IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.342 of 2020
and
C.M.P.No.2256 of 2020

National Insurance Company Ltd.,
Branch Office-II, Balaji Tower,
2nd Floor, 11, Ramakrishna Road,
Salem – 7. .. Appellant

Vs.

1.Sidhan

2.S.Nirmal Kumar

3.Kumaresan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2018 made in M.C.O.P.No.299 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri.

For Appellant	:	Mr.S.Vadivel
For R1	:	Mr.S.P.Yuaraj
For R2	:	No appearance
For R3	:	Left

J U D G M E N T

Challenging the liability as well as the quantum of compensation, the Insurance Company has preferred this Civil Miscellaneous Appeal against the Judgment and Decree dated 28.06.2018 made in M.C.O.P.No.299 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri.

2.The appellant herein is the 2nd respondent in M.C.O.P.No.299 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 27.03.2011.

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 car belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,20,000/- as compensation to the 1st respondent / claimant.

4.The learned counsel for the appellant/Insurance Company would contend that the Tribunal failed to take note of the fact that on the date of accident, the car belonging to 2nd respondent was not having valid registration and also the road tax was not paid for the relevant period and the appellant proved the same by examining R.W.1 & R.W.2 and by marking Exs.R1 & R2. He would further contend that the 1st respondent has taken treatment as inpatient in the hospital from 27.03.2011 and 30.03.2011 for four days and again from 25.06.2013 to 26.06.2013 for two days and the Tribunal ought not to have applied multiplier method for awarding compensation towards disability. The 1st respondent has not undergone any surgery and he was treated only conservatively and also he has not proved his avocation either as Agriculturist or as Milk Vendor and the monthly income fixed by the Tribunal at Rs.7,000/- is excessive. The Tribunal ought not have fixed the functional disability of the 1st respondent at 25% as the Medical Board has assessed that the 1st respondent has suffered only 25% physical disability. The amounts awarded by the Tribunal under other heads are excessive and prayed for setting aside the award of the Tribunal.

5.Per contra, the learned counsel appearing for the 1st respondent would contend that the Medical Board, Omalur Government Hospital, examined the 1st respondent and certified that the 1st respondent suffered 25% permanent disability and issued Ex.P12/disability certificate to that effect. He would further contend that at the time of accident, the 1st respondent was an Agriculturist and also doing Milk Vending business and earned a sum of Rs.7,000/- per month. The Tribunal considering the fact that due to the injuries sustained by the 1st respondent in the accident, he lost his earning capacity, adopted multiplier method and awarded compensation for loss of earning capacity. 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 his name is printed in the cause list, there is no representation for him, either in person or through counsel.

7.Heard Mr.S.Vadivel, learned counsel for the appellant as well as Mr.S.P.Yuaraj, learned counsel for 1st respondent and perused the materials on record.

8.From the materials on record, it is seen that it is the case of the appellant-Insurance Company that on the date of accident, the car belonging to 2nd respondent and insured with appellant was not having valid registration and also the road tax was not paid for the relevant period and hence, the appellant – Insurance Company is not liable to pay any compensation to the 1st respondent.

9.As far as the said contention of the appellant is concerned, a perusal of Exs.P4 & R3/copy of insurance policy of the car belonging to 2nd respondent, would show that the insurance policy for the car was issued on 06.12.2010 for the period of insurance from 06.12.2010 to 05.12.2011. The accident occurred on 27.03.2011. Therefore, it is clear that on the date of accident, the car belonging to 2nd respondent was having valid insurance policy. The main contention of the learned counsel for the appellant is that the car was registered on 05.01.1994 and the registration certificate of the car got expired on 04.01.2009 and on the date of accident, i.e., on 27.03.2011, the car was not having valid registration and hence, the appellant – Insurance Company is not liable to pay any compensation.

10.The appellant – Insurance Company while issuing insurance policy for a particular vehicle, has to verify the details of valid registration, payment of road tax. As on date of accident, Insurance Policy was in force, Insurer is bound by the terms of contract. Having entered into the contract of Insurance and issued the Insurance Policy, the Insurance Company is not permitted to turn around and state otherwise. The Tribunal considering the same, directed the Insurance Company to pay the compensation to the 1st respondent. The said finding of the Tribunal appears to be proper and acceptable and hence, needs no interference by this Court.

