



C.M.A(MD)No.385 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 31.07.2023

Pronounced On : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.385 of 2019

and

C.M.P.(MD)No.4667 of 2019

The Manager,
National Insurance Co., Limited,
No.24, Kamaraj Bazaar,
Bodinayakanur, Theni.

: Appellant / 2nd Respondent

Vs.

1.R.Murugesan @ Murugan

: Respondent / Petitioner

2.A.R.Bharathkumar

: Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.4 of 2012, dated 11.04.2018 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Karur.

For Appellant : Mr.R.Raja Mani



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For Respondents : Mr.K.Suresh, for R1.

: No Appearance, for R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.4 of 2012, dated 11.04.2018 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Karur.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.4,03,100/- with interest at 7.5% per annum to the second respondent/claimant for the disability suffered, consequent to an accident occurred on 13.08.2011, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. The learned counsel for the appellant would submit that the deceased drove the two wheeler along with two pillion riders and crossed the median, where there was no way for crossing the road and invited the accident; that R.W.1/Assistant Engineer of National High Way Authority of India, has clearly deposed that there was no gap in the median for the vehicle to go from west to east; that the deceased is the tortfeasor and



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that the Tribunal without considering the above aspects, has mechanically mulcted responsibility on the van driver and consequently, mulcted liability on the appellant.

4. The learned counsel for the first respondent/claimant would submit that the legal representatives of the deceased pillion riders has laid a claim petition in M.C.O.P.No.466 of 2011 and the Tribunal, after enquiry, has come to a conclusion that the accident was occurred only due to the rash and negligent driving of the van driver; that the claimant has produced the copy of the award passed in M.C.O.P.No.466 of 2011 under Ex.P.5 and that the Tribunal by relying on the same, has rightly answered the issue with regard to the liability in favour of the claimant.

5. It is not the case of the appellant that the finding with regard to the liability given in M.C.O.P.No.466 of 2011, has already been set aside by the appellate Court or that the said finding has been stayed by this Court, pending the appeal, challenging the award passed in M.C.O.P. No.466 of 2011. Since the issue with regard to the liability has already attained finality, the question of deciding the same again does not arise at all.



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6. Now turning to the quantum of compensation, the learned counsel for the appellant would submit that the claimant has not suffered any permanent disability nor functional disability and that the Tribunal without considering the evidence on proper perspective, has mechanically applied the multiplier method and that the compensation awarded, is highly excessive and without any basis.

7. It is the case of the claimant that after the accident he was admitted in Amaravathi Hospital, Karur; that he had sustained grievous head injury and injuries all over his body; that the claimant was aged 34 years at the time of accident; that he was working as a mason coolie and was earning Rs.15,000/- per month and that due to grievous injuries, he was unable to walk easily and his normal health was totally affected and he was unable to carrying his work.

8. It is evident from Ex.P.11/wound certificate that the claimant has suffered the following injuries:



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- (1) Bleeding from (Rt) ear*
- (2) Lacerated wound of size 3 x 1 x bone depth & contusion wound of size 5 x 4 cm over (Rt) frontal region of fore head.*
- (3) Pain and tenderness over (Rt) shoulder joint.*
- (4) Abrasion wound 1 x 1 cm over (Rt) ankle joint.*
- (5) Abrasion wound 2 x 1 cm over posterior aspect of (Rt) foot.*

9. It is further evident that the Medical Officer attached to the Amaravathi Hospital, Karur, has given his opinion that the third injury above referred, is grievous in nature. It is evident from Ex.P.12/discharge summary that the claimant was admitted in Amaravathi Hospital, Karur on 13.08.2011 and was discharged on 15.08.2011. In Ex.P.12, it has been stated that the claimant was treated with some injections and IV fluids and other supportive measures. Ex.P.12 does not say that surgery was performed on the claimant. P.W.2 /Doctor, who had treated the claimant in Amaravathi Hospital, Karur would say that he has suffered five types of injuries, that he had bone injury on his right shoulder and that he has given opinion that shoulder injury was grievous in nature and all other injuries were simple in nature.



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10. During cross examination, P.W.2 would say that clavicle fracture would unite by itself and hence, no surgery was performed. Though the claimant has alleged in the claim petition that he underwent surgery, he has not produced any evidence to substantiate the same. But on the other hand, as rightly pointed out by the learned counsel for the appellant, that no surgery was performed on him, as evident from Ex.P.12 and the evidence of P.W.2/Doctor.

11. P.W.3 Medical Officer has issued the disability certificate under Ex.P.17. But admittedly, he has not treated the claimant. He would say that the claimant had pain while moving his right hand and that he was not able to do heavy work. But in cross examination, he would say that the claimant has not produced medical records to show that he was in continuous treatment; that the clavicle joint got united and that he has not assigned any specific reasons for fixing the disability at 35%.

12. 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** :



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“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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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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13. It is settled law that in all cases of injury or permanent disablement, the assessment of future loss of income or loss of earning capacity is not automatic and that the Tribunal is duty bound to take into consideration on the various factors such as nature and extent of disablement, avocation of the injured and the disability on the avocation and that the multiplier method cannot be applied mechanically.

14. In the case on hand, as already pointed out, the claimant has suffered fracture on his right shoulder. According to the claimant, he was working as a mason coolie at the time of accident. But admittedly, he has not produced any evidence to substantiate the same. It pertinent to note that as per medical records and the evidence of P.W.3, the clavicle fracture already got united.

15. Considering the medical records and the evidence of Medical Officers/P.W.2 and P.W.3, this Court has no hesitation to hold that the claimant has miserably failed to prove that he suffered permanent disability nor functional disability. In the absence any evidence to show that the claimant has suffered functional disability, the decision of the



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Tribunal in applying the multiplier method is not proper and is very much against the settled legal position.

16. As rightly contended by the learned counsel for the appellant, percentage method is to be applied. Hence, taking note of the disability at 35% itself, the claimant is entitled to get compensation of **Rs.1,40,000/-**. [35 x 4000].

17. The Tribunal has awarded Rs.7,500/- towards medical expenses and Rs.5,000/- for pain and sufferings. The petitioner has produced the medical bills under Ex.P.14 and Ex.P.15, whereunder, it is evident that he has spent Rs.5,891/- for medical treatment. Considering the above, the claimant is entitled to get **Rs.6,000/-** for medical expenses.

18. Considering the nature of injuries suffered and the period of treatment and other attending circumstances, this Court is inclined to grant a sum of **Rs.30,000/-** for pain and sufferings; **Rs.10,000/-** for transportation charges ; **Rs.15,000/-** for extra nourishment, all totalling **Rs.2,01,000/-**. Considering the other facts and circumstances, this Court



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further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

19. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is reduced from **Rs.4,03,100/- to Rs.2,01,000/-**. The Appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

NCC : Yes\No
Index : Yes\ No
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To

- 1.The Motor Accident Claims Tribunal/
Principal Sub Judge/Full Additional Charge, Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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