BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.07.2023

Pronounced on : 11.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.172 of 2015
and Cros.Obj.(MD)No.12 of 2015
and M.P.(MD)No.1 of 2015

C.M.A.(MD)No.172 of 2015

United India Insurance Company Ltd.,
through its Branch Manager,
Salem,
Salem District. ...Appellant/
Respondent No.3

Vs.

1. M.Jenish ...Respondent No.1/
Petitioner

2. M.Manoharan ...Respondent No.2/
Respondent No.1

3. N.Sivabakkian ...Respondent No.3/
Respondent No.2

(R3 exonerated)

Cros.Obj.(MD)No.12 of 2015

M.Jenish ...Cross Objector/
1st Respondent

Vs.

1.United India Insurance Company Ltd.,
through its Branch Manager,
Salem,
Salem District. ...Respondent/ Appellant

2. M.Manoharan

3. N.Sivabakkian ...Respondents/ Respondents

Prayer in C.M.A.(MD)No.172 of 2015 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order passed in M.C.O.P.No.3 of 2013 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil dated 30.09.2014.

Prayer in Cros.Obj.(MD)No.12 of 2015 : This Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to allow this Cross Objection.

(in C.M.A.(MD)No.172 of 2015)

For Appellant : Mr.N.Murugesan

For R1 : Mr.C.Sankar Prakash

For R2 : No appearance

(in Cros.Obj.(MD)No.12 of 2015)

For Appellant : Mr.C.Sankar Prakash

For R1 : Mr.N.Murugesan

COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award passed in M.C.O.P.No.3 of 2013 dated 30.09.2014 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Nagercoil.

2. The appellant/insurer, who was made liable to pay compensation of Rs.2,42,950/- (Rupees Two Lakhs Forty Two Thousand Nine Hundred and Fifty only) with interest at 7.5% per annum and costs to the claimant for the disability suffered by him, consequent to an accident occurred on 11.12.2011, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The Cross Objector/claimant, who was awarded compensation of Rs.2,42,950/- (Rupees Two Lakhs Forty Two Thousand Nine Hundred and Fifty only) with interest at 7.5% per annum and costs for the disability suffered by him, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

4. Though the insurer has challenged the liability mulcted on it, in the grounds of appeal, the learned counsel appearing for the insurer would submit that they are only disputing the quantum of compensation awarded at, by the Tribunal. As already pointed out, the claimant has also raised cross objections seeking enhancement of compensation.

5. The case of the claimant is that he was a civil engineering student, who has completed diploma course in civil engineering and he was doing civil engineering decree course, that he used to go to Bangalore on holidays to assist his father, who was a building contractor and that he was earning Rs.1,00,000/- per annum.

6. It is the further case of the claimant that he sustained injuries on his right leg, left foot medial aspect of base of big toe to back side of heel, fracture medial crucial bar with dislocation of tarso metatarsal joint with crushing muscle of foot with loss, that he was immediately taken to Sushrushah Hospital, Nagercoil and he was given inpatient treatment from 11.12.2011 to 17.12.2011 and that subsequently, he was admitted on 10.02.2012 and discharged on 12.02.2012.

7. The defence of the insurer is that there is only one grievous injury and there is no disability or loss of income and that the compensation claimed is very high and disproportionate.

8. During enquiry, the claimant has examined himself as P.W.1 and medical officer Mohandhas and his father Mariya George as P.W.2 and P.W.3 respectively and exhibited 13 documents as Ex.P.1 to Ex.P.13. The respondents 2 and 3 herein had remained ex-parte. The insurer has adduced neither oral nor documentary evidence.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 30.09.2014 directing the insurer and the respondents 2 and 3 to pay compensation of Rs.2,42,950/- with interest at 7.5% per annum from the date of petition till deposit excluding the default period, if any, jointly and severely within 30 days from the date of that order. Aggrieved by the impugned order, the insurer has come forward with the present appeal and whereas, the claimant has preferred cross objections seeking enhancement.

