IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 3270 and 3548 of 2021
and C.M.P. No.18582 of 2021

(a). C.M.A. No.3270 of 2021

Reliance General Insurance Co. Ltd.,
T.P. Cell, No.6, Reliance House,
Haddow Road,
Nungambakkam,
Chennai - 600006. ... Appellant / 2nd Respondent

Vs.

1. Sathik Basha ... Respondent / Petitioner

2. A. Chandran ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 19.04.2021 made in M.C.O.P. No. 3733 of 2016 on the file of the III Judge (F.A.C.), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant	:	Mr. P. Suresh Srinivasan
For R1	:	Mr. C. Paraneedharan
For R2	:	No Appearance

(b). C.M.A. No. 3548 of 2021

Sathik Basha ... Appellant / Petitioner

Vs.

1. A. Chandran

2. Reliance General Insurance Co. Ltd.,
T.P. Cell, No.6, Reliance House,
Haddow Road,
Nungambakkam,
Chennai - 600006. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 19.04.2021 made in M.C.O.P. No. 3733 of 2016 on the file of the III Judge (F.A.C.), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant	:	Mr. C. Paraneedharan
For R1	:	No Appearance
For R2	:	Mr. P. Suresh Srinivasan

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JUDGMENT

These Civil Miscellaneous Appeals have been filed by the claimant and the insurance company against the Judgment and decree made in M.C.O.P. No. 3733 of 2016, dated 19.04.2021 on the file of the III Judge (F.A.C.), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, wherein the Tribunal has awarded compensation for a sum of Rs.16,02,600/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 08.04.2016, at about 19:15 hours, the claimant was riding a motorcycle bearing Registration No.TN-14-D-2367 on Thaiyur to Kelambakkam road, while he reached near Fish Market, Kancheepuram District, a Mahindra Tourister van bearing Registration No.TN-19-F-2401 driven by its driver in a rash and negligent manner, came in the opposite direction and hit on the motorcycle of the claimant and thereby causing grievous injuries. A criminal case was registered in Cr.No.150/2016 against the Van driver U/s.279, 337 of I.P.C. on the file of Kelambakkam Police Station Limit. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.35,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent, who is the owner of the Mahindra Tourister van bearing Registration No.TN-19-F-2401 has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the said van has filed a counter and contended that the accident was taken place only due to rash and negligence on the part of the claimant and disputed the age, occupation, income, injury sustained, disability sustained and medical expenses incurred by the claimant. The insurance company also further contended that the driver of the van has no valid driving licence at the time of accident and the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P.1 to P.18 and Ex.C.1 – Disability certificate were marked. On the side of the respondents, R.W.1 was examined and Exs.R.1 and R.2 were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the

Mahindra Tourister van bearing Registration No.TN-19-F-2401 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.16,02,600/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and directed the second respondent - insurance company to pay the compensation to the claimant and recover the same from the first respondent.

7. Aggrieved over the award, the claimant has filed an appeal seeking enhancement of compensation and the insurance company has filed an appeal challenging the liability fixed and quantum of compensation awarded by the Tribunal.

8. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidence placed on record regarding the employment and monthly earnings of the claimant and fixed Rs.10,000/- as notional monthly income and awarded compensation. The compensation awarded under heads are on the lower side, hence prays to enhance the monthly income of the claimant fixed by the Tribunal and

award just compensation under various other heads.

9. Per contra, the learned counsel appearing for the insurance company submitted that the compensation awarded under the various heads are on the higher side and more particularly, the Tribunal without any proper evidence to show that the claimant has sustained functional disability has adopted multiplier method and awarded compensation under the head disability. He further submitted that the driver of the offending van has no valid badge to drive the van at the time of accident, even though the Tribunal has accepted the same but ordered pay and recovery, hence prays to modify the award.

