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C.M.A.No.3245 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A No. 3245 of 2010

The United India Insurance Company Ltd.,
13 A, Nethaji Road
Manjakuppam, Cuddalore.

...Appellant/2nd respondent

Vs.

1.Kalimuthu

...1st respondent/Petitioner

2.Ramesh

...2nd respondent/1st 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.225 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.225 of 2004, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Cuddalore, dated 14.06.2006, for change in the quantum of compensation



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awarded by the said Tribunal.

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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. 10,00,000/- 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 (P.W2) who was 42 years old and was doing readymade garment business and was said to be earning an amount of Rs.10,000/- per month. The Tribunal has fixed Rs.5,000/- as monthly income is on the higher side.

5. It is further argued by the learned counsel for the appellant that Dr.Venugopal (P.W3) assessed the disability of the claimant at 35% is on the higher side and the same disability was taken by the Tribunal, which is incorrect. Except the discharge summary (Ex.P10) no other treatment record was marked.



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

7. Common evidence was recorded for M.C.O.P.Nos. 221 and 225 of 2004, as both the M.C.O.Ps arose out of same motor accident and common judgment came to be passed.

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

9. It is the testimony of P.W2/Kalimuthu that on 07.10.2003 at about 1:00 p.m. While he along with Kanageshwaran (P.W1), (petitioner in M.C.O.P.No.221 of 2004) were pushing his two wheeler Bajaj M 80 from west to east direction at the extreme left side of Cuddalore- Panruti Main Road, near the 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.W2 and P.W1) and caused grievous injuries to the them, besides damage to the two wheeler, is not in dispute.



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10. It is the evidence of the claimant (P.W2) that due to the said accident he suffered closed comminuted transverse fracture, both bones right leg at middle third level. As per the discharge summary (Ex.P10) issued by Ganga Medical Centre and Hospital, Coimbatore, the claimant (P.W2) was admitted in the hospital on 08.10.2003 and discharged on 19.10.2003. On 09.10.2003 the claimant underwent surgery – closed interlocking nailing tibia.

11. It is the evidence of Dr. R.Venugopal (P.W3) that the claimant (P.W2) suffered fracture on both bones at right leg and internal fixation was done. Due to the said impact, his right knee is affected and he finds it difficult to do his day to day work and therefore, he fixed the claimant's (P.W2) disability as 35%. It is also the evidence of Dr.R.Venugopal (P.W3) that the claimant (P.W2) suffered malunion.

12. It is the evidence of the claimant (P.W2) 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. The Tribunal has



adopted multiplier method for computing loss of earning power.

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13. 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



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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%.

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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."*

14. 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)



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15. In this case, the claimant who was a cloth merchant suffered both bone fracture of right leg. 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 work. The work of garment merchant involves standing, walking, to move from one place to another. This Court is of the considered view that the effects of the above said fractures would definitely affect his performance towards his work also. Therefore, the Tribunal is justified in invoking multiplier method while calculating compensation.

16. It is the testimony of the claimant (P.W2) that he was doing readymade garment business and was earning Rs. 10,000/- per month. The Tribunal has fixed the monthly income of the claimant (P.W2) as Rs.5,000/- appears to be reasonable.

17. Considering the fracture sustained by the claimant and the effects of said fracture coupled with evidence of claimant as well as P.W.3 (Dr.Venugopal), functional disability is fixed at 30%. For loss of amenities an amount of Rs.20,000/- is granted. For pain and sufferings, an amount of



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Rs.15,000/- is granted in addition to the amount already granted. As regards the other heads, the amounts awarded by the trial Court appears to be reasonable and hence, needs no interference.

18. 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 14.

For calculating the loss of earning power, the following formula emerges:

Age of the petitioner	= 42 years
Monthly income fixed	= Rs.5,000/-
Functional Disability	= 30%
Multiplier to be adopted	= 14
	= Rs.5,000/- X 30% X12 X 14
	= Rs.2,52,000/-

19. 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.

20. The compensation awarded by the trial Court is re fixed and the same is tabulated hereunder:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1	Partial permanent disability	3,15,000	2,52,000	reduced



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2	Loss of income during treatment period	21,000	-	rejected
3	Loss of amenities	-	20000	granted
4.	Pain and sufferings	7,000	22000	confirmed
5.	Medical expenses	75,590	75,590	confirmed
		3,97,590	3,69,590	

Rounded off as Rs.3,70,000/-

Award of the Tribunal is wrongly calculated and awarded as Rs.3,70,000/- which is actually Rs.4,18,590/-.

21. In the result,

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

(ii) The compensation awarded by the Tribunal is reduced from

Rs.3,97,590/- to Rs./-.Rs.3,70,000/-

(iii) The appellant/Insurance Company is directed to deposit the modified amount i.e., **Rs.3,70,000/-** (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.225 of 2004, on the file of the Motor Accident Claims Tribunal (Principal



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Subordinate Court), Cuddalore, dated 14.06.2006 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

To

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

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



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R.KALAIMATHI,J.

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