IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.04.2023
Pronounced on	28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1730 of 2021

and C.M.P.No.9117 of 2021

The Manager,
ICICI Lombard General Insurance Company Limited,
ICICI Lombard House,
414, Veer Savarkar Marg,
Nearby Sitthi Vinayagar Koil,
Prabhadevi, Mumbai-400 025,
Local Business Office,
2nd Floor, CVN 2nd Exivency No.647/B3,
Bye Pass Road, Hosur-635 109

…Appellant

Vs.

1.B.M.Murugan
2.Smiruthi Chandrasekar

(2nd Respondent was set exparte in the
Lower Court. Hence notice to them
is dispensed with)

…Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 05.02.2020 made in M.C.O.P.No.445 of 2018 on the file of the Motor Accidents Claims Tribunal cum Special Sub Ordinate Court, (MACT) Cases, Krishnagiri.

For Appellant	: Mr.K.Poomalai
For R1	: Mr.S.P.Yuvaraj
For R2	: Ex-Parte

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The appellant/Insurance Company has preferred this Civil Miscellaneous Appeal as against the award dated 05.02.2020 made in M.C.O.P.No.445 of 2018 on the file of the Motor Accidents Claims Tribunal cum Special Sub Ordinate Court, (MACT) Cases, Krishnagiri, awarding a sum of Rs.34,03,577/- for the injuries sustained by the respondent/claimant on 28.05.2017 at about 3.30 P.m when the claimant was riding his Hero Hondo Splendor motor cycle bearing Registration No.TN-24-B-3866 along with one pillion rider Umapathy towards Chinnamatrapalli village from Kathikuppam petrol bunk. The driver of the car bearing Registration No.KA-51-MC-8726 drove the vehicle in a rash and negligent manner, dashed against the vehicle of the claimant and caused the accident in which the claimant suffered fracture on his left leg. Immediately, the claimant was taken to the Government Hospital at Krishnagiri and FIR was registered against the driver of the car in Crime No.138/2017 on the file of Kathikuppam Police Station. With regard to manner of accident and the fixing of liability upon the 1st respondent and Insurance Company, there is no debate. There is no infirmity with regard to the findings of the Tribunal and the factors regarding the accident.

2.The learned counsel for the appellant/Insurance Company very much assails the quantum of compensation arrived at by the Tribunal by vehemently arguing that it is excessive and it does not confirm to the settled legal principle. According to the learned counsel for the appellant/Insurance Company there is no evidence on record to show that the injured was unemployed and he is bed-ridden due to the injuries sustained by him in the accident. Though the Medical Board assessed partial and permanent disability at 80%, the same is not affecting the avocation of the injured. There is no documentary evidence on record to prove that the left leg of the injured was amputated below the knee. It is further submitted that in the absence of proper documentary evidence, the Tribunal erred in fixing the monthly salary of the injured at Rs.17,000/- per month. The Tribunal also erred in applying multiplier method and in awarding 40% for future prospects. It is submitted that, viewed from any angle, the quantum of compensation awarded by the Tribunal at Rs.34,03,577/- is excessive.

3.On the other hand, the learned counsel appearing for the claimants/respondents would contend that, in injury cases description of nature of injury and permanent disablement are relevant factors and it has to be seen as to what would be impact of such injury/disablement on earning capacity of injured. There should be no departure from multiplier method on ground of "just" compensation since multiplier method is accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty for awards made all over country. Multiplier system based on doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases. He further submitted that no error is committed by the Tribunal in awarding future prospects to the claimant by considering his percentage of permanent disability. To support his contention he has relied upon the following decision cases reported in **:**

1.(2017) 3 SCC 351

2.2020 SCC Online SC 601

4.The relevant records showing the injury sustained, by the injured and the treatment given to him and the expenses incurred for the treatment are Exs.P.7 and P.8. The Disability Certificate is marked as Ex.P.6 in which the partial permanent disability of the petitioner is assessed to 80%. On perusal of Ex.P.8 it is seen that the petitioner has underwent above knee amputation. Ex.P.7 are the medical bills corresponding to the treatment undergone by the petitioner.

5.According to the claimant, his health had impaired drastically and he is unable to perform any work because of the injuries sustained by him in the accident. He pleaded that this disability has affected his avocation resulting in loss of future income. Though the Tribunal accepted the injuries and physical incapacity suffered by the claimant, it was of the opinion that even when it was not possible for the claimant to do work like a healthy person, looking to the nature of the said injuries, he could still perform his work as a supervisor and there was not impairment there in. However, the Tribunal considering the materials on record and the age of the claimant, awarded compensation to the claimant by applying the principle of multiplier based on 60% permanent disability.

6.The same was challenged by the appellant/Insurance Company stating that the Tribunal failed to consider that the partial permanent disability assessed by the Medical Board for the petitioner would not affect his avocation and that the Tribunal ought not to have applied multiplier method for non scheduled injury.

