



C.M.A(MD)No.197 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 31.07.2022

Pronounced On : 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.197 of 2019

The Branch Manager,
National Insurance Company Limited,
1st Floor, T.S.N. 4132, East Raja Street,
Pudukkottai Town,
Pudukkottai District.

: Appellant /2nd Respondent

Vs.

1.P.Vinmani

: 1st Respondent /Appellant

2.Murugesan

: 2nd Respondent /1st Respondent

(Memo dated 20.01.2023 in U.S.R.No.2423, is recorded as issuance of notice to R2 is dispensed with vide court order dated 08.02.2023 made in CMA(MD)No.197/2019)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the decree and judgment dated 24.05.2017 made in M.C.O.P.No.223 of 2011 on the file of the Additional District Judge, Pudukkottai.

For Appellant : Mr.A.Ilango

For 1st Respondent : No Appearance



J U D G M E N T

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The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.223 of 2011, dated 24.05.2017, on the file of the Additional District Judge, Pudukkottai.

2. The Appellant/Insurer, who was made liable to pay compensation of Rs.8,53,000/- with interest at 7.5 % per annum to the first respondent /claimant for the disability suffered by him, consequent to an accident occurred on 12.10.2007, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. Though the appellant has challenged the finding of the Tribunal with regard to the liability, the learned counsel for the appellant would submit that they are only disputing the quantum of compensation awarded at by the Tribunal.

4. The learned counsel for the appellant would submit that since there was no permanent disablement for the claimant preventing him from carrying out his previous activities, assessing the compensation by



adopting multiplier method is not proper; that the Tribunal has failed to consider the fact that the claimant has himself deposed before the Tribunal that he was working in Malaysia and he has gone back to Malaysia after the accident and he was working there even after the accident and that the compensation awarded at by the Tribunal is highly excessive and without any basis.

5. The only point that arises for consideration is as to whether the quantum of compensation is just and proper and is in accordance with law?

6. It is evident from Ex.P.8/wound certificate that the claimant has suffered the following injuries :

- (i) right partial contusion,
- (ii) right I Rib fracture,
- (iii) Optic nerve injury.

7. It is further evident that the Medical Officer attached to the Government Hospital, Pudukottai, has given his opinion that the injuries suffered by the claimant are grievous in nature. The claimant has produced Ex.P.2 to Ex.P.10 and Ex.P.12/medical records to prove the injuries suffered by him and the consequent disability sustained.



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8. It is evident from the records that the claimant for the eye injury, has taken treatment in Sri Krishna Eye Hospital, Pudukottai, Aravind Eye Hospital, Madurai, Sankara Nethralaya and Meenakshi Mission Hospital, Madurai. It is also evident that the claimant had taken treatment at Team Speciality Hospital, Pudukottai and Arun Hospital, Trichy and Government Hospital, Thanjavur for the bone injury suffered by him.

9. As rightly observed by the Tribunal, the claimant has suffered injury to the optic nerve relating to his right eye. The Medical Board attached to the Thanjavur Medical College Hospital, Thanajvur, examining the claimant, has issued the certificate, certifying that the claimant has suffered 30% of visual impairment and is a partial permanent disability.

10. It is not in dispute that the claimant himself has admitted that after the accident, he went to Malaysia and he was continuing his job.

11. Considering the above, the Tribunal has rightly come to a decision that the claimant has only suffered partial permanent disability and the claimant has not proved that there was loss of earning power. At this juncture, it is necessary to refer the decision of Honourable Supreme Court



in **Raj Kumar Vs. Ajaykumar and another**, reported in (2011) 1

Supreme Court Cases 343 :

“Para 12:

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence :

(i) Whether the disablement is permanent or temporary ;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.



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C.M.A(MD)No.197 of 2019

Para 19:

19. 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.”



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12. In the case on hand, as already pointed out, he suffered fracture on right eye rib and optic nerve injury. Admittedly, the claimant has not shown that he suffered any permanent disability and consequent functional disability. In the absence of any evidence to show that the claimant has suffered functional disability, the question of applying the multiplier method for computing compensation does not arise at all. But, this Court is at loss to understand, after coming to a decision that there was no permanent disability, as to how the Tribunal has adopted multiplier formula.

13. As already pointed out, the Medical Board has certified that the claimant has suffered 30% of visual impairment, but the Tribunal without assigning any evidence and without any proper reasons, has quantified the loss of income at 50%. Considering the above, as rightly contended by the learned counsel for the appellant, percentage method is to be applied. Accordingly, the claimant is entitled to get **Rs.1,20,000/-** (Rs.4,000 x 30).

14. The trial Court has granted **Rs.36,000/-** towards loss of income for six months ; **Rs.1,00,000/-** towards pain and sufferings; **Rs.10,000/-** extra nourishment; **Rs.50,000/-** towards medical expenses; **Rs.10,000/-**



C.M.A(MD)No.197 of 2019

towards attendant charges; **Rs.5,000/-** towards transportation charges; **Rs.2,000/-** towards damages to articles and **Rs.1,00,000/-** loss of convenience.

15. Considering the nature of injuries suffered and the period of treatment and also the disability sustained and taking note of the other attending facts and circumstances, the amount awarded by the Tribunal under the various heads above referred are very much reasonable and the same cannot said to be excessive. Hence, this Court concludes that the claimant is entitled to get **Rs.4,33,000/-** as compensation. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned award dated 24.05.2017 made in M.C.O.P.No.223 of 2011 on the file of the Additional District Judge, Pudukkottai, is modified and the compensation awarded by the tribunal is reduced from **Rs.8,53,000/- to Rs.4,33,000/-**. The Appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of



C.M.A(MD)No.197 of 2019

four weeks from the date of receipt of a copy of this judgment, if not already deposited and also permitted to withdraw the excess amount, if any, and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less the amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

25.08.2023

NCC : Yes/No
Index : Yes : No
Internet : Yes : No
das

To

- 1.The Additional District Judge, Pudukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.197 of 2019

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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