IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A No. 3244 of 2010

The United India Insurance Company Ltd.,
13 A, Nethaji Road ...Appellant/second respondent

Vs.

1.Kanakeswaran ..first respondent/Petitioner

2.Ramesh ...Second respondent/first respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.221 of 2004, on the file of the Motor Accident Claims Tribunal/Principal Subordinate Court, Cuddalore, dated 14.06.2006.

For Appellant : Mr.J.Chandran
For R1 & R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the judgment and decree passed in M.C.O.P.No.221 of 2004, on the file of the Motor Accident Claims Tribunal Principal Subordinate Court, Cuddalore, dated 14.06.2006, for a change in the quantum of compensation awarded by the said Tribunal.

2. The parties herein are referred to as per their ranking before the Tribunal.

3. The claim petition was filed under Section 166(1) of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained in a road accident that occurred on 07.10.2003.

4. Mr.J.Chandran, learned counsel for the appellant/Insurance company strenuously argued that the claimant was 19 years old and is said to be a garment merchant. On account of the accident, he sustained fractures on right femur and fracture on right lateral tibia condyle.

5. It is further argued by the learned counsel for the appellant that Dr.Venugopal (P.W3) assessed the disability of the claimant as 75% which is on the higher side. Except the discharge summary (Ex.P4) no other treatment records were marked.

6. Despite the receipt of notice R1 and R2 neither appeared nor through their counsels.

7. Before the trial Court, the claimant examined three witnesses and marked 15 documents. On the respondents' side no witness was examined.

8. It is the testimony of the claimant (P.W1) that on 07.10.2003 at about 1:00 p.m. he (P.W1) along with Kalimuthu (P.W2). (petitioner in M.C.O.P.No.225 of 2004) was walking with his two wheeler Bajaj M 80 from west to east direction at the extreme left side of Cuddalore-Panruti Main Road near Government Hospital, Karumariamman koil at Cuddalore, at that time, a van bearing registration No. T.N.51 Y 9022 belonging to the first respondent came in a rash and negligent manner and dashed against the claimants (P.W1 and P.W2) and caused grievous injuries to the them and damage to the two wheeler. This is not in dispute.

9. It can be seen from the discharge summary (Ex.P4) that the claimant (P.W1) suffered Open Grade III B comminuted fracture, distal third right femur with bone loss, slice fracture of right lateral tibial condyle involving intercondylar eminence with knee subluxation. On 09.10.2013 wound debridement and supracondylar nailing of femur (R) was done. Open reduction and internal and fixation of tibial condyle fracture (R) with

cancellous screw was also done. On 13.10.2003 for the upper tibia, debridement and superio medial based fasciocutaneous flap cover was done.

10. It is the evidence of Dr.R.Venugopal (P.W3) that due to the fractures and injuries suffered, the claimant's partial permanent disability was fixed at 90%.

11. It is the evidence of the claimant (P.W1) that on account of the accident he sustained the above said injuries and fractures. It is not possible for the claimant to sit, stand and walk for a long time.

12. Under what circumstances multiplier method in injury cases to be followed is very elaborately discussed by the Hon'ble Apex Court in *Rajkumar Vs. Ajaykumar reported in 2011 (1) SCC 343,* Wherein the Hon'ble Apex Court has held that:

> *"6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery*

which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in *regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.*

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

(iii) The doctor who treated 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."

13. This Court is also conscious of the fact that the object of the Act is ordering of just compensation. In the course of said exercise, the compensation should neither be bonanza nor should it be pittance (or) modicu.

14. In this case, the claimant who was a cloth merchant suffered fracture of thigh bone. Internal fixations were done for the leg. Therefore, no doubt the claimant who was suffering from partial permanent disability would face lot of difficulties even in attending to the day to day routine work. This Court is of the considered view that the effects of the above said fractures would definitely affect his performance towards attending his duties. Therefore, the Tribunal is justified in invoking multiplier method while calculating compensation.

15. Based on the evidence of the claimant (P.W1) and Dr.Venugopal (P.W3), coupled with the medical records the functional disability of the claimant was fixed at 50%.

16. It is the testimony of the claimant (P.W1) that he was doing readymade garment business and was earning Rs.7,500/-. Hence, this Court fixes the monthly income of the claimant (P.W1) at Rs.3,000/-.

17. As per the law laid down in *Sarala Verma and others vs. Delhi Transport Corporation, (2009) 6 SCC 121,* the multiplier to be adopted is 18. For calculating the loss of earning power, the following formula emerges:

Age of the petitioner	= 19 years
Monthly income of the claimant (P.W1)	= Rs.3,000/-
Multiplier to be adopted	= 18
	= Rs.3,000/- X 50% X12 X 18
	= Rs.3,24,000/-

18. For loss of earning power, if multiplier method is adopted, then the claimant is not entitled to claim loss of income during the treatment period.

19. As regards the other heads, the amounts awarded by the Tribunal appear to be reasonable and hence, needs no interference.

S. No	Description	Amount awarded by	Amount awarded by	Award confirmed

		Tribunal (Rs)	this Court (Rs)	or enhanced or reduced
1.	Loss of earning power	6,48,000	3,24,000	Reduced
2.	Pain and sufferings	7,000	7000	Confirmed
3.	Towards medical expenses	3,03,544.42	3,03,544.42	Confirmed
4.	Towards transportation charges	44,390.00	44,390.00	Confirmed
			6,78,934.42	

Rounded off to Rs.6,79,000/-.

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is reduced from **Rs.10,02,935/-** to **Rs./-.Rs.6,79,000/-**

(iii) The appellant/ Insurance Company is directed to deposit the modified amount i.e., **Rs.6,79,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.221 of 2004 on the file of Motor Accident Claims Tribunal/Principal Subordinate Court, Cuddalore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimant is at liberty to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal.

15.03.2024

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Index: Yes/No
Internet:Yes/No
Neutral Citation Case:Yes/No

R.KALAIMATHI,J.

vca

To

1.The Motor Accidents Claims Tribunal,
Principal Subordinate Court, Cuddalore,

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

C.M.A.No.3244 of 2010

15.03.2024