IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1916 of 2021
and C.M.P. No.10376 of 2021

Oriental Insurance Company Limited,
Dheen Plaza, State Bank Road,
Mayiladuthurai ... Appellant / 2nd Respondent

Vs.

1. Chandrakumar (Died) ... 1st Respondent/ Petitioner
2. Rameshkumar ... 2nd Respondent/ 1st Respondent
3. C. Rathika
4. Minor Rakshitha
5. Thaiyalnayaki … LRs of the 1st Respondent

(Respondent -1 died, Respondents 3 to 5 brought on record as LR's of the deceased R1 viz., Chandrakumar vide Court Order dated 31.01.2023 made in C.M.P. No.13952 of 2022 in C.M.A.No.1916 of 2021.)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 17.08.2017 passed in M.C.O.P. No. 96 of 2014 on the file of the Additional Sub Judge, Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai.

For Appellant	:	Mr. K. Vinod
For R1	:	Died
For R2	:	Served - No Appearance

For RR 3 to 5 : Mr. M. Lokesh

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and Decree passed in M.C.O.P. No. 96 of 2014, dated 17.08.2017 on the file of the Additional Sub Judge, Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai.

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

3. On 26.08.2012 at about 7:00 PM, the claimant was riding a Bajaj CT 100 two wheeler on the Thirunandriyur to Vaitheswaran Kovil main road from South to North direction, while he reached near Sandai velli Kaliyaperumal house, a Tavera car bearing Registration No.TN-50-W-4251 came from the opposite direction, driven by its driver in rash and negligent manner, hit against the two wheeler of the claimant, thereby causing grievous injuries to the claimant. A criminal case was also registered against the driver of the car in Cr.No.269 of 2012 under section 279, 337 and 338 of I.P.C on the file of the Vaitheswaran Kovil Police Station.

Subsequent to his treatment, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166 of Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the Tavera car bearing Registration No.TN-50-W-4251 has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the car has filed a counter and contended that the accident was taken place due to the negligence on the part of the claimant and also disputed the age, occupation, income and disability of the claimant. The insurance company also stated that the driver of the car has no valid driving licence at the time of occurrence and the compensation claimed under various heads is on the higher side, hence prayed to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.10 were marked. On the side of the respondent, no witnesses were examined and no exhibits 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 first respondent's car bearing Registration No.TN-50-W-4251 is responsible for the accident. In point No.2, the Tribunal has quantified and granted compensation for a sum of Rs.8,46,850/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point No.3, the Tribunal has fixed the liability on the second respondent – insurance company to indemnify the first respondent and to pay the compensation to the claimant.

7. Aggrieved over the award, the insurance company has filed this appeal challenging the quantum of compensation awarded by the Tribunal.

8. The learned counsel appearing for the insurance company submitted that the Tribunal has treated the case of the injured as functional permanent disability and awarded compensation under the head loss of earning capacity without any evidence, which is not warranted. He further contended that the first claimant was died subsequent to filing of this appeal, hence the compensation awarded under the head pain and suffering, extra

nourishment are not applicable, hence prays to modify the award.

9. Per contra, the learned counsel appearing for the claimants submitted that the first claimant has sustained grievous injuries at the time of accident and after filing of this appeal, he died due to the nature of injuries sustained by him in the occurrence, hence the Tribunal has rightly awarded compensation based on the multiplier method under the head loss of income.

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

11. In this case, to prove the disability, the claimant subjected himself before the Medical Board examination and the Medical Board has also assessed his disability as 60%, which is marked in Ex.P.10. The Ex.P.3 to P.5 are the medical records, which shows that the claimant has sustained fracture on his Right leg femur and also below the knee of the right leg, which is a crushed injury and he has undergone treatment for the same at Tiruvarur Medical College and Hospital. The Ex.P.10 also shows that even

at the time of his examination before the Medical Board for assessing his disability, the claimant was limping and struggling to walk freely. Moreover, the evidence of P.W.2 shows that the claimant was driver by profession and there is no dispute regarding his profession and there is also ample evidence to show due to his injuries, he could not continued his earlier avocation, hence the driver, who suffered multiple fracture on the right leg had incapacitated from doing his avocation. By the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]*** has given guidelines as well as illustration for fixing 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.*

....

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."

12. This Court is of the view that it is a fit case to treat the disability sustained by the claimant as a functional permanent disability, which results in loss of his earning capacity. The Tribunal has rightly accepted the percentage of disability of the claimant as 60%, which was assessed by the Medical Board and awarded compensation of Rs.7,77,600/- under the head loss of earning capacity. This Court finds no infirmity in the award of the Tribunal and hereby confirms the same.

13. It is reported that the claimant was died due to the injuries sustained by him, however, there is no evidence to show that he was died

only due to the injuries sustained by him at the time of accident and it is also submitted by the learned counsel appearing for the claimants, that the compensation awarded under the head pain and suffering and extra nourishment may be cancelled and this Court is inclined to accept the said submission and however, as per the judgment of the Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation Ltd.,*** reported in ***[2020 SSCR 299 : 2020 ACJ 2159]*** and ***Jagdish vs. Mohan and others [(2018) 4 SCC 571],*** the claimants are entitled for future prospectus, which was not awarded by the Tribunal, hence considering the age of the deceased claimant, who was 23 years at the time of occurrence and following the dictum laid in the judgments cited supra, 40% future prospectus on the loss of income due to disability is awarded and the same is assessed as follows:

Future prospectus @ (40% of 7,77,600/-) = Rs.3,11,040/-

14. Even though, the claimants have not come forward to file any appeal for enhancement, and the insurance company herein has challenged the quantum of compensation, this Court is entitled to consider, whether the Tribunal has awarded 'Just compensation' to the claimants herein or not. Hon'ble Apex Court in ***Anjali and Ors. Vs. Lokendra Rathod and Ors.***

[2023 (1) TNMAC 1 : 2023 ACJ 637] has illustrated 'just and fair' compensation in paragraph 10, which reads as follows:

> *"10. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. MANU/SC/0606/2009 : (2009) 6 SCC 121, this Court has laid down as under:*
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> > *16...."Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

15. 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.	Loss of income	7,77,600/-	7,77,600/-	Confirmed

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Pain and sufferings	50,000/-	---	Cancelled
3.	Extra nourishments	10,000/-	---	Cancelled
4.	Transportation Charges	5,000/-	5,000/-	Confirmed
5.	Medical expenses	4,250/-	4,250/-	Confirmed
9.	Future prospectus @ 40%	---	3,11,040/-	Granted
	Compensation Awarded	8,46,850/-	**10,97,890/-**	**Enhanced**

16. In the result, this Civil Miscellaneous Appeal is disposed of and the compensation of Rs.8,46,850/- awarded by the Tribunal is hereby enhanced to Rs.**10,97,890/- [Rupees Ten Lakhs Ninety Seven Thousand Eight Hundred and Ninety 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. The appellant -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.96 of 2014 on the file of the Additional Sub Judge, Motor Accidents Claims Tribunal, Mayiladuthurai. On such deposit, the claimants, who are the wife, daughter

and mother of the deceased Chandrakumar are permitted to withdraw the award amount as per the apportionment of 60%, 30% and 10% respectively, 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 Accounts of the claimants. Since this Court has enhanced the compensation, the claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation, before the Tribunal. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

22.12.2023

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

To:

1. The Additional Sub Judge,
   Motor Accident Claims Tribunal (Additional Sub Court)
   Mayiladuthurai.

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

K. RAJASEKAR, J.

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C.M.A. No. 1916 of 2021

22.12.2023