IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.245 of 2021
and
Civil Miscellaneous Petition No.1558 of 2021

M/s. National Insurance Company Ltd.,
Rep. by its Branch Manager,
Branch Office, Krishnagiri,
'Anuradha Complex', Bangalore Road,
Krishnagiri District, Tamil Nadu. ... Appellant / 2nd Respondent

Vs.

1. S. Hemanth Kumar ... Respondent / Claimant
[R1 set ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. Venkatesan ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2020 made in M.C.O.P.No.82 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Hosur.

For Appellant	:	Mr. J. Michael Visuvasam
For R1	:	Mr. M. P. Saravana
For R2	:	Served

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the second respondent-Insurance Company, challenging the Award passed in M.C.O.P.No.82 of 2019, dated 31.08.2020, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Hosur.

2. The matter was listed twice for hearing the learned counsel for the respondents but no one is appeared and hence, this Court is inclined to pass the Judgment.

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

4. The case of the claimant is that on 27.06.2017 at about 4.00 p.m., while the petitioner was riding the car namely, Renault KWID bearing Registration No.KA 51 MJ 2600 from Bagalur to Hosur Road, near Ever Green Way Bridge, at that time, a Tipper Lorry bearing Registration No.TN 24 AB 7096 came from opposite direction in rash and negligent manner, dashed against the car, which resulted in causing severe grievous injuries to the petitioner. Immediately, he was taken to Chandra Sekara Hospital,

Hosur and thereafter, he was shifted to Apollo Hospital, Bangalore for further treatment and after discharged from the Hospital, he filed Claim Petition, claiming compensation of Rs.20,00,000/- for the injuries sustained by him.

5. The first respondent therein is the owner of the Tipper lorry has not contested the case and was remained ex-parte. The second respondent-Insurance Company appeared and filed counter, contended that the driver of the Tipper lorry is not responsible for the accident and only the petitioner is responsible for the accident and hence, the Insurance Company is not liable to pay any compensation to the petitioner. Hence prays to dismiss the claim.

6. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P1 to P13 were marked. On the side of the second respondent no oral evidence adduced and the Medical Investigation Report was marked as Ex.R1. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

7. Based on the evidence placed on record, the Tribunal in point No.1, has held that the driver of the lorry is responsible for the accident. In

point No.2, the Tribunal has held that the petitioner is entitled to claim compensation. In Point No.3, the Tribunal has quantified compensation for a sum of Rs.14,31,589/- rounded of Rs.14,31,600/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

8. Aggrieved over the compensation awarded under the head disability by adopting multiplier method, this appeal has been filed by the Insurance Company.

9. The learned counsel for the Insurance Company has submitted that, the case of the claimant is that he was working in a Software Company and he had sustained only one fracture on the right femur, which was subsequently healed and the Medical Board has given an opinion that the injuries sustained by the petitioner which is not the functional disability and there is also no proper reasons given by the Medical Board regarding fixing of percentage. However, it is also recorded in the Discharge Summary that the the petitioner was having hip and knee stiffness on the right leg. Except these reasons, it is not a case of any functional disability, hence, the adoption of multiplier method by the Tribunal is not proper and prays to

award more compensation by calculating only percentage method.

10. I have considered the submissions and also perused the materials placed on record.

11. On perusal of Ex.P10-Discharge Summary, it shows that, admittedly, after the accident, the claimant was admitted into Hospital for treatment on 27.06.2017 at about 17.15 p.m., and on diagnosis, it was noted that he has sustained fracture on the right femur. This communited segmented fracture was treated by fixing nail on right femur and was discharged on 30.06.2017. Thereafter, he was once again admitted into the Hospital and taking treatment regarding his breathless and just discomfort. After 7 days of observation, he was discharged from the Hospital. As per the directions of the Tribunal, the claimant was sent to the Medical Board for assessing his disability. The Medical Board, after examination of the claimant has issued a Certificate, dated 26.11.2019, assessing the disability of the claimant as 60%. It is recorded in the Certificate that the claimant has suffered fracture on the neck of right femur, which is also resulted in hip and knee stiffness. Based on this report of medical record, the Tribunal in its award has held that fracture in the right femur of the petitioner would

definitely affect the avocation of the petitioner, as an employee of the private Company.

12. Admittedly, fracture on the femur was healed and he was fit to do his avocation. 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.
....

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 claims himself as Software Professionals and he has sustained only one communited fracture

on the right femur and subsequently, no evidence adduced to show that due to this injury, he was not able to continue his earlier avocation. Similarly, 60% of disability is not sustained on whole body and the injury sustained by the claimant should not be considered as a functional permanent disability and it is only a temporary permanent disability. Hence, this Court is of the view, that adopting multiplier method in this case is unwarranted and this Court fixes Rs.5,000/- per percentage of injury sustained by the claimant. Accordingly, the compensation awarded by the Tribunal under the head Disability is modified as follows: [5000 x 60% = 300000]. A sum of Rs.3,00,000/- is granted under the head 'Disability'.

14. It is also urged by the learned counsel for the Insurance Company that the compensation awarded under the head future medical expenses is also not necessary since, it is admitted evidence that the injury sustained by the claimant was healed and that he need not to undergo any future medical treatment, hence the same may also to be modified. Accordingly, the compensation awarded by the Tribunal under the head Future Medical Expenses has been rejected. As far as the compensation awarded by the Tribunal under other heads are concerned, this Court is of the view, that the same is just and reasonable and the same are hereby

confirmed.

15. Thus the compensation awarded by the Tribunal under various heads are modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	Rs.9,18,000/-	Rs.3,00,000/-	Reduced
2.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
3.	Extra nourishment	Rs.10,000/-	Rs.10,000	Confirmed
4	Transport and Hospital	Rs.10,000/-	Rs.10,000/-	Confirmed
5	Damages to Clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
6	Attender Charges	Rs.2,200/-	Rs.2,200/-	Confirmed
7	Medical Expenses	Rs.3,90,389/-	Rs.3,90,389/-	Confirmed
8	Future Medical Expenses	Rs.25,000/-	---	Rejected
9	Loss of income	Rs.15,000/-	Rs.15,000/-	Confirmed
10	Loss of Amenities	Rs.10,000/-	Rs.10,000/-	Confirmed
	Total Compensation	**Rs.14,31,589/- @ Rs.14,31,600/-**	**Rs.7,88,589/- @ Rs.7,88,600**	**Reduced by Rs.6,43,000/-**

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,31,600/- is hereby reduced to Rs.7,88,600/- [Rupees Seven Lakhs Eighty Eight Thousand and Six Hundred only] together with interest at the rate of 7.5%

per annum from the date of claim petition till the date of deposit. The Appellant/Insurance Company is directed to deposit the 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.82 of 2019, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. On such deposit, the claimant is entitled to withdraw the amount, now awarded 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 without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition stands closed.

09.10.2023

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

To:

1. The Additional Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Hosur.

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

K.RAJASEKAR,J.

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C.M.A.No.245 of 2021

09.10.2023