



C.M.A.No.1601 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1601 of 2020

and

C.M.P.No.11796 of 2020

The Manager – Claims,
Tata AIG General Insurance Co. Ltd.,
15th Floor, Tower A, Peninsula Business Park,
Ganapatrao Kadam Marg,
Off Senapati Bapat Marg, Lower Parel,
Mumbai – 400 013.

C/o. The Manager,
Tata AIG General Insurance Co. Ltd.,
Samson Towers, 2nd Floor,
No.403-I, PANTHEON Road,
Egmore, Chennai – 600 008.

.. Appellant

Vs.

1.V.Subramanyam

2.V.Saraswathi

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.03.2020 made in M.C.O.P.No.199 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr.K.Vinod
For R1 : Mr.P.A.Sudesh Kumar
For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the quantum of compensation granted by the Tribunal in the award dated 13.03.2020 made in M.C.O.P.No.199 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

2.The appellant herein is the 2nd respondent in M.C.O.P.No.199 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. The 1st respondent herein filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the road accident that occurred on 04.02.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to 2nd respondent and directed the appellant-



Insurance Company to pay a sum of Rs.9,30,717/- as compensation to the 1st respondent.

4.The learned counsel for the appellant/Insurance Company would contend that the total compensation awarded by the Tribunal at Rs.9,30,707/- is highly excessive. The Tribunal having held that 1st respondent sustained only middle finger right hand dorsal laceration and ring finger middle phalynx open fracture with dorsal laceration, erroneously fixed loss of earning capacity of the 1st respondent at 45% which is exorbitant. The Tribunal failed to note that the disability assessed by the Medical Board at 45% for the injuries sustained by the 1st respondent is on the higher side. The assessment of disability for a particular limb of the body cannot be taken as the loss of earning capacity. The monthly income of the 1st respondent fixed by the Tribunal at Rs.9,000/- is excessive. The Tribunal without properly appreciating the materials available, awarded excessive compensation and prayed for reducing the compensation.

5.Per contra, the learned counsel appearing for the 1st respondent would contend that in the accident, the 1st respondent sustained middle finger right

hand dorsal laceration and ring finger middle phalynx open fracture with dorsal laceration and the District Medical Board, Krishnagiri, examined the 1st respondent and certified that the 1st respondent suffered 45% disability and issued Ex.P12/disability certificate. Further, at the time of accident, the 1st respondent was working as Junior Line Man in A.P.S.P.D.C.L., Bangaru Palyam, Andhra Pradesh Southern Power Distribution Company Limited and earned a sum of Rs.35,298/- per month as salary. Due to the injuries sustained, the 1st respondent was unable to attend his work as did before. Hence, the Tribunal rightly granted compensation for 45% loss of earning capacity to the 1st respondent. The 1st respondent produced the salary slip and marked the same as Ex.P7, but the Tribunal without considering the same, fixed meagre amount of Rs.9,000/- as monthly income and awarded compensation. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

6. Though notice has been served on the 2nd respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.



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7. Heard Mr.K.Vinod, learned counsel for the appellant and Mr.P.A.Sudesh Kumar, learned counsel for 1st respondent and perused the entire materials on record.

8. From the above materials, it is seen that it is the case of the appellant that the injuries sustained by the 1st respondent are not grievous in nature and the Tribunal has granted excessive compensation for 45% disability suffered by the 1st respondent as assessed by the Medical Board. From Ex.P6 / discharge summary issued by the Christian Medical College Hospital, Vellore, it is seen that the 1st respondent sustained middle finger right hand dorsal laceration and ring finger middle phalynx open fracture with dorsal laceration and the District Medical Board, Krishnagiri, examined the 1st respondent and certified that the 1st respondent suffered 45% partial permanent disability and issued Ex.P12/disability certificate to that effect. The Medical Board has not stated that the 1st respondent suffered 45% functional disability.

9. Further, from the available materials, it is seen that at the time of



accident, the 1st respondent was said to be working as Junior Line Man in A.P.S.P.D.C.L., Bangaru Palyam, Andhra Pradesh Southern Power Distribution Company Limited and earned a sum of Rs.35,298/- per month as salary. The Medical Board has not assessed the percentage of disability for the whole body and also not mentioned in the disability certificate that due to the injuries sustained by the 1st respondent in the accident, he could not do any work. In such circumstances, the compensation awarded by the Tribunal for 45% loss of earning capacity seems to be excessive.

10.For fixation of percentage of disability for whole body when the disability for particular part of the body is given, how the percentage of particular part of the body has to be taken, has been dealt with in the following judgments:

(i)In *Mallanagouda Vs. Raju Hanumanthappa Mallapur and other* reported in [*LAWS (KAR) – 2019 – 7 - 354*], wherein the High Court of Karnataka has held that the evidence on record goes to show that the petitioner is suffering from permanent disability of 60% of the right lower limb and therefore it is just necessary to consider 1/3rd of the said disability



as for the whole body. Therefore the permanent disability is taken at 20% of the whole body for awarding compensation.

(ii) In *Rajkumar Vs. Ajaykumar* reported in [2011 (1) SCC 343], wherein the Hon'ble Apex Court has held that 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 ('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.

*The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could never be considered to be the functional disability of the whole body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of



time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.

11.It is seen from the available materials that it is the case of the 1st respondent that at the time of accident he worked as Junior Line Man in A.P.S.P.D.C.L., Bangaru Palyam, Andhra Pradesh Southern Power Distribution Company Limited. As he has sustained laceration in right hand middle finger and middle phalynx open fracture in right ring finger, for the rest of his life, he is not able to do work with right hand as did before. Thus, from the judgments referred to above, the percentage of disability assessed by the Medical Board, Krishnagiri for the 1st respondent at 45% is modified as the 1st respondent suffered 15% loss of earning capacity. To prove the income, the 1st respondent produced the salary slip and marked the same as Ex.P7. The Tribunal after considering Ex.P7 / salary slip, fixed the monthly income of the 1st respondent at Rs.9,000/- as the authority who issued the salary slip was not examined and the same does not need any interference. As per Ex.P6 / discharge summary, the 1st respondent was aged 27 years at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court



reported in **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**, rightly fixed multiplier '17'.

Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.2,75,400/- [Rs.9,000/- X 12 X 17 X 15/100].

12.In other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	8,26,200/-	2,75,400/-	Reduced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Attendant charges	10,000/-	10,000/-	Confirmed
5.	Pain and sufferings	20,000/-	20,000/-	Confirmed
6.	Medical expenses	54,517/-	54,517/-	Confirmed
	Total	Rs.9,30,717/-	Rs.3,79,917/-	Reduced by Rs.5,50,800/-

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,30,717/- is hereby reduced to Rs.3,79,917/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is



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directed to deposit the modified award amount now determined 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.199 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by filing necessary cheque application before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.199 of 2017, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

16.06.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

R.KALAIMATHI, J.



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To

- 1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Hosur.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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