THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.718 of 2020
and
C.M.P.No.4386 of 2020

M/s.National Insurance Company Ltd.,
'Anuradha Complex', III Floor,
Bangalore Road,
Krishnagiri – 635 001. ... Appellant

Vs.

1.B.Nandha Kumar (Died)
2.V.Ashokan
3.Murugan
4.Sudha

5.Minor N.Kevin
[rep. by the mother/Natural guardianship Sudha]

6.Eswari
7.Balakrishnan
[Respondents 4 to 7 brought on record as LRs
of the deceased R1 vide order dt. 06.06.2023 made in
C.M.P.Nos.236, 238 & 242 of 2022 in C.M.A.No.718 of 2020]
... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 28th March, 2019, passed in M.C.O.P.No.85 of 2018 by the Motor Accidents Claims Tribunal, (In the Court of Special Sub Judge), at Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Died (steps taken) [R1]
No appearance [R2 & R3]
Mr.M.Sivakumar [R4 to R7]

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JUDGEMENT

The Insurance Company has filed this appeal challenging the adoption of multiplier method by the Motor Accidents Claims Tribunal, (In the Court of Special Sub Judge), at Krishnagiri in M.C.O.P.No.85 of 2018 for calculating the loss of earning due to disability especially when disability has no impact on the earning capacity of the claimant.

2. On 22.07.2017, the claimant proceeded in a Yamaka Crus two wheeler bearing Regn.No.TN-24-5807 slowly, cautiously with following all the rules of the road with sounding horn in extreme left side mud portion of the road in Kaveripattinam to Dharmapuri N.H. Road to go to his house. At about 18.00 hours, while the claimant proceeded near HP Petrol Bunk at Mill Medu in Kaveripattinam to Dharmapuri Road, at that time a TATA

Ace bearing Regn.No.TN-24-E-8488 belonging to the first respondent and insured with the second respondent proceeded in front of the claimant's two wheeler and the driver of the said vehicle drove the same in a rash and negligent manner, without following any rules of the road with high speed without any proper signal and without applying indicator and due to the sudden act of the driver of the TATA Ace, the claimant's vehicle dashed on the back side of the TATA Ace and the accident took place. Due to the said accident, the claimant sustained fractures and various injuries. Immediately, he was taken to Government Hospital, Kaveripattinam and then Government Hospital, Krishnagiri and then taken treatment at Dharmapuri Government Hospital and then taken treatment at Maruthi Hospital, Krishnagiri. Thereafter, the claimant filed a claim petition claiming a total compensation of a sum of Rs.15,00,000/- for the injuries sustained by him in the road accident.

3. Before the Tribunal, the claimant had examined himself as P.W.1 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the respondents, they have examined one witness viz., R.W.1 and marked one document viz., Ex.R.1. The Tribunal had marked the disability certificate as

Ex.C.1. After adjudication, the Tribunal awarded a sum of Rs.11,76,000/- with an interest of 9% p.a., directing the third respondent to pay the said compensation and then recover from the first respondent. Aggrieved by the same, the insurance company had filed the present appeal.

4. The learned counsel appearing for the appellant/Insurance Company submitted that, though the Medical Board has assessed the disability of the claimant at 30%, however, the Tribunal on its own arrived at a conclusion that the claimant has suffered functional disability of 50% and by applying multiplier method, the Tribunal had awarded a sum of Rs.10,08,000/- towards loss of earning power, which is highly excessive and the same requires interference. Further, he submitted that without following the rules of the road, the claimant had dashed agianst the rear side of the offending vehicle, however, the Tribunal without fastening any contributory negligence on the claimant, had fastened the entire negligence on the driver of the offending vehicle, which is wholly unsustainable. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing for the respondents 4 to

7 submitted that, during the pendency of the appeal, the claimant had passed away, thereby the legal heirs of the claimant were impleaded as respondents 4 to 7. He further submitted that, taking into consideration all the relevant documents, the Tribunal had rightly fixed the negligence on the part of the driver of the offending vehicle, which cannot be interfered with. Further, he submitted that, by applying the ratio laid down by the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, the Tribunal had awarded compensation by adopting multiplier method by fixing 50% functional disability, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the respondents 4 to 7 and also perused the materials available on record.

7. There is no quarrel that the claimant had suffered the injuries as a result of the accident, in which the second respondent's vehicle was involved, which has been insured with the appellant/insurance company. The Tribunal, considering the materials placed before it has rightly come to

the conclusion that it was due to the rash and negligent driving of the driver of the second respondent's vehicle, the accident had happened and therefore, it is the duty of the insurance company as insurer of the offending vehicle to compensate the legal heirs of the claimant. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.

8. Now, the only grievance of the appellant is with regard to adoption of multiplier method for the disability suffered by the claimant. Ex.C.1 is the disability certificate issued by the medical board at Government Head Quarters Hospital, Krishnagiri, in which, the medical board assessed the disability at 30% partial permanent disability. However, the Tribunal on its own held that the claimant has suffered partial functional disability of 50% and awarded compensation by awarding multiplier method. In this regard, it is relevant to extract paragraph No.10 of the judgment passed by the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343*** :-

> *"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."*

9. A perusal of the above reveals that, the Tribunal has power to fix functional disability based on the oral evidence placed before it. However, in order to ascertain the functional disability the claimant not examined any expert either from the medical board or any independent doctor. Without any expert opinion, the Tribunal had arrived at a conclusion that the claimant had suffered functional disability and adopted multiplier method, which is wholly unsustainable and hence, the same is liable to be interfered with. Therefore, taking a sum of Rs.5,000/- per percentage of disability and fixing the disability sustained by the claimant at 50%, the loss of earning power is reassessed on percentage basis i.e., Rs.5,000/- x 50 = Rs.2,25,000/- and, accordingly, loss of earning power is reduced from Rs.10,08,000/- to a sum of Rs.2,25,000/-.

10. Further, this Court is of the view that the compensation awarded by the Tribunal under the other heads, viz., medical expenses, transport and nutrition, attender charges, pain and sufferings, loss of amenities and

enjoyment of life and damages to clothing and articles are just and reasonable and the same are confirmed.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	***Description***	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
1	Loss of Earning Power	**10,08,000/-**	**2,25,000/- (reduced)**
2	Medical Expenses	47,000/-	47,000/-
3	Transport and Nutrition, attender charges	20,000/-	20,000/-
4	Pain and Sufferings	50,000/-	50,000/-
5	Loss of Amenities and Enjoyment of life	50,000/-	50,000/-
6	Damages to clothing and articles	1,000/-	1,000/-
	Total	**11,76,000/-**	**3,93,000/-**

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed in the aforesaid terms and the impugned award of the Tribunal is modified, reducing the compensation amount from **Rs.11,76,000/-** to **Rs.3,93,000/-**. The appellant/Insurance Company is directed to deposit the modified award

amount to the credit of M.C.O.P.No.85 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. From the above modified award amount, the fourth respondent is entitled to a sum of Rs.2,00,000/-, the fifth respondent is entitled to a sum of Rs.1,00,000/-, the sixth respondent is entitled to a sum of Rs.50,000/- and the seventh respondent is entitled to a sum of Rs.43,000/-. On such deposit being made, the Tribunal is directed to transfer the amount as apportioned above, directly to the bank account of the respondents 4 to 7 through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

12.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal,
(In the Court of Special Sub Judge),
Krishnagiri.

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

M.DHANDAPANI, J.,

sp

C.M.A.No.718 of 2020

12.12.2023