity totally, the Tribunal, without considering all these aspects, mechanically awarded a sum of Rs.90,000/- as loss of earning capacity. The Tribunal has not even awarded amount for loss of earning during the treatment period. The

Tribunal ought to have applied multiplier method to award compensation for loss of earning.

7. In support of his contention, learned counsel referred to the judgment of Hon'ble Supreme Court in the case of ***Rajkumar vs Ajay Kumar*** reported in ***2010(2) TN MAC 581 (SC)*** and should have applied multiplier. Further, the learned counsel would also submit that the Tribunal ought to have considered awarding higher compensation under other heads including loss of income during the treatment period.

8. Learned counsel for the Insurance Company submitted that the disability was determined by the Doctor, who has not treated the patient/claimant and determined 75% disability. The Tribunal has fixed 45% disability and awarded compensation of Rs.2,000/- per percentage of disability, which would be just and fair. Therefore, there is no need to interfere with the award passed by the Tribunal. Further, learned counsel for the Insurance Company submits that the claimant was taking treatment upto the year 2014 and after 2014, her condition of health is not known.

Therefore, awarding a sum of Rs.90,000/- towards loss of income for the claimant is just and fair.

9. Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company and perused the materials available on record.

10. The claimant met with an accident on 16.12.2012 at 2.30 p.m. The said fact was admitted by both the parties. The Tribunal has fixed the liability against the driver of TATA Sumo car bearing Registration No.TN-25-B-5184. There is no challenge in the fixation of the liability by either of the parties.

11. The Doctor, who examined the claimant, has determined the disability as 75%, however, the Tribunal has taken only 45% and awarded a sum of Rs.90,000/-towards loss of earning capacity. The Tribunal awarded a sum of Rs.2,000/-per percentage of disability.

12. The contention of the appellant in the present case is that the claimant sustained severe injuries and she is not in a position to walk. She was 45 years of age at the time of accident. She was working as 'Construction Labourer' and due to her hip fracture, her left leg was not working. Therefore, she has lost 100% of her earning capacity.

13. This is a fit case to apply multiplier method. Upon perusal of the records, accident had occurred on 16.12.2012. Immediately, she was admitted in the Government Hospital, Harur. Accident Register was marked as Ex.P.2. Thereafter, she was admitted in Ganga Hospital, Coimbatore. She was treated as inpatient from17.12.2012 to 01.02.2013. Again she was admitted in the same hospital as inpatient from 09.01.2014 to 20.01.2014 and once again as inpatient from 22.05.2014 to 03.06.2014. Thus, totally she was in the hospital as inpatient for 72 days. On perusal of Exs.P.2 to P.5, it is seen that after accident, she has been continuously taking treatment for her hip and femur injuries. Originally, she was admitted for the following injuries:-

Head Injury - Subarachnoid Hemorrhage

Bicolumnar Fracture & Proximal Wall Fracture Left Acedabulum

Inferior Pubic Rami Fracture Left Side

Open Grade II Fracture Shaft of Left Femur MID 1/3rd Distal 1/3rd

Multiple Sutured Lacerated Wound on the Face and Scalp

Sutured Lacerated Wound on the Left Thigh

Sciatic Nerve Palsy Left With Foot Drop

Hypertension

Ischaemic Heart Disease

14. She was treated on couple of occasions for Non-union of Distal Femur Fracture with Sclerotic Ends with 6 Shanz Screws Insitu. Therefore, the injuries sustained by her has not been cured and was recurring again and again. That apart, the Doctor/P.W.5, who examined her and has given disability certificate, deposed that the injuries are severe in nature and she cannot walk without anybody's assistance and her left leg was completely inactive.

15. With this serious injury, no one can imagine that she can return to her normal work that too, she was working as 'Construction Labourer'. She has lost 100% earning capacity. The Apex Court time and again held that

when the claimant has lost 100% earning capacity, the Court should apply multiplier method to award compensation for the disability of the claimants.

16. In the present case, nothing was considered by the Tribunal and it has simply awarded a sum of Rs.2,000/-per percentage of disability and awarded a sum of Rs.90,000/- towards loss of earning capacity, which is totally unfair. Instead, the Tribunal should have applied multiplier and awarded compensation.

