



C.M.A.No.1859 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No. 1859 of 2014

The Branch Office,
United India Insurance Co.Ltd.,
12-A, Kovai Road,
PLA Building, II Floor,
Karur.

Appellant/Respondent - III

Versus

1. Prabaharan
2. S.Dhavamani
3. V.Rangasamy

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 31.10.2012 passed in M.C.O.P.No.15 of 2011 on the file of the II Additional District & Sessions Court at Tiruppur District.

For appellant : Mr.J.Chandran

For respondents : Mr.Ma. P.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company
challenging the quantum of compensation awarded to the claimants in



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M.C.O.P.No.15 of 2011 on the file of Motor Accident Claims Tribunal (II Additional District Court) Tiruppur, (for short "the Tribunal") *vide* award dated 31.10.2012.

2. For the sake of convenience and clarity, the parties herein are referred to as per their rank before the Tribunal:

3. The case of the claimant is as follows:

3.1 The claimant was riding a two wheeler bearing Reg. No.TN-37-A-5414, on 12.12.2010 at about 11.30 a.m. on the Avinasi to Sevur Road. When he reached near Solai Selvam Saloon, a lorry bearing Registration No. TN-28-H-4134 came in the opposite direction in a rash and negligent manner and hit on the two wheeler causing severe injuries to him. For the injuries sustained by him, he filed a claim petition seeking a compensation of Rs.7,00,000/-.

3.2 The 1st respondent herein has not contested the claim petition before the tribunal and remained *ex parte*. The 2nd respondent, the Insurance Company filed a counter affidavit and contented that there was no valid fitness



certificate for the lorry; the accident occurred due to the negligent driving of the claimant and no serious injuries were caused to him and the amount of compensation claimed is also on the higher side. In short, the 2nd respondent Insurance Company opposed for award of compensation, as claimed by the claimant.

3.3 Before the Tribunal, on the side of the claimant, three witnesses were examined and eight exhibits were marked. On the side of the respondent Insurance Company, one witness was examined and eight documents were marked.

3.4 Based on the evidence placed on record, the Tribunal, on the aspect of negligence and liability, held as under:

- (i) The occurrence has taken place due to the rash and negligent driving of the lorry driver;
- (ii) The 1st and the 2nd respondents are liable to pay the compensation.

3.5 As for compensation, the Tribunal held that the claimant is entitled to receive a sum of Rs.5,02,500/- as compensation along with interest at the rate of 7.5%.



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3.6 Aggrieved by the quantum of compensation awarded by the Tribunal, the Insurance Company has filed this appeal.

4. Mr.J.Chandran, learned counsel appearing on behalf of the Insurance Company submitted that the Tribunal has adopted multiplier method while awarding the compensation for the injuries which resulted in non-functional permanent disability and the compensation awarded is also on the higher side and prayed to modify the award and to award just compensation proportionate to the injuries sustained by the claimant.

5. *Per contra*, Mr. P. Thangavel, learned counsel appearing for the claimant submitted that the injuries sustained by the claimant have resulted in occupational disability; hence, by considering the same, the Tribunal has fixed the loss of earning capacity and has rightly adopted the multiplier method to award compensation; and hence, the award of the Tribunal deserves no interference.

6. Heard the learned counsel appearing on both sides and perused the materials placed on record.



7. Before the Tribunal, the claimant marked Ex.P.3 (Wound certificate) and Ex.P.4 (discharge summary). In Ex.P3 (Wound certificate) issued by Ganga Medical Centre and Hospital (P) Ltd., Coimbatore, it is stated that the claimant has sustained the following injuries:

" 1. Left Knee Ap/Lat: Lateral Tibial Condyle Fracture.

2.Right Leg Ap/Lat:Lateral Tibial Condyle Fracture."

In Ex.P4, discharge summary, the hospital has recorded the very same injuries and treatment was given accordingly. In the said exhibit, considerations has been stated as follows:

Treatment Consideration:

In view of displaced fracture of lateral tibial plateau , it has been planned for closed reduction and cancellous screw fixation left tibial condyle to achieve and maintain anatomical reduction. However the risks of infection, knee stiffness, knee instability have been explained to the patient.

The proof of the discharge summary of the claimant have also been examined.

8. Dr.Dhanasekar, (PW3), Orthopedic Surgeon, has assessed the disability based on the injuries sustained by the claimant and certified that the injuries sustained are partial permanent disability to an extent of 37%. He has also stated that due to the injuries on the left knee, the movement of knee joint has been restricted to 0 to 80 degree and the height of the left leg also has been reduced by 2 cms. Further, he has also listed the various complications relating



to fracture injuries.

