IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1130 of 2017

N. Khajamoideen ... Appellant

Vs.

1. J. Reginal Kulandai Thersa

2. The New India Assurance Co. Ltd.,
No.45, Moore Street, 5th Floor
Chennai-1 .... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 30.06.2008 passed in M.A.C.T.O.P. No. 4881 of 2002 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant	:	M/s. M. Malar
For R1	:	Ex-parte
For R2	:	Mr. R. Neethiperumal

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 4881 of 2002, dated 30.06.2008 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, wherein, the Tribunal has awarded compensation for a sum of Rs.2,25,303/- along with interest @ 12% p.a. from the date of filing of petition till the date of final payment.

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

3. The case of the claimant is that on 14.09.2002 at about 10:00 P.M, the claimant was riding his TVS 50 two wheeler, bearing Registration No. TN-07-P-4566 on the Dr.Natesan Road, Chennai. While he reached near Dr. Ambedkar bridge, a car bearing Registration No. TMQ-6869 driven by its driver belonging to the first respondent in rash and negligent manner, dashed against the two wheeler, which resulted in causing serious injuries to the claimant. After discharge from the hospital, the claimant has come forward to file a claim petition seeking compensation for a sum of Rs.6,00,000/-.

4. The first respondent is the owner of the car, has not contested the claim and was remained Ex-parte. The second respondent is the insurer of the offending vehicle filed counter and disputed the negligence on the part of the car driver and also taken the stand that the car driver does not have a valid driving licence. Further contended that the claim made under various heads are also on the higher side and prays to dismiss the same.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P20 were marked and on the side of the respondents, no witnesses were examined and no documents were marked.

6. Based on the evidences placed on record, the Tribunal in Point No.1, has held that the driver of the car owned by the first respondent is responsible for causing injuries to the claimant herein. In Point No.2, the Tribunal has held that there is no violation of policy condition, hence, the second respondent-insurance company is liable to pay the compensation. In Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.2,25,303/- along with interest @ 12% from the date of petition till the date of final payment.

7. Aggrieved over the quantum of compensation, the claimant has filed this appeal seeking enhancement of compensation.

8. The learned counsel for the claimant has submitted that the claimant has sustained grievous injuries and these injuries were considered by P.W.2 -Doctor, who assessed the disability as 75% but the Tribunal has fixed the disability as 60% and also not adopted multiplier method for fixing compensation. Hence, prays to enhance the compensation under the head loss of earning capacity. The learned counsel also contended that the compensation awarded under other heads also requires modification, since they are on the lower side.

9. The learned counsel for the Insurance Company submitted that the Tribunal after considering the evidence, including Disability Certificate, held that the injured has not sustained any functional permanent disability, which leads to reduction of earning capacity, accordingly, the compensation is awarded under various heads and prays to dismiss the appeal.

10. Upon hearing both sides and perusal of evidences placed on record, the only question to be decided in this appeal is whether the compensation awarded to the claimant herein is just reasonable or not.

11. The claimant has examined P.W.2- Dr. Saichandran, who stated that, he assessed the disability after taking x-ray and examining the injured and connecting records. He assessed that the claimant has sustained partial permanent disability of 75%. Even though, the injuries sustained by the claimant has reduced his regular activities, the disability has not been treated as functional permanent disability. The Tribunal based on the evidences placed on record assessed the disability of the claimant as 60% and treated the disability as partial permanent disability and awarded Rs.1,000/- per percentage of injury.

12. The claimant, claims himself as a business man, earning income of Rs.6,000/- per month. However, no documents relating to his income was produced before the Tribunal, hence the Tribunal has fixed notionally the income of the claimant as Rs.4,000/- per month and also held that the income of the claimant could not be fixed based on business income as stated by the claimant. Admittedly, the claimant is not a manual worker and he claims himself as a business man running a shop in the name of "Alla Home Appliances" and manufacturing steel rakes. Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***, has laid down guidelines for granting compensation for injury cases and in paragraphs 8,10 and 13, has observed 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).

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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."

13. The claimant has sustained the following injuries: *"fracture in right humerus, right ulna, pelvic bone, dislocation of right shoulder bone and damage to the bowel system"*. Discharge summaries and other exhibits shows that, the injuries sustained by the claimant are healed. But, the injuries sustained by the claimant are multiple fractures in hand, leg, pelvic and shoulder and would have reduced his regular physical activities. Further, his avocation is related to manufacturing activities and it requires good physique and physical health. By considering the nature of injuries sustained by the claimant, I am of the view that the injury sustained by him had resulted in loss of his earning capacity. However, considering the nature of avocation, the loss of earning capacity is fixed to the extent of 20%. Accordingly, this Court is inclined to follow the multiplier method for granting compensation for the above 20% loss of earning capacity. The age of the deceased is 32 years at the time of accident applicable multiplier is '16'. This Court confirms the notional income of Rs.4,000/- per month fixed by the Tribunal and by adopting multiplier method, the loss of earning capacity of the claimant fixed as Rs.1,53,600/- [4000 X 12 X 16 X 20%].

14. Considering the judgments of the Hon'ble Apex Court in ***Jagdish vs. Mohan and Others [(2018) 4 SCC 571]*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 SSCR 299 : 2020 ACJ 2159]***, this Court is of the view that the claimant is entitled to 40% of compensation fixed under loss of earning capacity, as future prospectus and the same is assessed as Rs.61,440/-. Since, this Court has granted compensation under the head loss of earning capacity, Rs.24,000/- awarded under the head loss of income during the treatment period is hereby cancelled. The compensation awarded by the Tribunal under various other heads are just and proper and reasonable and the same requires no modification.

15. Thus the compensation awarded 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 granted
1.	Loss of income for 6 months	24,000/-	---	cancelled
2.	Transportation	5,000/-	5,000/-	confirmed
3.	Extra Nourishment	5,000/-	5,000/-	confirmed
4.	Damages to cloth & articles	1,000/-	1,000/-	confirmed
5.	Medical expenses	49,303/-	49,303/-	confirmed
6.	Other expenses	1,000/-	1,000/-	confirmed
7.	Permanent Disability /Loss of earning capacity	60,000/-	1,53,600/-	Enhanced
8.	Pain and sufferings	60,000/-	60,000/-	confirmed
9.	Loss of amenities	10,000/-	10,000/-	confirmed
10.	Loss of expectation of life	10,000/-	10,000/-	confirmed
11.	Future prospectus	---	61,440/-	Granted
	Total	**2,25,303/-**	**3,56,343/-**	**Enhanced**

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,303/- is hereby enhanced to **Rs.3,56,343/- [Rupees Three Lakhs Fifty Six Thousand Three Hundred and Forty Three only]** together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent - 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.4881 of 2002 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. 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 without any formal application. Since this Court has enhanced the compensation, the appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant is not entitled to any interest for the delay period as per the order of this Court, dated 16.03.2017 made in C.M.P.No.11133 of 2016 in C.M.A.SR.No.49974 of 2011. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs.

20.09.2023

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

To:

1. The III Judge,
   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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