10. The learned counsel appearing for the claimant would submit that the Tribunal failed to consider the future prospects of the claimant in sports activities as the claimant could not continue his sports activities due to his disability, that the claimant has produced documents to show his achievements in sports, that the Tribunal ought to have granted Rs.1,00,000/- as compensation for loss of future prospects in sports, that the Tribunal ought to have allowed Rs.25,000/- towards mental agony and that the Tribunal ought to have granted Rs.20,000/- for extra nourishment.

11. The only point that arises for consideration is whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?

12. It is evident from the records that the claimant, after the accident, was admitted in Sushrushah Hospital, Nagercoil on 11.12.2011 and was discharged on 17.12.2011 and that subsequently, he was admitted on 10.02.2012 for removal of K wire from the foot and was discharged on 12.02.2012. It is also evident from Ex.P.4-Accident Register Extract that the claimant has suffered the following two injuries (1) lacerated wound

(burst injury) left foot medial aspect of base of big toe to back side of heel 15 x 10 x 3 cm with fracture medial crucial bar with dislocation of tarso metatarsal joint with crushing muscle of foot with loss and (2) abrasion with discorded skin at the posterior aspect of ankle.

13. The claimant, in order to prove the disability, has examined Doctor Mohandhas, who had treated the claimant and issued the disability certificate. In Ex.P.9-Disability Certificate, P.W.2-Mohandhas has stated that the claimant was treated with wound debridement and K wire stabilization, that on 10.02.2012, the K wire from the foot was removed and discharged on 12.02.2012, that the claimant is having painful scar on the right foot and ankle movements are restricted by 20% and the power of muscle in the left leg is reduced by 10% and that he has fixed the permanent disability at 10%.

14. The learned counsel appearing for the insurer would mainly contend that the Tribunal, without any justification and without any proof for permanent disablement and the resultant functional disability for the claimant, has adopted the multiplier method and that the Tribunal ought to

have followed the principles laid down by the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another*** reported in ***2010 (2) TN MAC 581.***

15. The learned counsel appearing for the claimant would submit that the claimant has suffered bone injuries on his right foot and surgery was done with wound debridement and K wire stabilization, that subsequently, K wire from the foot was removed, that the claimant had taken inpatient treatment in Sushrushah Hospital from 11.12.2011 to 17.12.2011 and subsequently from 10.02.2012 to 12.02.2012, that the claimant underwent surgery in the said hospital, that the claimant is not in a position to do his day to day routine work, that the claimant was a sports person and was aged 20 years at the time of accident and that the Tribunal, after analyzing the entire records and medical evidence, has rightly applied multiplier method.

16. Before entering into further discussion, it is necessary to refer the decision of this Court in ***United India Insurance Company Limited Vs. Veluchamy and another*** reported in ***2005 (1) CTC 38,***

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

(a) In all cases 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) (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 for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even 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."

17. The Hon'ble Supreme Court in ***Raj Kumar's*** *case* above referred relied on by the learned counsel appearing for the insurer has held as follows,

"9. 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.

....

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."

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

19. It is not in dispute that P.W.2-medical officer, who had treated the claimant has given the Disability Certificate under Ex.P.9, wherein, he has fixed the permanent disability at 10%. As already pointed out, the claimant had a crushing injury on his right foot.

20. It is not the case of the claimant that he has suffered any permanent disability and consequent functional disability. As already pointed out by the learned counsel appearing for the insurer, there is no amputation nor any functional disability.

21. As rightly contended by the learned counsel appearing for the insurer, the Tribunal, without assigning any reason, has come to a decision that he was taking the disability at 10% as the functional disability. In the absence of any evidence to show that the claimant has suffered functional disability, the decision of the Tribunal in applying the multiplier method is not proper and is very much against the settled position.