10. Heard the submissions made on both sides and perused the materials available on record:

11. On perusal of medical records Ex.P.8 – OPD case summary, Ex.P.9 – OP record and x-rays shows that the claimant has sustained grievous injuries such as: “Right Leg supra Condylar Comminuted Gr.-I fracture, Right Leg both bone Comminuted Gr.-I distal 1/3 fracture, Right

Leg Distal Femur Comminuted Gr.-I fracture, Severe crush injuries and muscle loss in Right Leg". Ex.P.2 - discharge summary issued by Stanley Medical College Hospital shows that the claimant was admitted on 09.04.2016 and undergone two surgeries on 11.05.2016 and 23.05.2016, Ex.P.5 - discharge summary issued by Stanley Medical College Hospital shows that he was again admitted on 10.07.2017 and undergone a surgery on 23.08.2017 and Ex.P.3 - discharge summary issued by Chettinad Hospital and Research Institute shows that he was admitted on 18.10.2016 and discharged on 05.11.2016. Ex.C.1 – Disability certificate issued by the Regional Medical Government Stanley Hospital shows that the claimant has sustained 48% permanent disability.

12. The medical records shows that the claimant has sustained grievous multiple fractures and crush injuries on the right leg and has undergone multiple surgeries, was inpatient for 125 days. The Tribunal after appreciating the disability assessed by the Medical Board has held that the claimant has sustained functional disability and further held that he could not continue his earlier avocation, hence adopted multiplier method for granting compensation under the head loss of earning capacity up to

50% due to his disability sustained. Before the Tribunal, the claimant claimed that he was a Driver by profession and his driving license was marked as Ex.P.12, however, has not adduced any evidence to prove his monthly income. The Tribunal considering the age and avocation of the claimant has fixed the notional income of Rs.10,000/- per month with future prospectus of 40% for assessing his loss of earning capacity and granted **Rs.13,44,000/-** (Rs.10,000/-X 40% X 12 X 16 X 50% disability).

13. 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.*

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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."

14. In this case, the facts shows that the claimant has sustained multiple fractures on his right leg femur and both bones and undergone multiple surgeries and took in-patient treatement for 125 days. Even though, it is not the case of amputation, the injuries in his leg shows that, he could not continue his earlier avocation as driver, hence this Curt finds no infirmity in awarding compensation under the head loss of earning capacity and this Court inclined to confirm the same.

15. The Tribunal has fixed notional income of Rs.10,000/- per month. The claimant contend that the same is not properly fixed. The Division Bench of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** has laid down guidelines for fixing the notional income of various categories of persons whose income has not been proved. Based on cost of index filed by CBDT, the notional income was permitted to be fixed, by following Apex Court judgment of ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459],*** held in paragraph nos.11, 12, 13 and 14 as follows:

> *"11. However, the Tribunal had accepted the views, principles and the method of income arrived by the Apex Court in Syed Sadiq Vs. United India Insurance*

Company, reported in 2014 (1) TNMAC 459 case. In the said case the Hon'ble Apex Court fixed the monthly notional income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. The Tribunal also took the same figure of Rs.6,500/- for the deceased who met with accident and died during the year 2014. However, the Tribunal failed to consider that the accident occurred during the year 2014 and other factors as mentioned below before fixing the monthly salary of the deceased.

(i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

(ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

(iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and

those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour.

"12. Therefore it is just and necessary to increase the notional income of Rs.6,500/- fixed by the Hon'ble Apex Court during the year 2008 corresponding to the cost of living, prices of the essentials and inflation. Hence to determine the notional income of the deceased who was working as a daily wager in "The Ark Chicken Mutton Corner" in the year 2014, we decided to apply the cost of inflation index as issued by the Central Board of Direct Tax (CBDT) for the purpose of determination of notional income of the deceased person.

13. The CBDT vide Notification No.370142 (E) (No.26/2008) (F.No.370/42/3/2008-TPL) dated 13.06.2008 specifies the cost of inflation index as mentioned in column No.3, for the financial year mentioned in the corresponding entry in column No.2 in the below said tabular column:-

S.No.	***Financial Year***	***Cost of Inflation Index***
1	*2001-2002*	*100*
2	*2002-2003*	*105*
3	*2003-2004*	*109*
4	*2004-2005*	*113*

S.No.	*Financial Year*	*Cost of Inflation Index*
5	*2005-2006*	*117*
6	*2006-2007*	*122*
7	*2007-2008*	*129*
8	*2008-2009*	*137*
9	*2009-2010*	*148*
10	*2010-2011*	*167*
11	*2011-2012*	*184*
12	*2012-2013*	*200*
13	*2013-2014*	*220*
14	*2014-2015*	*240*
15	*2015-2016*	*254*
16	*2016-2017*	*264*
17	*2017-2018*	*272*
18	*2018-2019*	*280*

