IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1473 of 2021
and
Civil Miscellaneous Petition No.7730 of 2021

The Oriental Insurance Company Limited,
Theni District. ... Appellant/2nd Respondent

Vs.

1. Karthik
2. Ravindran … Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 10.08.2018 made in M.C.O.P.No.46 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Chidambaram.

For Appellant	: Mr. Elveera Antionette Ravindran
For R1	: No appearance
For R2	: Mr. A. Kuberan (Vakalat returned)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the quantum of compensation awarded in M.C.O.P.No.46 of 2014, dated 10.08.2018, on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 25.05.2012 at about 9.00 p.m., the claimant was riding his two-wheeler bearing Registration No.TN 31 BY 3687 along with one Arun as a pillion rider in the Sethiyathoppu to Kumbakonam road, while he reached near Old Main Road, a Mahindra Xylo car, bearing Registration No.TN 60 W 5646 came in the opposite direction and hit on the two-wheeler, which resulted in causing severe injuries to the claimant. After taking treatment he has come forward with the claim petition claiming compensation for a sum of Rs.4,25,000/-.

4. The first respondent is the owner of the Mahindra Xylo car

has not come forward to contest the claim. The second respondent – Insurer of the car has contested the claim and filed counter and disputed the manner in which, the accident had taken place and also disputed the disability claimed by the claimant.

5. The Tribunal, after considering the evidences placed on record in Point No.1 has held that the driver of the car is responsible for the accident and in Point No.3 the Tribunal has quantified the compensation and awarded a sum of Rs.6,34,000/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded, the Insurance Company has filed this appeal. The claimant has not filed any Appeal or Cross Objection to challenge the same.

7. Mr. Elveera Antionette Ravindran, learned counsel for the Insurance Company has submitted that the claimant has not sustained any functional disability which is warranting award of compensation by following the multiplier method and injuries sustained by him is only a single injury which is to be compensated by adopting percentage method

and he has also submitted that the compensation awarded under various heads are also on the higher side and prays to modify the same.

8. Even though, the claimant served has not come forward to contest the appeal.

9. I have considered the rival submissions made by the counsel for the Insurance Company and also perused the records.

10. Ex.P2 is the Accident Register, Ex.P3 is the Wound Certificate and Ex.P5 is the Discharge Summary. On perusal of the Wound Certificate-Ex.P3, it shows that the claimant has sustained fracture on the shaft of femur. In Discharge Summary it is recorded that he has sustained two fractures mid shaft of left femur and displaced fracture of left calcanium-left ankle. Subsequently, the claimant was referred to the Medical Board and the Medical Board has assessed the disability as 15% permanent disability. The claimant has marked the Salary certificate as well as other certificates relates the nature of work carried on by him. 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).

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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."

11. In this case, claimant claims that he is a Welder by profession and a manual labour. Injury sustained shows that, shaft of the left femur severally damaged and displaced fracture of left ankle. Both the injury have drastically restricted the movement of left leg of the claimant. Since the injury have restricted the movement of the left leg, it will lead to incapacity of the claimant in doing manual labour like Welder, which requiring good physiq and agility. Hence, this Court is of the view that, the Tribunal has rightly fixed the Loss of earning capacity of the claimant to the extent of 15%.

12. According to the claimant, he was a Welder by profession and was earning a sum of Rs.15,000/- per month. Even though, the claimant was able to prove that he is a skilled workmen and was not able to prove his income by examining his employer. The Tribunal, after considering the nature of the work of the claimant has notionally fixed the income of the claimant as Rs.12,000/- per month by following the Judgment of this Court in ***Branch Manager, ICICI Lambard General Insurance Company Limited vs. Kaliamurthi and others [CDJ 2016 MHC 1375].***

13. The learned counsel for the Insurance Company has submitted that the Supreme Court has awarded only Rs.8,000/- for the skilled labour for the accident taken place in the year 2012 and he prays to modify the quantum of compensation. This Court is of the view that this Court consistently following the norms of fixing notional income of Rs.12,000/- for the skilled labour like the claimant who is a Welder and also age of the claimant shall also play vital role in fixing the income.

14. After considering the evidences placed on record, The

Tribunal has fixed the notional income of the deceased as Rs.12,000/- per month for calculating loss of earning capacity and 40% added as future prospects as per the Judgment of the Apex Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]*** and this Court is inclined to accept the same. The age of the claimant is 19 years at the time of accident, the Tribunal has properly applied multiplier '18' and this Court is of the view the same is reasonable and this Court is inclined to accept the same. As far as the compensation awarded under other heads are concerned, this Court finds the same is proper and no ground to interfere and the same are hereby confirmed. This Court finds there is no infirmity in the award passed by the Tribunal hence the appeal is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal in M.C.O.P.No.46 of 2014, dated 10.08.2018, on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Chidambaram is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

29.11.2023

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

To:

1. The II Additional District and Sessions Judge,
   Motor Accidents Claims Tribunal,
   Chidambaram.

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

K.RAJASEKAR,J.

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C.M.A.No.1473 of 2021

29.11.2023