



WEB COPY



C.M.A.No.1748 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.1748 of 2013

and M.P.No.1 of 2013

The National Insurance Co. Ltd.,
738, Anna Salai,
Office at 60, Hari Ram Mansion,
Chennai Metro city

... Appellant

vs.

1.Balasundaram
2.D.Meganathan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree dated 30.11.2011 made in M.C.O.P.No.102 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Court), Myladuthurai.

For Appellant : Mr.S.Vadivel
For Respondent : Mr.B.Jawahar for R1
: No Appearance for R2



C.M.A.No.1748 of 2013

WEB COPY

JUDGMENT

Challenge is made to the judgment and decree made in M.C.O.P No.102 of 2005 dated 30.11.2011 on the file of Motor Accident Claims Tribunal/Additional Subordinate Court, Myladuthurai by the Insurance Company in respect of quantum.

2. The claim petition was filed under Section 166 of Motor Accident Act, 1988, claiming compensation of Rs.15,00,000/- for the injuries sustained in a road traffic accident that occurred on 19.06.2004.

3. The Tribunal after evaluating the evidence has granted compensation of Rs.5,28,000/- at the rate of 7.5% per annum from the date of filing of petition.

4. The learned Counsel Mr.S.Vadivel appearing for the appellant/Insurance Company vehemently contended that though the claimant is stated to have been employed in BSNL as a Mechanic, no income certificate was filed. The Tribunal, fixed his income at Rs.4,000/- is



C.M.A.No.1748 of 2013

on the higher side. The disability assessed by P.W.3 Dr.Rajasekaran at 50% was taken for the purpose of calculating the loss of income by invoking multiplier method, which is not correct. It is his further argument that for medical expenses, the amount awarded by the Tribunal is on the higher side and requested for a change.

5. Per contra, the learned counsel appearing for the respondent/claimant Mr.B.Jawahar strenuously argued that the injured under went surgery for five times. It is his further argument that he suffers from shortening of leg for about 4 cm. Considering the fractures suffered, the disability assessment made by the Doctor is reasonable and the Tribunal, after taking into consideration of the age, nature of injuries and nature of job of the claimant, thought fit to invoke multiplier method for granting compensation for loss of earning power. It is his further argument that the amounts granted under various heads are commensurate with the age and fractures suffered by the claimant and the same need not to be interfered with.

6. At trial, on the petitioner's side, the claimant has examined himself as P.W.1 and two other witness were examined, and fifteen documents



C.M.A.No.1748 of 2013

were marked. Ex.P3 to Ex.P6 and Ex.P.9 to Ex.P.11 are the medical records of the claimant. Ex.P.9, Ex.P.10 and Ex.P.12 are the receipts issued by the MIOT Hospital, Chennai and Arun Priya Hospital, Mayiladuthurai. Ex.P.14 is the Disability Certificate issued by P.W.3 Dr.Rajasekaran

7. It is the evidence of P.W.1 that on 19.06.2004 at 10.45 hours, while the claimant was proceeding from Sembanarkoil to Karuguzhilmadhan Pettai at the point of Malayur, towards west direction on the left side in a TVS-50 two wheeler, at that time, a Maruti Van bearing Registration No.TN 09 U 0690 came in a rash and negligent manner, hit on his vehicle, is not in dispute.

8. It has come on record through the evidence of P.W.1/Injured that he was initially treated at Arun Priya Hospital, Mayiladuthurai where he was in admission from 19.06.2004 till 07.07.2004. It is seen from Ex.P.4 Discharge Summary issued by the Arun Priya Nursing Home, Mayiladuthurai that the claimant, due to the accident, suffered fracture of Supra Condylar Right Femur with Inter Condylar Extension Community with PCL Injury. He had undergone surgery and implants were fixed on



C.M.A.No.1748 of 2013

the right Femur. He has suffered fracture of right Patella and right Femur as seen from Ex.P.6 accident register copy issued by the Government Hospital, Mayiladuthurai. On 09.08.2004, he was again admitted as in patient at MIOT Hospital, Manapakkam, Chennai and got discharged on 06.09.2004 for about one month he was under treatment in the said hospital for the Infected Non Union Right Femur. Following the Implant Surgery, the implant was removed. P.W.1 claimant has stated that he suffers from permanent disability on right leg. Due to the accident, he suffered fracture above the right knee and below the right knee and the movements have been restricted.

