IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1491 of 2021

R. Sankar ... Appellant / Petitioner

Vs.

1. P. Periyasamy

2. Reliance General Insurance Co. Ltd.,
6th Floor, Reliance House, No.6,
Haddows Road, Nungambakkam,
Chennai – 600 006. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 28.02.2020 passed in M.C.O.P. No. 6000 of 2016 on the file of the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai -104.

For Appellant	:	Mr. S. C. Richard Suresh Kumar
For R1	:	Ex-parte
For R2	:	Mr. S. Arunkumar

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant for enhancement of compensation awarded in M.C.O.P. No. 6000 of 2016, dated 28.02.2020 on the file of the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai -104.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 17.08.2016 at about 00:30 Hours, the claimant was standing in the ECR Road, Thiruvanmiyur for boarding Share Auto (Public Transport Vehicle), at that time, a Motor cycle bearing Registration No.TN-07-CA-9796, ridden by its rider in a rash and negligent manner, hit against the claimant, which has caused grievous injuries. A criminal case was also registered against the rider of the two wheeler in Cr.No.541/2016 on the file of the Sub Inspector of Police, Traffic Investigation, J2 Adyar, Mylapore Range, Chennai. For the injuries sustained, the claimant filed claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166 of Motor Vehicles

Act and Rule 3 of M.A.C.T. Rules.

4. The first respondent is the owner and the second respondent – insurance company is the insurer of the motor cycle bearing Registration No.TN-07-CA-9796. The first respondent has not contested the claim and remained ex-parte. The second respondent – insurance company has filed a counter and disputed the age, occupation and monthly income of the claimant and also contended that the negligence, alleging that claimant crossed the road without seeing on coming vehicle, had invited the accident. The second respondent insurance company also contended that the first respondent vehicle has been falsely implicated in this case and also the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant himself examined as P.W.1 and Exs.P.1 to P.7 were marked, on the side of the second respondent, no witnesses were examined and no exhibits were marked. The disability certificate of the claimant issued by Medical Board was marked as Ex.C.1.

6. Based on the evidence, placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the rider of the first respondent motor cycle bearing Registration No.TN-07-CA-9796 is responsible for the accident. In point Nos. 2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.3,90,200/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.4, the Tribunal has held that there is no violation of policy condition at the time of occurrence, hence fixed the liability on the second respondent – insurance company to indemnify the first respondent and to pay the compensation to the claimant.

7. Aggrieved over the quantum of compensation, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly appreciated the disability assessed by the Medical Board, which was marked as Ex.C.1 and without any reason, Tribunal has reduced the disability as 40% and granted compensation by adopting percentage method. The Tribunal has not properly considered the

fact that the claimant has sustained multiple grievous injuries at the time of accident, the Tribunal should have granted compensation by adopting multiplier method towards loss of earning capacity instead of adopting percentage method. The claimant could not continue his earlier avocation of mason and also further submitted that the compensation awarded under various other heads is also on the lower side, which is not a just compensation, hence prays to enhance the compensation.

9. Per contra, the learned counsels appearing for the second respondent insurance company has submitted that the Tribunal based on the evidence placed on record has fixed a just compensation, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. The claimant immediately after accident, admitted in the Government Royapettah Hospital at Chennai for treatment. After the treatment, the claimant appeared before the Medical Board for assessing the

disability sustained by him, and the Medical Board assessed 80% permanent disability. However, the Tribunal has not accepted the disability assessed by the Medical Board and without giving any proper reason fixed the disability as 40% and awarded compensation for Rs.3,000/- per percentage of disability.

12. The discharge summary and O.P. treatment record, which are marked as Ex.P.2 to P.3 respectively, shows that the claimant has sustained both bone fracture on left leg, bimalleolar fracture on left ankle for which the claimant has underwent a procedure called "wound debridement and K-wire fixation" and the claimant has also underwent three surgical procedures. The Ex.C.1, disability certificate issued by the Medical Board shows that the disability sustained by the claimant is 80% permanent disability. For granting compensation under the head loss of earning capacity, the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]*** has given a guidelines as well as illustration for fixing the disability and in Paragraph Nos.8, 10 and 13, it summarizes the principles to be followed while assessing the disability and granting compensation under the head loss of earning capacity as follows:

"8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v.

D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).

....

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.*

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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."*

13. In this case, admittedly, the claimant is a Mason and he has sustained both bone fracture on left leg, bimalleolar fracture on left ankle for which the claimant has underwent a procedure called "wound debridement and K-wire fixation" and the claimant has also underwent three surgical procedures. To continue the avocation of mason, the claimant requires good physique and capable to lift weights, capable to work under various positions in the construction sites. Having fractured leg of this nature, is an impediment to carry out his earlier avocation. He could not continue his avocation of mason like he had done prior to accident, hence awarding compensation of loss of earning capacity by adopting multiplier method would be proper and accordingly, this Court based on the medical records and nature of injuries is inclined to fix the loss of earning capacity of the

claimant as 15% permanent functional disability and also fix the notional income of the claimant as Rs.15,000/- per month. Accordingly, as per the dictum laid down in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the age of the claimant is about 41 years at the time of occurrence, hene, the multiplier is fixed as '14', hence the loss of earning capacity is assessed as follows:

Annual income (Rs.15,000/- x 12)	= Rs.1,80,000/-
Percentage of Disability	= 15%
loss of earning capacity due to disability	= Rs. 27,000/-
Total compensation under loss of earning capacity (Rs.27,000/- x 14)	= Rs.3,78,000/-

14. As per Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation Ltd.,*** reported in ***[2020 SSCR 299 : 2020 ACJ 2159]***, considering the age of the claimant, this Court is inclined to award future prospectus of 25% on his loss of earning power and accordingly, the compensation towards future prospectus is assessed as **Rs.94,500/-** (25% of Rs.3,78,000/-).

15. The Tribunal has awarded Rs.4,200/- towards attender charges,

but considering the nature of injuries sustained, period of inpatient treatment, this Court is inclined to modify the compensation awarded towards attender charges to Rs.15,000/-. Whereas the compensation awarded under other heads are concerned, the Tribunal has awarded just compensation, hence this Court is inclined to confirm the same.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability / modified to Loss of earning capacity	1,20,000/-	3,78,000/-	Enhanced
2.	Pain and suffering	1,50,000/-	1,50,000/-	Confirmed
3.	Extra nourishment	25,000/-	25,000/-	Confirmed
4.	Transportation expenses	25,000/-	25,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attender charges	4,200/-	15,000/-	Enhanced
7.	Medical expenses	15,000/-	15,000/-	Confirmed
8.	Future medical expenses	10,000/-	10,000/-	Confirmed
9.	Loss of income	30,000/-	30,000/-	Confirmed
10.	Loss of amenities	10,000/-	10,000/-	Confirmed
11	Future Prospectus	---	94,500/-	Granted
	Total Compensation	3,90,200/-	**7,53,500/-**	**Enhanced**

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,90,200/- is hereby enhanced to **Rs.7,53,500/- [Rupees Seven Lakh Fifty Three Thousand and Five Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - insurance company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.6000 of 2016 on the file of the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/ claimant is directed to pay the necessary Court fee, if any, on the

enhanced compensation. There shall be no order as to costs in the present appeal.

16.10.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

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

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

K. RAJASEKAR, J.

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C.M.A. No. 1491 of 2021

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