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C.M.A.Nos.1219 and 1324 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N. MALA

C.M.A.Nos.1219 and 1324 of 2014

The Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
46, Whites Road, Royapetai,
Chennai.

... Appellant
in C.M.A.No.1219 of 2014

K.K.Brindha Devi

... Appellant
in C.M.A.No.1324 of 2014

Vs.

1.K.K.Brindha Devi

2.V.Rathanam

3.T.S.Shanmugam

... Respondents
in C.M.A.No.1219 of 2014

1.V.Rathanam

2.T.S.Shanmugam

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3.The Manager,
Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers,
46, Whites Road,
Royapetai,
Chennai.

... Respondents
in C.M.A.No.1324 of 2014

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 19.12.2013, in M.C.O.P.No.47 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam.

For Appellant	:	Mr.M.B.Raghavan for M/s.N.Vijayaraghavan in C.M.A.No.1219 of 2014 Mr.P.Valliappan in C.M.A.No.1324 of 2014
For R1	:	Mr.P.Valliappan in C.M.A.No.1219 of 2014
For R3	:	Mr.M.B.Raghavan in C.M.A.No.1324 of 2014
R2 & R3	:	Set <i>ex parte</i> in Tribunal in C.M.A.No.1219 of 2014
R1 & R2	:	Set <i>ex parte</i> in Tribunal in C.M.A.No.1324 of 2014



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COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

These two Civil Miscellaneous Appeals arise out of the award of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam (“the Tribunal” for brevity), dated 19.12.2013, in M.C.O.P.No.47 of 2012. C.M.A.No.1219 of 2014 is by the Insurance Company as against the award. C.M.A.No.1324 of 2014 is against the same award by the claimant, seeking further compensation.

2.The appellant in C.M.A.No.1324 of 2014 is the 1st respondent in C.M.A.No.1219 of 2014. She is referred to as “claimant” hereinafter.

3.The claimant suffered grievous injury on account of a motor vehicle accident on 15.10.2011 at Anthiyur Bus Terminal in Central Bus Stand, Erode. It is the case of the claimant that a Bus belonging to the 3rd respondent in C.M.A.No.1219 of 2014 and insured with the appellant in C.M.A.No.1219 of 2014 hit the claimant on her back, when she was waiting



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for the Bus with her mother at Erode Bus Stand. Because of the heavy impact, the claimant fell on ground and the front left wheel of the Bus ran over the left hand of the claimant and stopped at the crushing stage of the claimant's left hand under the wheel. Due to the nonfatal accident, it is the case of the claimant that her left hand was totally crushed below and above the elbow, due to the heavy weight of the Bus loaded with few passengers. The claimant took treatment as an In-Patient from 15.10.2011 at Ganga Medical Centre and Hospital and was discharged on 15.12.2011. It is her case that she was undergoing treatment periodically as Out-Patient and she was also undergoing physiotherapy for a considerable time. The claimant was 27 years old at the time of the accident and she was employed as Technology Analyst in a private company and was drawing a salary of Rs.74,264/- per month. It is also stated that her annual salary was more than Rs.8,50,000/- in total with all allowances. Therefore, the claimant filed the claim petition in M.C.O.P.No.47 of 2012 before the Tribunal, claiming a total compensation of Rs.1,50,00,000/-.



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4. Before the Tribunal, the claimant examined herself as P.W.1 and examined the Doctor as P.W.2. The Doctor (P.W.2) gave Disability Certificate, after assessing the claimant's disability at 90%. The Tribunal awarded a sum of Rs.22,000/- for transport to hospital, Rs.8,000/- towards medical expenses, Rs.75,000/- towards pain and suffering, Rs.75,000/- towards future medical expenses. A sum of Rs.1,50,000/- was allowed for loss of prospects of marriage and a sum of Rs.25,000/- was allowed under the head "Loss of Amenities". As regards compensation for loss of earning power, the Tribunal, relying upon the judgment of the Division Bench of this Court in the case of *United India Insurance Company Limited v. Veluchamy* reported in **2005 (1) CTC 38**, determined the functional disability of the claimant at 50% and taking into consideration the income of the claimant, allowed a sum of Rs.61,20,000/- as compensation by adopting 17 as multiplier. Accordingly, a sum of Rs.64,75,000/- was awarded by the Tribunal, in all.



