



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2020

Pronounced On : 08.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A (MD)No.465 of 2015

and

M.P. (MD)No.3 of 2015

The Manager,
Cholamandalam M.S.General Insurance Co. Ltd.,
Pondicherry.

: Appellant / 2nd Respondent

Vs.

1.Marimuthu

2.R.Ganesan

: Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 08.02.2013, made in M.C.O.P.No.16 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur.

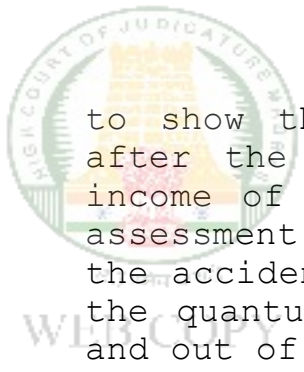
For Appellant	: Mr.S.Srinivasa Raghavan
For R1	: Mr.K.Appadurai, for Mr.V.M.Ravichandran
For R2	: No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award dated 08.02.2013, made in M.C.O.P.No.16 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur.

2.The Appellant/Insurer, who was made liable to pay total compensation of Rs.18,32,892/- with interest at 7.5% per annum to the injured claimant for the disabilities suffered by him, consequent to an accident occurred on 14.04.2009, challenged the quantum of compensation arrived at by the tribunal and more particularly, the application of multiplier method adopted by the tribunal.

3.The main contention of the Appellant/Insurer is that the tribunal without any justification has adopted the multiplier formula and awarded Rs.15,36,000/- towards future loss of earning capacity, that there is no proof of permanent disablement and for functional disability for the injured, that there is no evidence



to show that the injured is unable to carry out the avocation after the accident, that the fixation of Rs.8,000/- as monthly income of the injured notionally is without any basis, that the assessment of disability by the Medical Officer two years after the accident would show that the disability is fictitious and that the quantum of compensation awarded by the tribunal is excessive and out of proportion.

4.The points that arise for consideration are :

(i) Whether the tribunal erred in applying and adopting the multiplier method in the absence of any evidence for permanent disablement and resultant functional disability for the injured claimant ?

(ii) Whether the quantum of compensation awarded by the tribunal is proper and is in accordance with law?

Point Nos.1 and 2:

5.The learned counsel for the appellant would contend that the trial Court ought not to have applied and adopted the multiplier formula as there is absolutely no proof for permanent disablement and the resultant functional disability for the injured, that the tribunal has failed to notice that there is no evidence relating to the total disablement, the loss of avocation and the functional disability, and that tribunal ought to have followed the principles laid down by the Division Bench of Madras High Court in **United India Insurance Company Limited Vs. Veluchamy and another**, reported in **2005 (1) CTC 38**.

6.The learned counsel for the claimant would contend that the injured had suffered seven specific injuries along with other injuries all over his body, that he was given in-patient treatment at Government Hospital, Chennai for the period between 14.04.2009 and 16.04.2009, that thereafter, he was admitted in New Hope Medical Centre, Keelpauk and was given in-patient treatment from 16.04.2009 to 26.04.2009 and again from 19.05.2009 to 02.06.2009 that the claimant had spinal cord injury, left clavicle fracture and head injury, that the left hand of the injured was paralysed, that he was unable to walk and was having headache and eye problems very often and that the tribunal, after analyzing the entire evidence has rightly adopted the multiplier method.

7. Before entering into the further discussion, it is necessary to refer the decisions relied on by the learned counsel for the Appellant;

(i) **2005 (1) CTC 38 :**

United India Insurance Company Limited Vs. Veluchamy and another,

Para 11:

"11. The following principles emerge from the

above discussion :

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



(a) In all case of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying 'multiplier method' as provided under Second Schedule to the Motor Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

(ii) **(2011) 1 Supreme Court Cases 343 :**

**Raj Kumar Vs. Ajaykumar and another,
Para 12:**

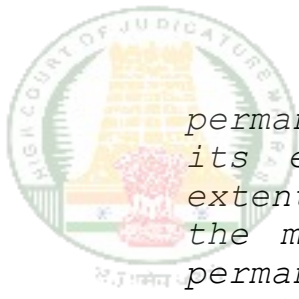
"12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence :

(i) Whether the disablement is permanent or temporary ;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is



permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

Para 19:

19. 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.

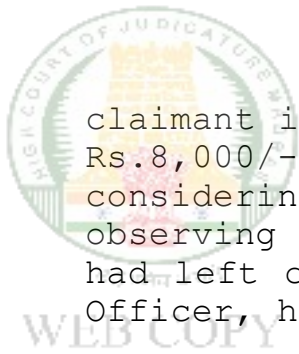
(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, 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 to 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."

8.Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic and that the tribunal is duty bound to take into consideration the various factors such as nature of extent of disablement, avocation of the injured and the impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

9.In the case on hand, the learned trial Judge has dealt with in the said aspect in para 9 and 12 of his judgment. The claimant has pleaded that he was owner cum driver of lorry bearing Registration No. TCH 9779 and that he was earning a sum of Rs.35,000/- per month. The trial Court, after considering the evidence available before it, has come to the conclusion that the



claimant is a heavy vehicle driver and fixed the monthly income at Rs.8,000/-. Admittedly, the claimant's left hand got paralysed and considering the medical evidence produced, the trial Court by observing that due to head injury, he had hematoma, and that he had left clavicle fracture and by relying the evidence of Medical Officer, has fixed the disability at 85%.

10.As rightly contended by the learned counsel for claimant, since the injured's left hand got paralyzed, he will not be in a position to drive the heavy vehicles and that therefore, fixing the disability at 85% cannot said to be excessive. The trial Court on relying the dictum laid down by the Honourable Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, had applied the multiplier 16 and arrived at Rs.15,36,000/- towards loss of earning capacity. The trial Court on the basis of the medical bills has granted towards medical expenses at Rs.2,17,732/-; Rs.4,160/-towards transportation charges; Rs.10,000/- towards extra nourishment ; Rs.40,000/- towards pain and sufferings; Rs. 25,000/- towards loss of amenities, all totalling Rs.18,32,892/-.

11.Considering the nature of injuries, period of treatment, disability sustained and the other attending circumstances, the amount awarded under various heads by the tribunal are very much reasonable and are not excessive. Considering the above, this Court decides that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 08.02.2013, made in M.C.O.P.No.16 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur is confirmed. Parties are directed to bear their own costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



das

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Virudhunagar District at Srivilliputhur.

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Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.APPA DURAI, Advocate (SR-601[F] dated 08/01/2021)

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-729[F] dated
08/01/2021)

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