22. Considering the nature of the injuries and the disability suffered and also the fact that the accident was occurred in the year 2011, this Court is of the view that it is a fit case to apply the percentage method and as such, the claimant is entitled to get Rs.4,000/- per percentage and the disability compensation comes to Rs.40,000/- (Rs.4,000 x 10).

23. The main contention of the claimant is that he is an active sports men and he had received so many prizes in running and volley ball. The

claimant has produced two certificates issued in the year 1992 by Sports Development Authority of Tamilnadu for getting 3rd position in 1500 meter running and winner in volley ball. The claimant has also produced three certificates issued by his college Udaya Institute of Technology to show that the claimant had secured 1st place in 400 meter running, 100 meter running and 200 meter running conducted in the academic year 2010-2011 and another certificate issued by St.Xavier's Hr. Sec. School, Palayamkottai on 30.11.2006 for securing 4th position in volley ball.

24. The learned counsel appearing for the insurer would submit that the claimant has failed to examine any person to prove that the claimant was an active sports person and had won several prizes. As rightly pointed out by the learned counsel appearing for the claimant, it is pertinent to note that Ex.P.13-sports certificates came to be exhibited before the Tribunal and the claimant was put to cross-examine with regard to the same. Though the insurer has put a suggestion that the above certificates were created for the purpose of the case, the same was specifically denied by the witness and except the above, nothing was elicited by the insurer's side in their favour.

25. P.W.2-Mohandhas in Ex.P.9 has specifically observed that the claimant has painful scar on the right foot and ankle movements got restricted by 25% and the power of muscle in the left leg is reduced by 10%. As rightly contended by the learned counsel appearing for the claimant, since the claimant had participated in running as well as in volley ball competition in the year 2011, the year in which the accident was occurred, the contention of the claimant that he will not be in a position to take part in the sports activities again cannot be rejected. Considering the above, this Court is of the view that the claimant is entitled to get compensation of Rs.75,000/- for losing the opportunity in taking part in sports activities.

26. The Tribunal has awarded Rs.250/- towards transport charges, Rs.5,500/- towards extra nourishment, Rs.1,500/- towards damage to the dress and articles and Rs.40,000/- for pain suffering. The Tribunal, taking note of the medical bills, has rightly granted Rs.66,100/- towards medical expenses. Considering the nature of the injuries sustained and the consequent disability sustained and the period of treatment, this Court is inclined to grant Rs.15,000/- for extra nourishment and Rs.5,000/- for

attendant charges and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability compensation	1,29,600	40,000	Reduced
2.	Medical Expenses	66,100	66,100	Confirmed
3.	Transport charges	250	250	Confirmed
4.	Extra nourishment	5,500	15,000	Enhanced
5.	Damage to the dress and articles	1,500	1,500	Confirmed
6.	Pain and suffering	40,000	40,000	Confirmed
7.	Attendant Charges	Nil	5,000	Granted
8.	For loss of opportunity in sports activities	Nil	75,000	Granted
	Total	**2,42,950**	**2,42,850**	

27. Considering the above, there is no reason to interfere with the award passed by the Tribunal. Consequently, this Court concludes that the civil miscellaneous appeal and the cross objection are devoid of merits and the same are liable to be dismissed. 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 point is answered accordingly.

28. In the result, the Civil Miscellaneous Appeal and the Cross Objection are dismissed. The insurer is directed to deposit the award amount with interest and costs to the credit of M.C.O.P.No.3 of 2013 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Nagercoil, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, 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. Consequently, connected miscellaneous petition is closed. Parties are directed to bear their own costs.

11.08.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

K.MURALI SHANKAR,J.

csm

To

1. The Motor Accident Claims Tribunal /
   Chief Judicial Magistrate, Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in

C.M.A.(MD)No.172 of 2015
and Cros.Obj(MD)No.12 of 2015
and M.P.(MD)No.1 of 2015

Dated : 11.08.2023