7.In accident claims relating to injury, the victim is entitled to pecuniary as well as non-pecuniary damages. The pecuniary damages such expenditure on treatment, special diet, conveyance, attendant, loss of income etc., are based on documentary evidence produced by the claimant. The non-pecuniary damages such as pain and suffering, loss of amenities of life, disfiguration and matrimonial prospects are conventional and depend upon the nature of injuries suffered and on based on comparable awards to maintain uniformity and predictability. In cases of permanent disablement, the claimant is also entitled to loss of earning capacity. The permanent disability is assessed on the basis of the certificate issued by the Medical Board. Every permanent disability does not result in loss of earning capacity. The loss of earning capacity is determined according to the principles laid down by the Hon'ble Supreme Court in the case of Rajkumar. The multiplier involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured.

8.We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in the case of **Rajkumar v. Ajay Kumar** and others:

Assessment of future loss of earnings due to permanent disability

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities

which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the 'Disabilities Act', for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

10. 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, the 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.

11. 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 terms 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."

9.Where the claimant suffers a permanent disability as a result of injury, 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.

10.In the present case, the crucial factor which has to be taken into consideration is that, to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In fact, it cannot be disputed that the said disability will not allow him to continue his job as a Supervisor. But to do this work efficiently he has to move around supervising the work of the employees. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the claimant have been restricted to a large extent and that too at a young age. We are of the opinion that in a case like this and having regard to the injury suffered by the appellant, there is defenite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method, as held by the Hon'ble Supreme Court in ***Yadava Kumar v. Divisional Manager, National Insurance Company Limited & Anr***.reported in (***2010) SCC 341:***

> *"9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same*

position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases-and that is now recognized mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand."

11.In that case, after following the Judgment in ***Kerala SRTC v. Susamma Thomas*** reported in ***(1994) 2 SCC 176,*** the Court chose to apply mulitpliyer of 18 keeping in view the age of the victim who was 25 years at the time of the accident.

12.In the instant case, the claimant is certified to have suffered permanent disability to the extent of 80%. However, the Tribunal has assessed only 60% as loss of future earning capacity. We cannot assume that the claimant will be left with no job and no income for the rest of his life. However, the injured cannot earn his living as before the accident. Hence, this Court choose to apply the multiplier method keeping in view the age of the victim, the nature of work and the injury sustained by him.

13.The Tribunal had quantified the income of the appellant at Rs.17,000/- per month, relying on Ex,P.3-Salary Certificate and Ex.P.4 Bank Pass book. No contra evidence let in on the side of the respondent to discard the same. There is no dispute that the injured is 25 years old at the time of accident. As per the guidelines laid down in Pranay Sethi's case for granting future prospects for the injured who at the time of the accident for self employed on fixed salary 40% is added as future prospects. 17000 + 40% = 17,000 + 6800 = Rs.23,800/-. Taking the monthly income as Rs.23,800/-, the annual income is calculated as 23,800 x 12= Rs.2,85,600/- Going by the age of the injured at the time of the accident, multiplier of "17" would be admissible. Keeping in view, that the permanent disablity is 60%, the compensation under this head would be worked out at Rs.2,85,600/- x 60% x 17= Rs.29,13,120/-. Since compensation under the head “Loss of income” is awarded applying principles of Multiplier Method, no amount shall be awarded under the head of “Loss due to disability” whereas, the compensation awarded under other heads are confirmed.

S.No.	*Description*	*Amount awarded by the Tribunal (Rs.)*	*Amount awarded by this Court (Rs.)*	*Award confirmed or enhanced or granted*
1	Loss due to disability	2,40,000	-	Denied
2	Loss of Income	29,13,120	29,13,120	Confirmed
3.	Medical Expenses	96,457/-	96,457/-	Confirmed
4.	Transport charges	10,000/-	10,000/-	Confirmed
5	Nutrition and attender charges	15,000/-	15,000/-	Confirmed
6.	Pain and suffering	64,000/-	64,000/-	Confirmed
7.	Social Amenities	6,400/-	6400/-	Confirmed
7.	Damages of clothes	1000/-	1000/-	Confirmed
	Total	**34,03,577/-**	**31,63,577/-**	**Reduced by 2,40,400/-**

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby reduced from Rs.34,03,577/- to Rs.31,63,577/-. The appellant/Insurance Company is directed to deposit the said reduced amount along with interest at 7.5% per annum from the date of claim, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposits, the claimants/respondents are permitted to withdraw the compensation amount as apportioned by the Tribunal by filing necessary application before the Tribunal. In other aspects the award of the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.)   (K.G.T.,J.)

28.06.2023

vsn

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To:-

The Motor Accidents Claims Tribunal cum Special Sub Ordinate Court,
(MACT) Cases, Krishnagiri.

D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

C.M.A.No.1730 of 2021
and C.M.P.No.9117 of 2021

28.06.2023