



C.M.A(MD)No.600 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.11.2022

PRONOUNCED ON:06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.600 of 2022

and

C.M.P.(MD)No.8429 of 2022

M/s United India Insurance Company Ltd.,
Divisional Office,
II Floor, Xavier Building,
PWD Office Road,
Nagercoil,
through its Divisional Manager. : Appellant/ 2nd Respondent

Vs.

1.Manikanda Prabhu : 1st Respondent/Petitioner

2.A.Gnanadhas : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.1764 of 2018, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, dated 20.12.2021.



WEB COPY



C.M.A(MD)No.600 of 2022

For Appellant : Mr.S.Royce Immanuel

For Respondents :Mr.V.Sasikumar
for R.1

: No Appearance for R.2

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1764 of 2018, on the file of the Motor Accident Claims Tribunal / Special Sub Court dealing with the M.C.O.P., cases, Tirunelveli.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.21,81,237/- with interest at 7.5%p.a., to the injured claimant for the disability suffered by him, consequent to an accident occurred on 29.07.2018, challenged the liability mulcted on it and the quantum of compensation awarded at, by the Tribunal.

3. The case of the claimant is that on 29.07.2018 at about 20.15 hours, when the petitioner was riding a motorcycle bearing Registration



C.M.A(MD)No.600 of 2022

WEB COPY

No.TN-K-3702 along with his friend Suresh Nathan as pillion rider, at main road, Then Thamaraiikulam at the place near Village office, one Ambassador car bearing Registration No.TN-74-C-5072 came in the opposite direction in a rash and negligent manner and suddenly dashed against the motorcycle and as a result of which, the petitioner and the pillion rider had sustained grievous injuries, that the petitioner was admitted in Thiraviam Hospital, Nagercoil and that the Ambassador car driver was responsible for the accident and hence, a case in Cr.No.146 of 2018 under Sections 279 and 337 I.P.C., came to be registered on the file of the Then Thamaraiikulam Police Station and the case is now pending before the Judicial Magistrate Court No.III, Nagercoil. It is the further case of the claimant that the petitioner was aged about 26 years at the time of accident, that he was hale and healthy and that the petitioner was working as a mason and was earning a sum of Rs.20,000/- per month. It is the further case of the claimant that the petitioner has suffered fractures in the right leg, that he underwent two surgeries, that he had spent a sum of Rs.6,00,000/- towards medical expenses and that the petitioner is unable to do any work, as he suffered permanent disability.



C.M.A(MD)No.600 of 2022

WEB COPY

4. The defence of the second respondent is that there is contributory negligence on the part of the petitioner himself in riding the two wheeler, that the petitioner was not having driving licence to ride the two wheeler at the time of accident, that there is no valid registration certificate and the insurance policy to the said two wheeler and that the compensation claimed by the petitioner is very high and exorbitant.

5. It is evident from the records that the petitioner's friend Suresh Nathan, who had also sustained injuries has also filed claim petition in M.C.O.P.No.1785 of 2018 and that the Special Court has conducted a joint trial of the two claim petitions. During enquiry, the petitioner's friend Suresh Nathan and the petitioner have been examined as P.W.1 and P.W.2 respectively and Dr.Sudhan has been examined as P.W.3 and totally 19 documents were exhibited as Exs.P.1 to P.19. The first respondent had remained exparte. The appellant/Insurer has examined a staff attached to RTO office, Nagercoil as R.W.1 and exhibited three documents as Exs.R. 1 to R.3. The learned trial Judge, upon considering the evidence both oral and documentary, has passed the impugned award dated 20.12.2021, holding that the Ambassador car driver was responsible for the accident, but at the same time fixed the contributory negligence on the part of the



C.M.A(MD)No.600 of 2022

petitioner at 10% and directed the appellant to pay the compensation of Rs.21,81,237/- with interest and costs. Aggrieved by the said award, the Insurer has come forward with the present Civil Miscellaneous Appeal.

5. The points that arise for consideration are

(1) Whether the Tribunal erred in applying and adopting multiplier method in the absence of any evidence for permanent disablement and resultant functional disability for the injured claimant;

(2) Whether the quantum of compensation awarded by the Tribunal is just and proper and in accordance with law?

Points 1 and 2:

6. As rightly pointed out by the learned Counsel for the claimant, the Appellant/Insurer has not disputed the accident nor the involvement of the two wheeler bearing Registration No.TN-K-3702 and the Ambassador car bearing Registration No.TN-74-C-5072 and that the petitioner's version regarding the mode of the accident.