9. That apart, P.W.3 Dr.Rajasekaran has assessed the disability of claimant. It is his evidence that after surgery, due to infection, subsequently two surgeries were performed on him. Totally, he under went five surgeries. He has assessed disability at 50% for the fracture, for shortening of leg to the tune of 4 cm and for fracture of right 6th rib.

10. It is made clear through the evidence of the injured P.W.1 and the Dr.Rajasekaranan P.W.3 that the injured suffered fracture over the right leg and other injuries. It is relevant to note that totally, the claimant under



C.M.A.No.1748 of 2013

went surgeries for five times over the leg. His right leg is shortened by 4 cm. Obviously, claimant would find difficulties during work as he did before. It is the common understanding that the injured will face difficulty in walking, standing, climbing stairs, riding the two wheeler, etc., for which the Tribunal has invoked multiplier method for computing the loss of earning power which is questioned.

11. It is relevant to refer to the observations of the Hon'ble Supreme Court in **Mr.R.D.Hattangadi v.M/s.Pest Control (India) Pvt. Ltd., and others** reported in **1995 (1) SCC 551** wherein, it has been held that "In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

12. The Hon'ble Supreme Court in **Raj Kumar vs Ajay Kumar** reported in **[(2011) 1 SCC 343]** has elaborately dealt with under what circumstances, the multiplier method in injury cases may be invoked. The Hon'ble Supreme Court has also summarised the principles as follows:



WEB COPY

“(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."

13. In ***T.J.Parameshwarappa vs The Branch Manager, New***



C.M.A.No.1748 of 2013

India Assurance Company Limited [Civil Appeal No.8598 & 8599 of

2022 dated 18.11.2022], the Hon'ble Supreme Court held that 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.

14. Therefore, considering the fractures suffered by the injured and shortening of leg for 4 cm as mentioned supra, the claimant would face difficulties in walking, standing and other related difficulties. Considering the above said details, his functional disability is fixed at 50%. The claimant has to face this physical incapacity till his life time and there is no doubt that this will have more impact on his work.

15. Therefore, the claimant who was aged about 45 years at the relevant point of time and said to be working as a Mechanic in BSNL suffered fractures and shortening of leg by 4 cm. Therefore, for computing the loss of earning capacity, invoking of multiplier method by the Tribunal cannot be found fault with.

16. In so far as, the medical expanses are concerned receipts



C.M.A.No.1748 of 2013

Ex.P.9, Ex.P.10 and Ex.P.12 have been marked. Relying upon Ex.P.9 and Ex.P.12 receipts, the Tribunal has arrived at a sum of Rs.92,095/- and Rs.60,870/-. As regards Ex.P10 series receipts, no amount was granted by the Tribunal. Based on the medical receipts, the Tribunal has granted a sum of Rs.1,52,965/- for the medical expenses. Therefore, the amounts as mentioned supra, awarded by the Tribunal appears to be reasonable and needs no interference.

17. Based on the aforesaid discussions, this Civil Miscellaneous Appeal stands dismissed and the Judgment and Decree dated 30.11.2011 passed in M.C.O.P.No.102 of 2005 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Myladuthurai is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
mac



WEB COPY



C.M.A.No.1748 of 2013

To

1. The Motor Accident Claims Tribunal, Myladuthurai
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

mac

C.M.A.No.1748 of 2013
and M.P.No.1 of 2013



WEB COPY



C.M.A.No.1748 of 2013

24.01.2024