14. As per the above said index, the cost of inflation index for the year as 2007-2008 is 129 and for the year 2013-2014 will be 220. Now we determine the notional income of the deceased in the manner stated below:-

The notional income fixed by the Hon'ble Supreme Court of India (i.e., Rs.6,500/-)	*X*	*Cost of Inflation Index for the vegetable vendor for the year 2013-2014*

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i.e., (Rs.6,500/- X 220)/ 129 = Rs.11,085/-(notional income of the deceased)"

16. Hence, this Court is inclined to modify the notional income fixed by the Tribunal based on the dictum laid down in the Hon'ble Apex

Court judgment cited supra and the same is assessed as Rs.13,302/-.

17. The Tribunal has rightly followed the dictum as laid down in ***Erudhaya Priya vs. State Express Transport Corporation Ltd.,*** reported in ***[2020 SSCR 299 : 2020 ACJ 2159]*** and fixed 40% as future prospectus and as per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '16'. The Ex.P.12 – driving license of the claimant, shows his date of birth as 05.06.1981, hence, he is aged about 35 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. Accordingly the compensation under the head loss of earning capacity with modified notional income of Rs.13,302/- is assessed as follows:

Annual income (Rs.13,302/- x 12)	= Rs.1,59,624/-
Future prospects @ 40%	= Rs.63,849.60
Yearly income of the claimant	= Rs.2,23,473.60
Applicable Multiplier	= 16
Total (Rs.2,23,473.60 x 16)	= Rs.35,75,577.60
Disability @ 50% (35,75,577.60 X 50%)	= Rs.17,87,788.80/-
	= Rs.17,87,789/- (round off)

18. Considering the period of treatment, age and nature of injuries sustained by the claimant, the Tribunal has awarded Rs.50,000/- each towards pain and suffering and loss of amenities, Rs.50,000/- towards extra nourishment and transportation, Rs.43,750/- towards attender charges. This Court is of the view that the Tribunal has awarded a just compensation for the above heads and the same are hereby confirmed.

19. In view of the discussions made, the grievances raised by the respondent - Insurance Company that adoption of multiplier method by the Tribunal and the quantum of compensation awarded under other heads is not sustainable and same is hereby rejected. The next contention of the insurance company is that the driver of the offending vehicle was not having a valid driving licence. Based on the evidence of R.W.1- RTO Official and Ex.R.2 – Driving license extract of the van driver, the Tribunal has rightly held that the driver of the offending van has no valid driving licence at the time of accident, however, the injured in this case is third party to policy, hence the Tribunal has follwed the principle of pay and recover, as per the law laid down by the Apex Court in ***National Insurance Company Vs. Swaran Singh and Others, [(2004) 3 SCC 297]***. This Court finds no

infirmity in the application of the principle of pay and recover. Accordingly, the appeal filed by the insurance company has no merits and liable to be dismissed.

20. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Pain and Sufferings	50,000/-	50,000/-	Confirmed
2.	Extra Nourishment and Transportation	50,000/-	50,000/-	Confirmed
3.	Medical bills	63,787/-	63,787/-	Confirmed
4.	Loss of amenities	50,000/-	50,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attender charges	43,750/-	43,750/-	Confirmed
7.	Loss of earning due to disability	13,44,000/-	17,87,789/-	Enhanced
	Total Compensation	16,02,537/- @ 16,02,600/-	**20,46,326/-**	Enhanced

21. In the result, the Civil Miscellaneous Appeal (C.M.A. No.3270

of 2021) filed by the insurance company is dismissed and the Civil Miscellaneous Appeal (C.M.A. No.3548 of 2021) filed by the claimant is partly allowed and the compensation awarded by the Tribunal at Rs.16,02,600/- is hereby enhanced to **Rs.20,46,326/- [Rupees Twenty Lakh Forty Six Thousand Three Hundred and Twenty Six only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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.3733 of 2016 on the file of the III Judge (FAC), Motor Accidents Claims Tribunal, III Court of Small Causes and recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the award amount now determined 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. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. Consequently connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

15.12.2023

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

To:

1. The III Judge (F.A.C),
   Motor Accident Claims Tribunal,
   III Court of Small Causes, Chennai.

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

K. RAJASEKAR, J.

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C.M.A. Nos. 3270 and 3548 of 2021

15.12.2023