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5.As against the total compensation of Rs.64,75,000/-, the above appeals have been preferred, both by the Insurance Company as well as by the claimant.

6.Learned counsel appearing for the Insurance Company/appellant in C.M.A.No.1219 of 2014 submitted that the Tribunal awarded the compensation without considering the admission of the claimant (P.W.1) in her evidence, that she is continuing in the same employment and drawing the same salary, even after the accident. The counsel submitted that the Tribunal ought not to have awarded compensation by adopting multiplier method as if the functional disability of the claimant is 50%. The counsel also submitted that the sum awarded towards loss of earning is against the well settled principles. All the arguments were focused on the point that the Tribunal has awarded compensation for loss of earning by adopting multiplier method, ignoring the fact that there was no loss of employment or income to the claimant due to the accident.



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7. On the other hand, learned counsel appearing for the claimant/appellant in C.M.A.No.1324 of 2014 produced before this Court the photographs taken immediately after the surgery undergone by the claimant to join the bones with the help of metal rods and plates. By drawing the attention of this Court to the chief-examination of the claimant (P.W.1), the counsel submitted that the claimant (P.W.1) has deposed to the effect that she is unable to use her left hand as she was using it before the accident and that she is also experiencing pain in her left shoulder as a result of the accident.

8. Heard the learned counsel on either side and perused the entire materials available on record.

9. Though the evidence during the chief-examination of the claimant (P.W.1) was to the effect that her income after the accident was reduced and she has suffered 100% physical disability, the evidence during her cross-examination reads as follows :



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“விபத்து அக்டோபர் மாதம் 2011ம் நடந்தது. எங்கள் நிறுவனத்தில் நான் விடுமுறைக்கடிதம் எழுதிக் கொடுத்து விட்டு வந்துள்ளேன். இந்த விபத்தினால் எத்தனை நாட்கள் விடுமுறை எடுத்தேன் என்று காட்டுவதற்காக ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான். 17.5.2010ல் இருந்து இன்றைய தேதி வரை அதே கம்பனியில்தான் வேலை செய்து வருகின்றேன் என்றால் சரிதான்.”

The Doctor (P.W.2), in his evidence, though states that the movement of the claimant's left hand below wrist is affected and certified that the physical disability of the claimant is 90%, during cross-examination, the Doctor (P.W.2) has admitted that the permanent physical disability, if properly calculated, would be 22.85%. From the evidence of P.W.2, this Court is unable to sustain the order of the Tribunal, fixing the functional disability at 50%. From the claimant's admission that she is drawing salary from the same company and she is continuing in the same employment, this Court is unable to justify the approach of the Tribunal, fixing compensation towards loss of income by adopting the multiplier method.



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10.The learned counsel appearing for the Insurance Company, apart from relying upon the judgment of the Division Bench of this Court in the case of *United India Insurance Company Limited v. Veluchamy (supra)*, referred to the judgment of the Hon'ble Supreme Court in the case of ***Raj Kumar v. Ajay Kumar and others*** reported in ***2011 (1) SCC 343***, wherein, the Hon'ble Supreme Court had an occasion to deal with a similar case, where, the compensation towards loss of income was determined on the basis of physical disability. Para Nos.9 and 10 of the said judgment and the illustrations given in Para Nos.13 and 14 are relevant and hence, they are extracted as follows :

“9.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.

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



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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



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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.

14.The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration `A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability



to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs.36,000/-.
- b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5400/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%.

Calculation of compensation will be as follows:

- a) Annual income prior to the accident : Rs.36,000/-.
- b) Loss of future earning per annum (75% of the prior annual income) : Rs.27000/-.
- c) Multiplier applicable with reference to age : 17



d) Loss of future earnings : (27000×17) : Rs. 4,59,000/-

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Illustration `C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- a) Minimum annual income he would have got if had been employed as an Engineer : Rs.60,000/-
- b) Loss of future earning per annum (70% of the expected annual income) : Rs.42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings : (42000×18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].”