C.M.A(MD)No.600 of 2022

WEB COPY

7. In the appeal memorandum, the appellant has taken a stand that the contributory negligence fixed at 10% on the part of the two wheeler is too low, since the vehicle driven by the injured claimant was not at all insured and he was not having driving licence at the time of accident. As rightly pointed out by the learned Counsel for the claimant, in the appeal also, the appellant has not disputed the finding of the Tribunal that the Ambassador car driver was mainly responsible for the accident, but their only objection is that the contributory negligence fixed at 10% on the part of the petitioner is very low.

8. The learned trial Judge, taking note of the fact that the petitioner was not possessing driving licence and that the vehicle which was driven by the claimant was not having registration certificate and the insurance policy on the date of accident, has rightly deducted 10% of the compensation towards contributory negligence on the part of the petitioner. It is not the case of the appellant that the accident was occurred only due to the rash and negligent riding of the two wheeler and that the car driver was not at fault. Considering the evidence available, the finding of the Tribunal that the accident was occurred due to the rash and negligent driving of the car driver fixing the negligence at 90% and



C.M.A(MD)No.600 of 2022

WEB COPY

fixing the contributory negligence at 10% on the petitioner cannot be found fault with.

9. Now turning to the compensation, the learned Counsel for the appellant would submit that the trial Court ought not to have applied and adopted the multiplier formula, as there is absolutely no proof for permanent disablement and the resultant functional disability for the claimant and that the Tribunal has failed to notice that there is no evidence relating to the total disablement, the loss of avocation and the functional disability.

10. The learned Counsel for the claimant would contend that the injured had sustained serious injuries, that he was given inpatient treatment in Thiraviam Orthopaedic hospital, Nagercoil, from 29.07.2018 to 04.09.2018 and again from 31.10.2018 to 26.11.2018, that the petitioner had underwent two surgeries and that the petitioner has suffered permanent disability.



C.M.A(MD)No.600 of 2022

WEB COPY

11. It is evident from the discharge summaries that the petitioner was admitted in Thiraviam Orthopaedic hospital on 29.07.2018 and was diagnosed to have compound comminuted fracture both bones right leg and after surgery, he was discharged on 04.09.2018 and that subsequently he was again admitted on 31.10.2018 and was discharged on 26.11.2018. It is pertinent to note that Thiraviam Orthopaedic hospital has given the disability certificate, wherein total permanent disability was quantified at 65% under Ex.P.18. It is evident from Ex.P.18 that the Medical team had quantified 65% permanent disability as loss of range of movement in the right knee, right ankle and foot at 6% and 30% respectively, loss of muscle strength of right anke and foot at 24%, difficulty in walking, in climbing stairs, squatting on floor at 3%, 5% and 5% respectively, that shortening of right lower limb at 4% and for deep infection of right leg at 6% totalling 65%. It is evident from the records that the petitioner has suffered injuries on his right knee and on his right ankle.

12. As already pointed out, the petitioner underwent two surgeries. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajaykumar and another***, reported in



C.M.A(MD)No.600 of 2022

(2011) 1 Supreme Court Cases 343, wherein the Hon'ble Apex Court has held as follows:

“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



WEB COPY



C.M.A(MD)No.600 of 2022

whether such permanent disability has affected or will affect his earning capacity.

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.



C.M.A(MD)No.600 of 2022

WEB COPY

(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.”

13. In ***United India Insurance Company Limited Vs. Veluchamy and another***, reported in **2005 (1) CTC 38**, this Court has held as follows:

“Para 11:

“11. The following principles emerge from the above discussion :

(a) In all case of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent?



C.M.A(MD)No.600 of 2022

WEB COPY

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying 'multiplier method' as provided under Second Schedule to the Motor Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident.

14. Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic and that the tribunal is duty bound to take into consideration the various factors such as nature of extent of disablement, avocation of the injured and the impact of the



C.M.A(MD)No.600 of 2022

disability on the avocation and that the multiplier method cannot be applied mechanically.