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9. Even though in wound certificate (Ex.P3) and discharge summary (Ex.P4), it has been noted that the claimant has suffered injuries in his right leg, there is no treatment done on the right leg. Similarly, Dr. Dhanasekar (P.W.3) who assessed the disability only spoke about the injury on the left leg, which shows that the claimant has sustained injuries only in his left leg, this injury has been healed with the following complications. The Tribunal, based on the above evidence, has fixed the disability as 35% and adopted the multiplier method to arrive at the compensation.

10. The Hon'ble Apex Court, in *Rajkumar vs Ajay Kumar and Another*, SCC (2007),pgs.343 -356, has given guidelines for assessing the loss of future earning capacity and the same are usefully extracted below:

"19.(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 is not the same as the percentage of permanent disability

(except in a few cases, where the Tribunal on the basis of



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evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who teated an injured claimant of who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent or 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 percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earning is explained below with reference to the following illustrations:

Illustration A. - *The injured, a workman, was aged 30 years and earning Rs.3,000/- per month at the time of accident. As per doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of*



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compensation will be as follows:

- (a) *Annual income before the accident: Rs.36,000*
- (b) *Loss of future earning per annum: Rs. 5,400
(15% of the prior annual income)*
- (c) *Multiplier applicable with reference : Rs.17
to age*
- (d) *Loss of future earnings:(5400 * 17) : Rs.91,800*

Illustration B.- *The injured was a driver aged 30 years, earning Rs.3,000 per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, all the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:*

- (a) *Annual income prior to the accident:Rs.36,000*
- (b) *Loss of future earning per annum
(75% of the prior annual income):Rs.27,000*
- (c) *Multiplier applicable with reference: 17
to age*
- (d) *Loss of future earnings:(27,000 * 17) : Rs.4,59,000*

Illustration C.- *The injured was aged 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and*



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vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- (a) *Minimum annual income he would have : Rs.60,000/-
got if had been employed as an engineer*
- (b) *Loss of future earning per annum
(70% of the expected annual : Rs.42,000/-
income)*
- (c) *Multiplier applicable (25 years) : 18*
- (d) *Loss of future earnings: (42,000 x 18) : Rs.7,56,000/-*

11. In this case, the injured has sustained one fracture, at the left knee. These injuries have subsequently caused reduction of movement of knee joints as well as the reduction of height of the leg by 2cms. The claimant claims himself as a Mechanic in a textile mill. To prove the same, he has also examined one Senthil Kumar (P.W.2) who is his co-worker. But, he was not able to produce any document or any other corroborative material to show that P.W.2 was his co-worker.

12. But, the Tribunal has rejected the evidence of Senthil Kumar

(P.W.2) on the ground that he has to prove the avocation of the claimant. The



Tribunal has notionally fixed Rs.6,000/ as his monthly income, treating him as a manual labour. This Court is of the view that the claimant has not properly proved his avocation. However, the finding of the Tribunal is that, the claimant is entitled to Rs.6,000/- as wages based on his manual labour. But, he being a manual labourer, the claimant is required to have a good physique capable of carrying heavy weights. Whereas, in this case, the evidence of Dr.Dhanasekar (P.W.3) shows that height of the claimant's leg is shortened by 2 cms which incapacitates the claimant from doing any manual work. Similarly, the restriction on the knee is also to be considered as impediment to do any manual work for long hours. Hence, this Court is of the view that the incapacity of the claimant due to the injury sustained in the accident has prevented him from continuing his earlier avocation. However, the percentage of loss of future income requires to be reduced from 35% to 25%. The compensation awarded under other heads requires no enhancement and the same is confirmed. Accordingly, the percentage of loss of future earning is fixed as 25% and notional monthly income and the quantum fixed by the Tribunal is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount award- ed by this Court (Rs)	Award confirmed or en- hanced or granted
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1.	Loss of income (6000 x 12*17 x 25%)	4,28,000	3,06,000	Reduced
2.	Pain and Sufferings	40,000	40,000	Confirmed
3.	Medical expenses	14,100	14,100	Confirmed
4.	Nutrition and Transport expenses	10,000	10,000	Confirmed
5.	Inconvenience	10,000	10,000	Confirmed
	Total	5,02,500	3,80,100	

Accordingly, this Civil Miscellaneous Appeal is partly allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

24.08.2023

vca/stn

Index: Yes/No

Internet: Yes/No

Neutral Citation Case: Yes/No

To

1. The Judge,
Motor Accidents Claims Tribunal,
II Additional District Court,
Tiruppur.

<https://www.mhc.tn.gov.in/judis>



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



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K.RAJASEKAR.,J.

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