11.It is the further case of the appellant that the 1st respondent suffered only 25% physical disability and the Tribunal erroneously granted compensation for 25% loss of earning capacity by adopting multiplier method. The Tribunal ought not to have adopted multiplier method and granted compensation. From the materials available, it is seen that in the accident, the 1st respondent sustained L3 wedge compression fracture and multiple injuries all over the body. It could be seen from Exs.P9 & P10 that immediately after the accident, the 1st respondent was admitted at Vinayaka Mission Hospital, Salem, where he has taken treatment as inpatient from 27.03.2011 to

30.03.2011 and further he was admitted at Dharan Hospital, Salem, where he has taken inpatient treatment from 25.06.2013 to 26.06.2013. Further, the Medical Board, Omalur Government Hospital, examined the 1st respondent and certified that the 1st respondent suffered 25% permanent disability and mentioned in the disability certificate that "persistent pain in lower back, aggravated by lifting heavy weight and necessitating modification of all activities requiring heavy weight lifting". The Tribunal taking into consideration the nature of injuries sustained by the 1st respondent and the disability certificate issued by the Medical Board, has fixed the functional disability of 1st respondent at 25% and granted compensation for 25% loss of earning capacity by adopting multiplier method.

12.It is relevant to refer the following judgments under what circumstances in injury cases, multiplier method may be invoked for the purpose of granting compensation:

13.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.

13(i).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%.

14.In **Civil Appeal No.7223 of 2010**, **[Yadava Kumar Vs. The**

Divisional Manager, National Ins. Co. Ltd., and another], wherein the Hon'ble Apex Court held that in this case, the appellant has sustained a fracture of distal end of left radius with fracture of left ulnar styloid process and fracture distal end of right radius with mild diastosis and soft tissues swelling around wrist joint. The doctor has assessed the disability at 33% in respect of the right upper limb and 21% towards left upper limb and 20% in respect of the whole body, which prevents the appellant from painting in view of multiple injuries sustained by him.

14(i).The Hon'ble High Court while granting compensation refused to award any amount towards loss of future earning. Though that point was specifically urged before the Hon'ble High Court, the Hon'ble High Court refused any compensation towards loss of future earning by, inter alia, holding that: "We are of the view that, the said submission has no force for the reason that, the appellant has not produced an iota of document to substantiate his stand."

14(ii).While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome.

14(iii).It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a `just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of `just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable.

15.From a perusal of the observations of the Hon'ble Apex Court, if a person suffers from permanent disability either partial or total, after the period of treatment and recuperation and if it affects his performance to attend to his duties and bodily functions, depending upon the age, work or avocation and the impact and effect of the disability, etc., the Tribunal / Court is justified in invoking multiplier method while calculating compensation.

16.This Court is also conscious of the fact that the object of the fact namely ordering of just compensation. In the course of said exercise, the compensation should neither be bonanza nor should it be pittance (or) modicum.

17.The injured is stated to be an Agriculturist and doing Milk Vending Business has sustained L3 Wedge Compression Fracture and the Medical Board has fixed the disability as 25%.

18.It is also pertinent to note that as an Agriculturist, due to the post effects of the fracture, the injured would have difficulties in bending and lifting of objects and while doing the agricultural work. Therefore, one cannot deny the fact that the injured will not be in a position to do the work as he did before. Hence, adoption of multiplier method by the Tribunal appears to te proper and acceptable.

19.Further, the Tribunal has fixed the loss of earning capacity of the 1st respondent at 25% based on the disability certificate issued by the Medical Board, which appears to be on the higher side. Considering the disability suffered by the 1st respondent and nature of work done by him, it will be just and proper to fix the loss of earning capacity of the 1st respondent at 20%. The 1st respondent was aged 45 years at the time of accident and the multiplier '14' applied by the Tribunal is proper as per 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]***. The Tribunal considering the nature of work done by the 1st respondent, age of the 1st respondent and year of accident has fixed a sum of Rs.7,000/- per month as notional income of the 1st respondent and the same appears to be reasonable. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.2,35,200/- [Rs.7,000/- X 12 X 14 X 20/100].

20.Though the learned counsel for the appellant vehemently put for his case that the amounts awarded under pain and sufferings and transportation and other heads are on the higher side, the claimant being an Agriculturist, having suffered L3 Wedge Compression Fracture and multiple injuries all over the body, he would not have involved in the agricultural activities for a long period. Therefore, the amounts awarded under other heads appears to be reasonable and commensurate with the injuries sustained by the claimant and it needs no interference.

21.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	2,95,000/-	2,35,200/-	Reduced
2.	Medical expenses	25,000/-	25,000/-	Confirmed
3.	Pain and sufferings	50,000/-	50,000/-	Confirmed
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Extra nourishment	25,000/-	25,000/-	Confirmed
6.	Attendant charges	10,000/-	10,000/-	Confirmed
7.	Damages to clothes	5,000/-	5,000/-	Confirmed
	Total	**Rs.4,20,000/-**	**Rs.3,60,200/-**	**Reduced by Rs.59,800/-**

22.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,20,000/- is hereby reduced to Rs.3,60,200/- 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 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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.299 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri. 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 making 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.299 of 2011, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

19.06.2023

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

R.KALAIMATHI, J.

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankagiri.

2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.342 of 2020

19.06.2023