17. As this Court has already come to the conclusion that the claimant has lost 100% earning capacity, the Tribunal has taken functional disability as 45%, though the Doctor certified as 75%. This Court is inclined to take the functional disability at 45% as taken by the Tribunal.

18. At this juncture, it will be appropriate to refer the relevant paragraph of the judgment of the Hon'ble Supreme Court in the case of ***Rajkumar vs Ajay Kumar and Another*** reported in ***2010(2) TN MAC 581 (SC).:-***

8. 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 terns 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 (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).*

19. In view of the settled law, this Court is inclined to apply the multiplier method. According to the claimant, she was working as 'Construction Labourer'. The Apex Court in the case of ***Syed Sadiq vs Divisional Manager, United India Insurance Company*** reported in ***2014(1)TN MAC 459 (SC),*** fixed the notional income of a vegetable vendor as Rs.6,500/-, for the accident occurred in the year 2008. In the present case, the same yardstick will apply. The accident took place in the year 2012. Therefore, appropriate additions have to be made due to increase in the cost of living. Accordingly, this Court is of the view that fixing a sum of

Rs.9,000/- as notional income would be appropriate. Accordingly, notional income of the claimant is fixed as Rs.9,000/- for the purpose of determining loss of income.

20. The age of the claimant at the time of accident was 45 years. For 45 years, the multiplier applicable is 14. The Hon'ble Supreme Court in the case of ***National Insurance Company Ltd vs Pranay Sethi and Others*** reported in ***2017(2) TN MAC 609 (SC),*** considering the increase in cost of living and all other aspects fixed 25% for future prospects for the age group of 40 to 50 for non-fixed income group. Therefore, in this case, this Court is inclined to fix 25% as future prospects. Hence, loss of earning is determined as follows:-

9000 +

(+) 25% of 9000 = 2250

Thus, 9000 + 2250 = 11,250/-

21. The notional income of the claimant is fixed at Rs.11,250/-. The loss of earning capacity is thus computed as 45/100 x 11,250 x 12 x 14= Rs.8,50,500/-.

22. The Tribunal failed to award any amount towards loss of income during the treatment period. Admittedly, the claimant was under treatment for 72 days. In the present case, disability is fixed at 45%. If the Tribunal had fixed 100% disability and awarded compensation, then, there is no necessity for awarding loss of income during the treatment period. During the treatment period, the claimant has lost her 100% income. Therefore, this Court is inclined to award additional compensation for 18 months towards loss of income.

23. The notional income awarded by this Court is Rs.9,000/-. Therefore, loss of income during the treatment period would be Rs.9000 x 18 = Rs.1,62,000/-.

24. The Tribunal has awarded Rs.15,000/- towards attendant charge, which is very low, since she was under treatment for 18 months. Therefore, this Court is inclined to award a sum of Rs.60,000/- towards attendant charges. Accordingly, the award of the Tribunal is enhanced as below:-

Compensation under Various Heads	***Award passed by this Court***
Loss of Earning Capacity due to 45% total disability (45/100X11,250X12X14)	Rs.8,50,500/-
Loss of earning during the treatment period (9000X18)	Rs. 1,62,000/
Attendant charges	Rs. 60,000/-
Pain and Suffering	Rs. 40,000/-
Nourishment	Rs. 15,000/-
Transportation charges	Rs. 10,000/-
Medical expenses	Rs. 4,43,500/-
Total	Rs 15,81,000/-

25. Accordingly, the award is enhanced from Rs.6,13,500/- to **Rs.15,81,000/-** (Rupees fifteen lakh eighty one thousand only) payable with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The money shall be deposited before the Court below by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this judgment.

26. The Tribunal is directed to transfer the entire amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit made by the Insurance Company or upon the

application made by the claimant for withdrawal of the award amount, whichever is later.

27. The appellant is directed to pay the excess court fee on the enhanced amount of compensation awarded by this Court.

28. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

16.04.2021

sr
Index:yes/no
Speaking Order/Non-speaking order

To

Motor Accidents Claims Tribunal
Chief Judical Magistrate Court, Thiruvannamalai

KRISHNAN RAMASAMY,J.,

sr

CMA NO.2050 of 2017

16.04.2021