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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2021

C O R A M

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 3088 of 2017

Kusum Chandak (alias) Kusum Metha

...Appellant/Petitioner

Vs.

1.Nirmal Metha

2.The Oriental Insurance Company Limited,

No.216, Prakasam Salai,

Broadway, Chennai - 600 108.

.... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 14.03.2017 made in M.C.O.P. No.6968 of 2013 on the file of the Motor Accident Claims Tribunal, Court of Small Causes-II, Chennai.

For Appellant : Mr.K.Suryanarayanan

For R1 : Vacated from the address

For R2 : Mr.J.Chandran

J U D G M E N T

Challenging the quantum of compensation, the claimant has been filed the present appeal.

2. The factum of the accident and the fixation of negligence, are not in dispute. The learned counsel appearing for the appellant/claimant submitted that the Tribunal has awarded a sum of Rs.1,35,000/- under the head "disability". The Doctor who assessed the claimant, determined the disability at 50% based on Ex.P-13. However, the Court after deducting 5%, had fixed the disability of the claimant at 45% and awarded a sum of Rs.3,000/- per percentage (in total $45 \times 3 \times 1000$) under the head "disability" at Rs.1,35,000/-.



3. The learned counsel appearing for the appellant/claimant submitted that the assessed amount is very low. This is a fit case to apply multiplier method. The learned counsel further submitted by referring to Ex.P13, Ex.P14 and Ex.P15, that the claimant sustained grievous injuries due to the accident and she was not able to walk and she has been suffering from headache and giddiness due to the multiple fracture on the head. Further, the learned counsel submitted that, in this situation, the Court should have applied multiplier method and awarded the compensation. In the case of Raj Kumar v. Ajay Kumar and Another, reported in [CDJ 2010 SC 1153], the Apex Court considered for applying the multiplier method at the time of awarding the compensation.

4. Further, the learned counsel for the appellant/claimant submitted that the Court below fixed the notional income of the deceased at Rs.8,000/- per month. However, in the present case, accident occurred in the year of 2013. The Hon'ble Apex Court in Syed Sadiq v. Divisional Manager, United India Insurance reported in [2014 (1) TNMAC 459 (SC)], fixed the notional income of a vegetable vendor as Rs.6,500/- and if the same principle is applied to the present case, by taking into consideration of increase in cost of living over a period from 2008 to 2013, it would be appropriate to fix the notional income of the claimant at a sum of Rs.13,000/- and accordingly the counsel plead before this Court to fix the notional income at Rs.13,000/-.

5. Per contra, Mr.J.Chandran, the learned counsel appearing for the second respondent/Insurance Company strongly opposed the submissions of the learned counsel for the appellant/claimant stating that in the present case, though the disability certificate was issued by the Doctor, the said Doctor was not examined and he has stated that number of injuries and they are only minor injuries and the same are not related to the accident and she has already pre-existing diseases. Towards the medical expenses a sum of Rs.6,10,100/- has been awarded, against which, they have not preferred any appeal. Therefore, the appellant/claimant must be satisfied with the award passed by the Tribunal. Further, he submitted that there is no need for any re-consideration of the award passed by the Tribunal.

6. Heard both side and perused the materials available on record.

7. The accident occurred on 16.02.2013. The factum of accident and the fixation of liability are not in dispute. In the present case, the only issue that arises for consideration is as to with regard to the non-applicability of the multiplier method and the notional income fixed by the Tribunal is just and fair. The Doctor who assessed the claimant determined the



disability at 50% and issued the Disability Certificate which was marked as Ex.P13. However, the Tribunal, for the purpose of awarding the compensation, had taken the disability at 45%. A plea has also been made on the part of the learned counsel appearing for the 2nd respondent/Insurance Company that, even if the Court is inclined to apply the multiplier method, the functional disability may be taken as 1/3 permanent partial disability, as determined by the doctor.

8. On a perusal of Ex.P3, Ex.P4, Ex.P5 and Ex.P6, would show that the claimant has sustained following injuries:-:

- (i) Traumatic Communitated Depressed Fracture of partial bone in the Vertex,
- (ii) Subarachnoid Hemorrhage,
- (iii) Ring fracture of CI Vertebra
- Tear drop fracture of C6 Vertebrl Body,
- (iv) Bilateral Lung consolidation with mild pleural effusion,
- (v) Stress Induced cardiomyapathy,
- (vi) Anernia,
- (vii) Gram Negative Bacteremia,
- (viii) Hypokalemia,
- (ix) Coagulopathy,
- (x) Drug Rash,

