**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|---|---|
| 22.12.2020 | 06/01/2021 |

**CORAM**

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.M.A(MD) No.91 of 2015**

Balasubramanian ... Appellant

vs.

1.Shibu

2.Reliance General Insurance Company Limited,
through its Branch Manager,
Alapuzha. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree made in M.C.O.P.No.271 of 2011 on the file of the Motor Accident Claims Tribunal, (Additional Sub Judge), Tirunelveli dated 01.10.2013.

For Appellant : Mr.T.Selvakumaran
For R-1 : No appearance
For R-2 : Mr.S.Srinivasa Raghavan

**J U D G M E N T**

This Civil Miscellaneous Petition has been preferred challenging the award passed in M.C.O.P.No.271 of 2011 dated 01.10.2013 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Tirunelveli.

2.The injured, who was granted total compensation of Rs.1,74,015/- with interest at 7.5% per annum payable by the second respondent/insurer for the disability suffered consequent to an accident occurred on 07.01.2011, not satisfied with the compensation awarded, has claimed the enhancement of compensation.

3.The main contention of the appellant/injured is that the Tribunal ought to have applied multiplier method and granted compensation towards loss of earning capacity, that the Tribunal has granted very meagre amount under the other heads of transportation, extra nourishment, attendant charges and pain and sufferings and that the Tribunal ought to have granted compensation under the head of loss of amenities.

4.The only point that arises for consideration is whether the quantum of compensation arrived at by the Tribunal is proper and is in accordance with law ?

5.The learned counsel for the appellant would contend that considering the disability percentage fixed at 35% by the Medical Officer, the Tribunal has only granted Rs.70,000/- for permanent disability by adopting the percentage method, that the claimant had sustained two bone injuries on his right leg and after surgery, plates were implanted, that he had taken out-patient treatment for more than six months and he was unable to do any work and that therefore, the Tribunal ought to have applied multiplier method and awarded compensation under the head of loss of earning capacity.

6.The learned counsel for the second respondent would strongly contend that considering the nature of injury and the disability suffered, the Tribunal has rightly applied the percentage method and that there was absolutely no scope for adopting the multiplier method and he relied on the decision of the Hon'ble Supreme Court reported in ***(2011) 1 SCC 343*** in the case of ***Raj Kumar Vs Ajay Kumar and another*** and the relevant portions are extracted hereunder:-

> *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.*

*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 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.*

7.Considering the above, it is very much clear that in all case of injuries or permanent disablement, the ascertainment of loss of earning capacity is not automatic and that the Tribunal is duty bound to take into consideration the various factors such as nature and extent of disablement, avocation of the injured, impact of disability on the avocation and that therefore, the multiplier method cannot be applied mechanically. In the case on hand, admittedly the petitioner had sustained two fractures on his right leg and there was no amputation of any limb. The Tribunal, by observing that the petitioner had sustained bone injuries and plates were implanted and that he has been continuing his job as before, has rightly adopted the percentage method. Hence, the decision of the Tribunal in not adopting the multiplier method and applying the percentage method cannot be found fault with.

8.The learned counsel for the appellant would contend that if the multiplier method is not adopted, then the injured ought to have been granted compensation for his disability at Rs.3,000/- per percentage of disability instead of Rs.2,000/- granted by the Tribunal and relied on the decision of the Madras High Court reported in ***2013(2) TN MAC 583*** in the case of ***National Insurance Co.Ltd., Vs G.Ramesh and another.*** In the above decision, the accident was occurred on 25.03.2009 and the Court by taking into account the then prevailing cost of living, has granted Rs.3,000/- per percentage of disability. In the case on hand, the accident was occurred on 07.01.2011 and as such, it would be more appropriate to accept Rs.3,000/- per percentage of disability.

9.The Tribunal has awarded Rs.66,147/- for loss of income for three months. The learned counsel for the appellant would contend that since the claimant had taken treatment as out-patient for more than six months, he ought to have granted loss of income for six months. The Tribunal has specifically dealt with that issue in paragraph No.10 of the judgment and wherein, it was observed that the injured has taken 161 days leave and for that period, he had received his salary. Considering the stand taken by the injured that he would lose his earned leave salary in future, the Tribunal has rightly held that there was loss of income for 90 days. Considering the above, granting of Rs.66,147/- towards loss of income for three months is very much proper and the same does not warrant any interference.

10.The Tribunal has then awarded Rs.3,000/- towards extra nourishment, Rs.2,000/- towards attendant charges and Rs.20,000/- towards pain and sufferings. The learned counsel for the second respondent would fairly concede that the amount so awarded may be increased. Considering the nature of the injuries, period of treatment, disability suffered and the attending circumstances, this Court is of the view that the injured is to be granted Rs.10,000/- towards transportation charges, Rs.15,000/- for extra nourishment, Rs.15,000/- towards attendant charges and Rs.30,000/- for pain and sufferings. Accordingly, the compensation payable would be follows:-

| | | |
|---|---|---|
| 1. | Disability<br>(Rs.3000 X 35%) | Rs.1,05,000/- |
| 2. | Pain and Sufferings | Rs.30,000/- |
| 3. | Medical Expenses | Rs.9,868/- |
| 4. | Transport Charges | Rs.10,000/- |
| 5. | Extra Nourishment | Rs.15,000/- |
| 6. | Loss of Income for three months | Rs.66,147/- |
| | Total | Rs.2,36,015/- |

11.Considering the above, this Court decides that the claimant is entitled to get total compensation of Rs.2,36,015/- and 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 point is answered accordingly.

12.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.1,74,015/- to Rs.2,36,015/-. The Insurance company is directed to deposit the modified award amount with interest at the rate of 7.5% per annum, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

To

1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal
Tirunelveli.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate ( SR-458[F] dated 07/01/2021 )

+1 CC to Mr.T.SELVA KUMARAN, Advocate ( SR-411[F] dated 07/01/2021 )

**JUDGMENT MADE IN**
**C.M.A(MD) No.91 of 2015**
**Dated**
**06.01.2021**

KM (21.01.2021) 5P 6C