



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.2577 of 2023
and
C.M.P.No.23761 of 2023

M/s.United India Insurance Co.Ltd.,
Kotagiri Branchi, Kotagiri,
The Nilgiris.

...Appellant

Vs.

1.A.Mahendran
2.S.Kannan @ Gnanasekar
3.A.Easwaran

...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 17.12.2021 made in MCOP.No.6 of 2019 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Coonoor.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.Thilageswaran



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J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal. The 1st respondent is on caveat. Since the liability of the Insurance Company is not in dispute we deem it unnecessary to issue notice to the owner and driver of the offending vehicle.

2. The claimant sought for compensation for the injuries suffered by him in the accident that occurred on 22.04.2007 at about 4.30 p.m. According to him, the injuries suffered by him has resulted in 80% disability and therefore he has not only lost the income, his earning capacity is also been affected severely. The claimant quantified the compensation at Rs.25,00,000/-.

3. The Insurance Company resisted the claim contending that the percentage of disability claimed is on the higher side and there is no permanent disability, which will render the claimant unfit for carrying on his avocation viz., the driver. The age, income particulars were also disputed.



4. At trial, the claimant was examined as PW1 and one Jayaganesh Murthy was examined as PW2. Exs.P1 to P20 were marked on the side of the respondents. The Insurance policy of the offending vehicle was marked as Ex.R1 and disability certificate was marked as Ex.C1.

5. Based on the evidence adduced, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the jeep bearing Reg.No.TDY 5279. On the quantum, the Tribunal accepted the claim of the deceased that there was 80% disability and adopted multiplier method to calculate the loss of income. It took the monthly income at Rs.6,000/-, added 40% towards future prospects, adopted the multiplier '18' and disability at 80%. The Tribunal thus worked out the total loss of earning capacity at Rs.14,51,520/- [Rs.8,400/- (6000+2400) x 12 x 18 x 80/100]. The Tribunal also awarded a sum of Rs.2,59,443/- towards medical expenses based on the actual bills, Rs.20,000/- for extra nourishment, Rs.10,000/- for travelling expenses, Rs.2,00,000/- for pain and sufferings and Rs.50,000/- for attender charges. Thus, the total compensation arrived at was Rs.19,07,963/-.



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6. Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company would vehemently contend that the quantum of disability taken by the Tribunal is on the higher side. He would rely upon the fact that the petitioner has got his driving license renewed after the accident, that by itself would show that the injury suffered or the alleged disability has not resulted in total loss of earning capacity. He would further contend that the injury viz., Brachial plexus on the right hand would not result in any loss of earning capacity though there might be a slight disability.

7. Contending contra Mr.K.Thilageswaran, learned counsel appearing for the claimant would submit that the injury has resulted in locomotor disability, where the flexibility of the wrist has been affected, which would render driving difficult. Therefore, according to the learned counsel, the Tribunal was right in adopting 80% disability, as suggested by the Medical Board.



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8. We have considered the rival submissions. We have been taken through the evidence on record, particularly, the discharge summary and the nature of injury. We find that the disability is not stated to be a permanent disability. Reduction in the flexibility of the wrist may have an effect on the earning capacity. It may not result in rendering the arm useless. We must also fathom the fact that the petitioner has got his driving license renewed after the accident, that by itself would show that the petitioner is capable of driving. In such circumstances, we do not think that the Tribunal was right in adopting 80% disability, resulting in loss of earning capacity.

9. On the evidence that is placed before us, we find that the reduction in earning capacity would be to the tune of 50%. We therefore fix the reduction of earning capacity or loss of earning capacity at 50%. Thus, calculated the loss of earning capacity would be as follows:-

$$[\text{Rs.}8,400/- (6000 + 2400) \times 12 \times 18 \times 50/100] = \text{Rs.}9,07,200/-$$



10. Though the Tribunal granted Rs.2,00,000/- towards pain and suffering, it had not granted any amount towards loss of amenities.

Admittedly, there is disfigurement of right hand. Hence, we award a sum of Rs.50,000/- towards loss of amenities. The awards under the other heads viz., medical expenses at Rs.1,76,443/-, extra nourishment at Rs.20,000/- travelling expenses at Rs.10,000/-, pain and sufferings at Rs.2,00,000/- and attender charges at Rs.50,000/- are upheld. Thus, the total compensation would workout to Rs.14,13,443/-.

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded in this appeal</i>
Loss of income	Rs.14,51,520/-	Rs.9,07,200/-
Medical expenses	Rs.1,76,443/-	Rs.1,76,443/-
Extra nourishment	Rs.20,000/-	Rs.20,000/-
Travel expenses	Rs.10,000/-	Rs.10,000/-
Pain and Sufferings	Rs.2,00,000/-	Rs.2,00,000/-
Attender charges	Rs.50,000/-	Rs.50,000/-
Loss of amenities	--	Rs.50,000/-
Total	Rs.19,07,963/-	Rs.14,13,643/-

11. In fine, the appeal is **partly allowed**. The award granted by the Tribunal is modified to Rs.14,13,643/- and the same is rounded off to Rs.14,14,000/-. The claimant would be entitled to interest at 7.5%. The Insurance Company is granted six weeks time to deposit the entire award



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amount, less the amount, if any, already deposited. On such deposit, the claimant is permitted to withdraw the entire award amount. No costs.

Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
19.10.2023

dsa
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Internet :Yes
Neutral Citation :No
Speaking order
To

The Motor Accidents Claims Tribunal,
Subordinate Judge, Coonoor.



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and
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