11.Per contra, the learned counsel appearing for the claimant submitted that the Tribunal has awarded only a sum of Rs.1,50,000/- towards loss of prospects of marriage, even though the photographs and the



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nature of injuries suffered by the claimant would indicate that she is entitled to more than the amount awarded by the Tribunal. The counsel also submitted that the Tribunal has not awarded any compensation towards medical expenditure, even though a sum of Rs.75,000/- was allowed for future medical expenses. The counsel submitted that the claimant is entitled to more than the amount awarded by the Tribunal towards pain and suffering. Relying upon the judgment of the Hon'ble Supreme Court in the case of ***Govind Yadav v. New India Insurance Company Limited*** reported in ***2012 (1) CTC 437***, the learned counsel appearing for the claimant submitted that the claimant is entitled to a sum not less than Rs.3,00,000/-.

12.In the case relied upon by the learned counsel appearing for the claimant, the Hon'ble Supreme Court has considered the pain and suffering and trauma caused due to the amputation of limb and a sum of Rs.1,50,000/- was awarded. In Para No.19 of the said judgment, the Hon'ble Supreme Court has held as follows:

“19.The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had



remained in the hospital for a period of over three months. It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the purpose of fixing the amount of compensation. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.”

13.Though the learned counsel appearing for the claimant submitted that the functional disability of the claimant ought to have been taken as 30%, this Court is unable to find any justification for allowing the functional disability beyond 20%, particularly having regard to the job, in which, the claimant is engaged before and after the accident.



14. After considering the judgment of the Hon'ble Supreme Court in

Raj Kumar's case (supra) and the judgment relied upon by the learned counsel for the claimant in *Govind Yadav's case (supra)* and also the evidence on record, this Court is of the view that the claimant is entitled to a sum of Rs.5,00,000/- towards loss of prospects of marriage, instead of Rs.1,50,000/- as awarded by the Tribunal. The claimant is also entitled to a sum of Rs.5,00,000/-, as she has to employ somebody for her daily routines. Therefore, this Court is inclined to award a sum of Rs.5,00,000/- towards loss of amenities, instead of Rs.25,000/- as awarded by the Tribunal. The claimant is also entitled to a sum of Rs.3,00,000/- towards pain and suffering, instead of Rs.75,000/- as awarded by the Tribunal. Considering the fact that, though the claimant could continue in employment, her future prospects may not be promising and in view of the nature of injuries suffered by her and the functional disability ascertained by the Doctor who deposed as P.W.2, this Court is of the view that the claimant is entitled to compensation for loss of earning power by adopting multiplier method by calculating her functional disability at 20%. By taking her monthly income



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as Rs.60,000/- as arrived at by the Tribunal, the loss of income would be

Rs.24,48,000/- (Rs.60,000 x 12 x 20% x 17).

15.In fine, the award of the Tribunal is modified as follows :

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified to</i>
<i>Pain and suffering</i>	<i>Rs.75,000/-</i>	<i>Rs.3,00,000/-</i>
<i>Loss of prospects of marriage</i>	<i>Rs.1,50,000/-</i>	<i>Rs.5,00,000/-</i>
<i>Loss of amenities</i>	<i>Rs.25,000/-</i>	<i>Rs.5,00,000/-</i>
<i>Loss of earning power</i>	<i>Rs.61,20,000/-</i>	<i>Rs.24,48,000/-</i>

Except the above, the amounts awarded by the Tribunal under the other heads are confirmed. In toto, the award of the Tribunal is reduced from Rs.64,75,000/- to **Rs.38,53,000/- (Rupees Thirty Eight Lakhs and Fifty Three thousand only).**

16.As a result, the appeal by the Insurance Company in C.M.A.No.1219 of 2014 is partly allowed and the award of the Tribunal is



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modified to the extent indicated above, and the appeal by the claimant in

C.M.A.No.1324 of 2014 is dismissed.

17.The Insurance Company/appellant in C.M.A.No.1219 of 2014 is directed to deposit the modified award amount, i.e., Rs.38,53,000/- (Rupees Thirty Eight Lakhs and Fifty Three thousand only), which is now quantified by this Court in these appeals, along with interest at 7.5% per annum from the date of claim petition till the date of realisation, within a period of eight weeks from the date of receipt of copy of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the claimant is permitted to withdraw the entire amount with interest. No costs.

(S.S.S.R., J.) (N.M., J.)
10.10.2022

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To

The III Additional District Judge,
(Motor Accident Claims Tribunal),
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