15. In the case on hand, as already pointed out, the Doctor of Thiraviam Orthopaedic hospital, Nagercoil, where the petitioner had taken treatment had assessed the disability at 65%. As rightly contended by the learned Counsel for the appellant, the Tribunal without considering the material fact that the disability certificate was issued by the Doctors who had treated the petitioner and the quantum of percentage fixed for each of the injury and for its consequences, has accepted the same mechanically. Moreover, there is nothing on record to show that the claimant suffered functional disability and that he could not do his work as he was doing earlier. The claimant has not proved that he is suffering permanent disablement and the functional disability. Hence, the adoption of multiplier method is not proper. Unless the acceptable evidence is given to prove that the claimant suffered functional disability and could not do his work, as he was doing earlier, the Tribunal cannot adopt the multiplier method to award compensation towards loss of earning capacity.



C.M.A(MD)No.600 of 2022

WEB COPY

16. As rightly contended by the learned Counsel for the appellant, the Tribunal without assigning any valid reasons, has adopted multiplier method in awarding compensatio for 65% disability towards loss of earning capacity. Hence, this Court is of the view that the claimant is entitled to compensation towards disability only on the percentage method. Considering the fact that the accident was occurred on 29.07.2018, it will be reasonable to award a sum of Rs.5,000/- per percentage of disability. In the case on hand, as already pointed out, the petitioner has suffered 65% disability as certified by the private Doctors, who had treated him and the same may be taken for applying percentage method. Hence, the petitioner is entitled to get a sum of Rs.3,25,000/- (Rs.5,000/- x 65%) for 65% of disability.

17. Though the petitioner has alleged that he was working as a mason and was earning Rs.20,000/- per month, he has not produced any iota of evidence to substantiate the same. Considering the nature of the job and the age of the claimant, the Tribunal has rightly fixed the monthly income at Rs.8,000/- and added 40% of the income towards future prospects. The Tribunal, taking note of the medical bills



C.M.A(MD)No.600 of 2022

produced, has rightly awarded a sum of Rs.7,53,477/- towards medical expenses. The Tribunal, taking note of the treatment period, has granted Rs.20,000/- towards attendant charges. Considering the period of treatment, nature of injuries and the disability suffered, the Tribunal has awarded Rs.50,000/- towards pain and suffering and Rs.55,000/- towards loss of convenience and Rs.50,000/- towards extra nourishment. The Tribunal has also awarded a sum of Rs.10,000/- towards transport expenses. The amounts awarded by the Tribunal under the other heads are just and reasonable and hence, the same are confirmed.

18. The petitioner had taken inpatient treatment for 65 days. Considering the above, the petitioner is certainly entitled to get Rs.48,000/- towards loss of income for the six months period. The petitioner in his evidence would say that he is in need of Rs.2,00,000/- for the removal of plates and screws and for further treatment. Admittedly, the petitioner has not produced any evidence to substantiate the same. However, considering the implants already made, the petitioner is entitled to get Rs.50,000/- towards future medical expenses. Accordingly, the compensation awarded by the Tribunal is modified as follows:



C.M.A(MD)No.600 of 2022

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted or reduced
1	Loss of earning power	14,85,120/-	-----	-----
2	For 65% disability	-----	3,25,000/- (Rs.5,000/-x65)	granted
3	Medical Bills	7,53,477/-	7,53,477/-	confirmed
4	Attendant Charges	20,000/-	20,000/-	confirmed
5	Pain and Sufferings	50,000/-	50,000/-	confirmed
6	Loss of convenience	55,000/-	55,000/-	confirmed
7	Transport expenses	10,000/-	10,000/-	confirmed
8	Extra Nourishment	50,000/-	50,000/-	confirmed
9	For loss of income for the period of treatment	---	48,000/-	granted
10	For future medical expenses	-----	50,000/-	granted
	Total	24,23,597/- after deduction of 10% = Rs. 21,81,237/-	13,61,477/- after deduction of 10% = Rs. 12,25,330/-	

19. In the result, the Civil Miscellaneous Appeal is partly allowed by reducing the compensation from Rs.21,81,237/- to Rs.12,25,330/- along with interest at 7.5%pa., and costs. The appellant/Insurer is



C.M.A(MD)No.600 of 2022

WEB COPY

directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.1785 of 2018, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit made, the first respondent/claimant is entitled to withdraw the same on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

06.02.2023

Index : Yes : No

Internet : Yes : No

SSL

To

- 1.The Motor Accident Claims Tribunal/
Special Sub Court, Tirunelveli,
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.600 of 2022

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.600 of 2022

06.02.2023