



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.259 of 2021

Rameshkumar

... Appellant/Petitioner

vs.

1)Venkatesan

2)The Divisional Manager,
Sriram General Insurance Company Ltd.
No.5, Ramachandran Street,
Saravanan Nagar,
Srivaram, Perungudi,
Chennai-96.

... Respondents/Respondents

(1st Respondent remained exparte before the lower Court)

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award made in MCOP.No.409 of 2018 dated 03.07.2019 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Thanjavur.

For Appellant : Mr.K.Bhaskaran

For R2 : Mr.D.Sivaraman

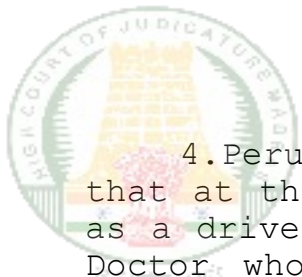
JUDGMENT

Not satisfied with the quantum of compensation, the claimant has filed this appeal.

2.The learned counsel for the appellant/claimant would state that though Ex.P8-disability certificate has been produced to prove that due to the amputation of right leg above knee, the appellant/claimant has sustained permanent disability to the extent of 80%, the Tribunal has reduced the same to 70% without any basis. He would further state that the appellant/claimant was a Mini Lorry driver by avocation and due to amputation of right leg above knee, he could not at all do his avocation as driver and therefore as per the judgment **reported in 2010 (2) TN MAC 581(SC), Raj Kumar vs. Ajay Kumar and another**, the functional disability suffered by the appellant is 100%. He would also state that though the appellant claimant that as a driver in Mini Lorry, he earned Rs.30,000/- per month, the Tribunal in the absence of proof, has fixed a meagre sum of Rs.6,000/- per month. Considering the date of accident and the avocation of the appellant, the Tribunal ought to have fixed Rs.9,000/- as monthly income. Thus, he would pray for appropriate modification on the quantum.

3.Heard the learned counsel for the appellant as well as the 2nd respondent.

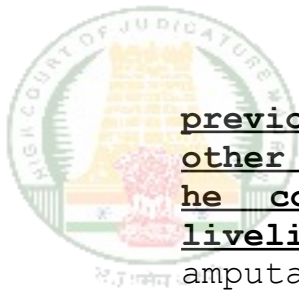
<https://hcservices.ecourts.gov.in/hcservices/>



4.Perusal of record shows that the appellant/claimant claimed that at the time of accident, he was aged 38 years and was working as a driver in a Mini Lorry and earned Rs.30,000/- per month. PW2 Doctor who examined the appellant with reference to the medical records, has stated that due to grievous injuries, the appellant took treatment as inpatient in Government Medical College Hospital, Madurai, between 14.01.2018 and 28.02.2018, during which, a surgery was performed and the right leg of the appellant above knee was amputated due to grievous injuries. PW2 Doctor has assessed the disability sustained by the appellant at 80% and issued Ex.P8-disability certificate. However, the Tribunal has reduced the percentage of disability at 70%. In the absence of proof for income, the Tribunal has fixed the income of the appellant at Rs.6,000/-. After adding 40% towards future prospects and applying 15 multiplier according to the age of the appellant, the Tribunal has fixed the compensation at Rs.10,58,400/- towards 70% disability and future loss of income. In the judgment of this Court reported in **2019 (1) TN MAC 54 (DB), Andal vs. Avinav Kannan**, the Division Bench, evolving formula for determining notional income considering rise in inflation index, has fixed Rs.11,000/- as notional income for the accident occurred therein in 2014. In the present case, the accident is of the year 2018 and therefore, the Tribunal atleast ought to have fixed the monthly income of the appellant at Rs.11,000/-. Accordingly, the monthly income of the appellant is fixed at Rs.11,000/-.

5.As regards the contention of the learned counsel for the appellant that due to amputation of the right leg above knee, the appellant is completely not able to do his avocation as a driver, as such, the functional disability is 100%, this Court finds merit in the said contention. In this regard, it is relevant to extract below paragraphs 10 and 13 of the judgment reported in **2010 (2) TN MAC 581(SC), Raj Kumar vs. Ajay Kumar and another:-**

'10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his



previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional 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. Be that as it may.

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.''

6.To do the work of a Lorry driver, Legs are necessary. In the present case, the appellant/claimant has suffered amputation of right leg above knee. Therefore, as held by the Hon'ble Supreme Court in the above reported judgment, though the claimant has suffered 80% disability as per Ex.P8-disability certificate, the actual loss of earning capacity is 100% since the claimant could not at all do his avocation as driver due to the amputation of right leg above knee. Therefore, the percentage of disability is taken as 100%. The monthly income is Rs.11,000/-. After adding 40% towards future prospects, the income comes to Rs.15,400/- (Rs.11,000 + Rs.4,400/-). After computing annual income and applying 15 multiplier, the disability compensation is calculated at Rs.27,72,000/-. Accordingly, the disability compensation is hereby enhanced to Rs.27,72,000/- from Rs.10,58,400/- awarded by the Tribunal. Except the above modification, the compensation under other heads are not interfered with. The total compensation is modified and apportioned as hereunder:-

Disability compensation	=	Rs.27,72,000/-
Transportation	=	Rs. 30,000/-
Nutrition	=	Rs. 20,000/-
Pain and sufferings	=	Rs. 50,000/-
Damage to clothes	=	Rs. 5,000/-
Attendant charges	=	Rs. 10,000/-

Total = Rs.28,87,000/-
(Less) Award of the Tribunal= Rs.11,73,400/-

Enhanced compensation = Rs.17,13,600/-

7.In the result, there shall be an enhancement of Rs.17,13,600/- on the quantum. The 2nd respondent insurance company is directed to deposit the modified compensation of Rs.28,87,000/- with 7.5% interest per annum from the date of petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the

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formal permission before the Tribunal. The claimant shall pay necessary court fee for the enhanced amount forthwith.

8. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar (CS)

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To
The Special District Judge,
Motor Accidents Claims Tribunal cum
Special District Court,
Thanjavur.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-11641[F] dated 17/03/2021)
+1 CC to M/s.K.BHASKARAN, Advocate (SR-11689[F] dated 17/03/2021)

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RK (23.08.2021) 5P 6C