9. On a perusal of PW1's deposition, it is seen that she has sustained multiple fracture injuries on the head, due to the said accident, and she has been suffering from headache and also sudden giddiness continuously. That apart, she has also been facing the hearing problem as well. PW2-Dr.Mathiazhagan also deposed that the claimant has been suffering from headache, giddiness and hearing problem due to the multiple fractures sustained on the head due to the accident. This Court perused the deposition of PW1 and PW2 and also the cross examination made on the part of the Insurance Company. The statements of both the Doctor as well as the appellant/claimant has not been refuted. No question was put against these statements on the part of the respondent/Insurance Company. Therefore, this Court is of the view that the injuries sustained by the claimant are grievous in nature. At the time of sustaining of injuries, the claimant was about 30 years, thus the contention that she is having the complication of blood pressure, sugar and giddiness, otherwise, has not been proved. Hence, the said contention of Insurance Company cannot be accepted. The claimant had taken treatment for 21 days in the hospital as in-patient, and the Tribunal fixed Rs.6,10,100/- towards medical expenses to the claimant. Having accepted and paid the medical expenses by the Insurance Company, now they can not claim that the injuries sustained are not grievous in nature. Therefore, this Court is of the view that the injuries are grievous in nature and



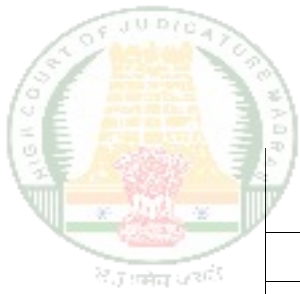
following the judgment of the Hon''ble Apex Court in the case of Raj Kumar v. Ajay Kumar and Another, reported in [CDJ 2010 SC 1153], it would be appropriate to apply the multiplier for awarding the compensation under the head "disability". Due to the nature of injuries sustained by the claimant, this Court would like to take the functional disability of the claimant at 25% for the purpose of determination of compensation for his disability.

10. The next issue for consideration is as to the fixation of notional income. The Tribunal fixed a sum of Rs.8,000/- as notional income. The accident is of the year 2013. Even the Hon'ble Apex Court in Syed Sadiq v. Divisional Manager, United India Insurance reported in [2014 (1) TN MAC 459 (SC)], fixed the notional income of a vegetable vendor as Rs.6,500/- and the accident in that case was of the year 2008, in the present case, the accident occurred in the year 2013, therefore, by providing appropriate addition to the increase in cost of living over a period of five years, it would be appropriate to fix the notional income at Rs.13,000/- p.m. On behalf of the appellant/claimant, Ex.P11 Income Tax Return was filed and marked. On a perusal of the IT return, it would show that she was earning a sum more than Rs.4,00,000/- per annum, but how she was earning that amount is not known. No evidence has been produced to substantiate the same. No pass book details are produced about continuous receipt of the salary. Under these circumstances, the fixation of notional income of the claimant at a sum of Rs.13,000/- (including future prospects) would be proper. For the age group of 30, the multiplier applicable is 17. The loss of income for the disability of the claimant is determined as follows:-

Rs.13,000 x 12 x 17 x 25/100 : Rs.6,63,000/-.

11. With regard to the award passed by the Tribunal under the other heads are just and fair and the same stands confirmed and accordingly, the award amount of Rs.9,01,100/- fixed by the Tribunal is re-determined at Rs.14,29,600/- as total compensation as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Transportation, nourish food and Miscellaneous Expenses	50,000	50,000
2.	Medical Expenses	6,10,100	6,10,100



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3.	Future Medical Expenses	10,000	10,000
4.	Attender Charges	10,000	10,000
5.	Damages for Pain & Suffering and Trauma	50,000	50,000
6.	Disability	1,35,000	6,63,000
7.	Loss of Earning during the period of treatment	16,000	16,000
8.	Loss of Amenities	20,000	20,000
	Total	9,01,100	14,29,100

12. The second respondent/Insurance Company is directed to deposit the entire award amount as determined now, along with 7.5% interest from the date of filing of the petition till the date of realization, after deducting the amount if any already deposited before the Tribunal, within a period of 8 weeks from the date of receipt of a copy of this order. Further, the Tribunal is directed to transfer the entire amount to the claimant within a period three weeks from the date of the deposit of the amount by the Insurance Company, by way of RTGS to the Bank account of the claimant or from the date of filing an application for withdrawal of the award amount, whichever is later.

13. Accordingly, the Civil Miscellaneous Appeal is disposed of. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

msm

To

1. The II Judge,
Motor Accidents Claims Tribunal,
II Small Causes Court,
Chennai.



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

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+1cc to Mr.K.Suryanarayanan, Advocate Sr.24039

+1cc to Mr.J.Chandran, Advocate Sr.24769

C.M.A.No. 3088 of 2017

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