



C.M.A.No.1407 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1407 of 2019
and C.M.P.No.3955 of 2019

The Branch Manager
National Insurance Company Limited,
Branch Office-1,
No.33, Promenade Road,
Cantonment, Trichy-1

... Appellant/2nd Respondent

Vs

1.Sureshkumar

... Respondent/Petitioner

2.Sri.Sakthi Bus Service Firm,
No.IC-35, 11th A Cross,
Thillainagar, Trichy-18

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgment and Decree passed in M.A.C.T.O.P.No.503 of 2013 dated 28.02.2014 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.



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For Appellant
For Respondent

... M/s.N.B.Surekha
... Notice Appearance [R1]
... Notice not in ready [R2]

JUDGMENT

Aggrieved by the impugned award dated 28.02.2014 passed by the Motor Accident Claims Tribunal, Principal District Court, Perambalur in M.A.C.T.O.P.No.503 of 2013, the Appellant/Insurance Company has filed the present Appeal questioning the quantum of compensation fixed by the Tribunal.

2. On.28.06.2013, at about 8 p.m, when the claimant was riding his Two Wheeler bearing Reg.No.T.N.45-AY-9871, the bus bearing Reg.No.T.N.45-AU-08378 belonging to the 2nd respondent driven by its driver in a rash and negligent manner which was coming in the opposite direction dashed against the claimant due to which, the claimant sustained multiple grievous injuries all over his body resulting in fracture of bone in right leg and right hand. Since the claimant was not able to do the regular work after



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suffering the injuries, the claimant claimed a sum of Rs.10,00,000/- under various heads.

3. Before the Tribunal, the claimant examined himself as P.W.1, examined one Karthikeyan as P.W.2 and examined the Doctor as P.W.3 and marked Ex.P.1 to Ex.P.17. No witnesses were examined nor any documents were marked on the side of the respondents. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.8,67,509/- in the claim petition. Aggrieved by the said award, the Appellant/Insurance Company has filed the present appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that the compensation awarded by the Tribunal towards loss of earning capacity and disability is highly excessive and so also the compensation awarded under the other heads, which requires reconsideration. Accordingly, he prayed for allowing this Appeal.



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5. Though notice was served on the 1st respondent and his name printed in the causelist, none appeared on behalf of the 1st Respondent today. Considering the pendency of the Appeal which is of the year 2019, this Court is inclined to dispose of the same based on the materials available on record.

6. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the Appellant is with regard to the quantum of compensation fixed by the Tribunal. In the impugned award, the Tribunal had fixed the notional income at Rs.4000/- and has awarded a sum of Rs.4,60,800/- (Rs.4000/- * 12= Rs. 48,000/- * 60% * 16) under the head Loss of earning capacity by adopting multiplier method by fixing the disability at 60%.

7. The main argument advanced by the learned counsel appearing for the appellant is with regard to the adoption of multiplier method and in this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, which lays



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down the steps to ascertain the effect of the partial permanent disability suffered by the claimant on his earning capacity. The relevant portion is extracted hereunder:-

“ 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 disability (this is also relevant for awarding compensation under the head 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



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head of 'loss of future earnings', if the claimant continues in Government service, through 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."

In the aforesaid decision, to arrive at the percentage of disability and also usage of multiplier method, the Apex Court had pointed out three steps, which required to be fulfilled so that multiplier method could be adopted. The steps culled out in the aforesaid decision clearly stands attracted to the present case on hand. Though the Tribunal had adopted multiplier method, however, the steps, which have been laid down to give such a finding have not been properly considered by the Tribunal. The Tribunal ought to have found out in what manner, the disability suffered by the claimant would affect his



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earning capacity. In order to ascertain the nature of employment of the claimant, this Court had perused the evidence of P.W.2 namely Karthikeyan, who was working as an accountant in Tribo Technical Engineering Works at Mathur. In this regard, this Court had perused Ex. P-13, the copy of summons issued to P.W.2 and Ex.P-14, the employment certificate issued to the claimant by the technical engineering authorized signatory stating that the claimant was employed as a supervisor in his company. On perusal of Ex.P-13 & Ex.P-14, it is evident that the claimant was working in the supervisory capacity in the said company.

8. In the present case, Ex.P-14, the employment certificate which has been issued by the Authorized signatory of the Engineering Department certifies that the claimant was working in a supervisory capacity in the Company. There is no material placed by the claimant either before the Tribunal or before this Court to establish that the injuries suffered by the claimant would have a bearing on the earning capacity. Merely because the claimant has suffered fracture and the percentage of the said disability is



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around 66% it cannot be the basis to compute the loss of earning by adopting multiplier method. The disablement should be such an extent that the claimant would be denied the normal earning, which he would otherwise have earned. Such is not the case in the present case on hand, as the claimant having worked only in a supervisory capacity, the injuries sustained by him would not have a lasting impact on the earning capacity of the claimant. However, the said fact has not been properly appreciated by the Tribunal and the Tribunal has erroneously adopted the multiplier method which cannot be sustained. Hence, no compensation can be awarded by adopting multiplier method under the head loss of earning.

9. However, Rs.2,000/- has been fixed per percentage of disability while computing the compensation under the head disability. Considering the nature of injuries suffered by the claimant, the Tribunal has fixed the disability at 60% on the basis of the disability certificate viz., Ex-P16 issued by P.W.3 and has awarded a sum of Rs.1,20,000/- by fixing a sum of Rs.2000/- per percentage which is on the lower side. Therefore, this Court is inclined to fix a



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sum of Rs.4,000/- per percentage of disability and accordingly, the amount under the head compensation towards disability stands enhanced to a sum of Rs.2,40,000/- (60 x Rs.4,000/- = Rs.2,40,000/-) and to that extent the compensation awarded under the said head stands modified.

10. Further, the Tribunal has awarded a sum of Rs.20,000/- towards Pain and suffering Rs.2,26,709/- towards Medical expenses; Rs.10,000/- towards Transport charges; Rs.10,000/- towards Loss of comforts; Rs.5,000/- towards Nutrition and Rs.10,000 towards Loss of amenities. This Courts finds that the compensation awarded under above heads are just and reasonable which does not require any interference.

11. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-



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S.No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Partial permanent disability	Rs.1,20,000/- (60 * Rs.2,000/-)	Rs.2,40,000/- (60 * Rs.4,000/-) (enhanced)
2.	Loss of earning capacity	Rs.4,60,800/-	-
3.	Pain and suffering	Rs.20,000/-	Rs.20,000/-
3.	Medical expenses	Rs.2,26,709/-	Rs.2,26,709/-
4.	Transport charges	Rs.10,000/-	Rs.10,000/-
5.	Loss of comforts	Rs.10,000/-	Rs.10,000/-
6.	Nutrition	Rs.5,000/-	Rs.5,000/-
7.	Loss of amenities	Rs.10,000/-	Rs.10,000/-
8.	Attendant charges	Rs.5,000/-	Rs.5,000/-
	TOTAL	Rs.8,67,709/-	Rs.5,26,709/-

12. Accordingly, the appeal is allowed and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.8,67,709/-** to **Rs.5,26,709/-**. The Appellant-Insurance Company is directed to deposit the reduced amount to the credit of M.C.O.P.No.503 of 2013 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 six (6) weeks from the date of receipt of a copy



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of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the 1st Respondent/claimant through RTGS within a period of two weeks thereafter. The 1st Respondent/claimant is directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the 1st Respondent/claimant. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

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

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To

1.The Motor Accident Claims Tribunal
Principal District Court,
Perambalur.

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

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