IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

**C.M.A.No.1721 of 2020**
**and**
**C.M.P.No.12752 of 2020**

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.6, 1st Floor, Sriram Complex,
Hagadur Colony, Immadihalli Main Road,
White Field, Bangalore-560 066.
C/o.The Divisional Manager,
The Oriental Insurance Company Ltd.,
Motor Third Party Hub, No.11, EVN Garden,
Parimalam Complex, 2nd Floor,
Mettur Road, Erode-638 011. … Appellant

vs.

1.Thimmaraj
2.Venkatesh … Respondents

**PRAYER**: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.09.2019 made in M.C.O.P.No.264 of 2017 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Hosur.

For Appellant : Mr.D.Baskaran
For 1st Respondent : Mr.P.A.Sudesh Kumar[R1]
For 2nd Respondent : Notice Dispensed With.

**JUDGMENT**

Challenge is made to the judgment and decree passed in M.C.O.P.No.264 of 2017 on the file of Motor Accident Claims Tribunal (Additional District Court), Hosur, dated 18.09.2019, by the Insurance Company.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.30,00,000/- from the respondents for the injuries sustained by the claimant in a road accident that occurred on 13.07.2014.

3. The Tribunal after evaluating the evidence has granted compensation of Rs.16,75,935/- fastening the liability on the 2nd respondent/Insurance Company.

4. The claimant suffered fracture and the Tribunal has invoked multiplier method for calculating the loss of earning power is under challenge.

5. The learned counsel appearing for the appellant/Insurance Company would strenuously argue that the claimant suffered fracture of femur and implants were fixed. At the time of accident, age of the claimant

was 26 years and he was said to be a painter. The discharge summary, wound certificate(Exs.P4 and P5) issued by Ashok Hospital, Hosur are the only treatment records. Further treatment records were not produced. It is his further argument that the Medical Board assessed his disability at 50%. He would further contend that adopting multiplier method by the Tribunal is incorrect. Therefore, the amounts granted for loss of earning power and the amount awarded for future prospects are liable to be set aside.

6. Per contra, the learned counsel appearing for the respondent/claimant vehemently argued that as the claimant suffered femur fracture and as a painter, it will be difficult for him to stand and do his work as he did before, therefore, the Tribunal thought it fit to invoke multiplier method. To buttress his arguments, the following decisions were referred to:

i) ***Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.,*** reported in ***2014 (2) SCC 735***.

ii) ***Rajkumar v. Ajay kumar and Another*** reported in ***(2011) 1 SCC 343.***

7. Heard the arguments of the learned counsel for the appellant Mr.D.Baskaran and the learned counsel for the respondent Mr.P.A.Sudesh

Kumar and perused the materials available on record.

8. At trial, the claimant has examined himself as PW1 and Exs.P1 to P9 were marked. On the side of the respondent neither any witness was examined nor any document was marked.

9. The judgment referred in Syed Sadiq case was referred in order to contend that the injured/claimant in that case namely Syed Sadiq suffered amputation of right leg to lower end of right femur and left upper arm and the disability was certified by the Doctor to the extent of 24% in respect of upper limb and 85% to the lower limb. The Tribunal fixed the disability at 30% in respect of whole body. The High Court in an appeal fixed the disability at 65%. Whereas the Hon'ble Supreme Court determined the disability at 85%. For the injured claimant/vegetable vendor aged about 24 years, income was fixed at Rs.6,500/- p.m. By adding 50% as future prospects, it would come to Rs.9,750/- and by applying multiplier of 18, the Apex Court granted Rs.17,90,100/- as loss of earning power [Rs.9750/- X 12 X 18 X 85%].

10. The Hon'ble Supreme Court was of the view that as a vegetable vendor, the nature of job would require 100% mobility and the loss of limb

is equal to loss of livelihood.

11. In Rajkumar v. Ajay kumar and another [2011 (1) SCC 343], the injured claimant, a cheese vendor sustained fracture of both bones left leg and fracture of left radius. The Tribunal fixed the disability at 45%. In appeal, the High Court rejected to increase the compensation on the ground that the disability certificate was not reliable. The Hon'ble Supreme Court in an appeal held that the disability certificate referred to 45% and functional disability of the body was not fixed and the disability was assessed at 25% and loss of future earning capacity was fixed at 20% and the Hon'ble Supreme Court elaborately dealt with under what circumstances, multiplier method may be invoked, even in injury cases and the modalities to be followed also have been given by the Apex Court.

12. In ***Sandeep Khanuja v. Atul Dande and Another*** reported in ***(2017) 3 SCC 351***, the Hon'ble Supreme Court held that in injury cases, description of nature of injury and permanent disablement are relevant factors and what would be the impact of such injury/disablement on earning capacity of injured has to be seen. The injured/claimant suffered 70% permanent physical disability who is a Chartered Accountant and the Tribunal did not invoke multiplier method. But, the Apex Court held that

the appellant who is a Professional Chartered Accountant is supposed to move around for taxation work, he has to appear before the Assessing Authority under the Income Tax Act. As there is a definite loss of earning capacity, multiplier method was adopted for estimation of functional disability by the Hon'ble Supreme Court.

13. It is seen from the medical records, Ex.P4-discharge summary and Ex.P5 - wound certificate issued by Ashok Hospital, Hosur that he suffered fracture of head of femur with posterior dislocation of left hip with foot drop and closed fracture of left clavicle. The injured was admitted in the Hospital as an inpatient on 13.07.2014 and he was discharged on 18.07.2014. He had undergone surgery where open reduction internal fixation(ORIF) with Herbert Screws fixation over head of femur and open reduction of left hip under spinal anaesthesia was done on 15.07.2014. On 14.07.2014, after 3D C.T.scan taken, pipkin fracture type-I noted in left hip joint: left femoral head inferior to fovea with posterior dislocation of the distal fracture fragment noted: and he also suffered undisplaced fracture of left greater trochanter.

14. The District Medical Board Krishnagiri medically examined the claimant and issued disability certificate Ex.P9, wherein, the disability was

assessed at 50%. It is discernible from the medical records that the claimant aged about 26 years, at the time of accident was a painter suffered the following fractures:

i) Fracture head of femur with posterior dislocation of left hip with foot drop ;

ii) Closed fracture of left clavicle;

15. The claimant suffered fracture of left thigh bone with foot drop, fracture of left collar bone, fracture of left hip joint and undisplaced fracture of greater trochanter (upper extremity of right femur). Therefore, the injured suffered two fractures in the hip itself and suffered fracture of upper thigh bone along with fracture of collar bone. As a painter, it necessarily involves through out to stand and work at times, they have to climb stairs, it involves 100% mobility. Therefore, it is a common understanding that after the said fractures, it will not be possible for a person to continue his work as he did before.

16. The Tribunal has taken the disability which was fixed by the Medical Board. Relying upon the Medical records coupled with other evidence, this Court deems fit to fix the functional disability at 50%. He suffered two fractures in the hip and one fracture in the upper thigh bone. It

is relevant to note that he had the problem of foot drop also. It is still worse. Therefore, based on the aforesaid discussions, invoking of multiplier method by the Tribunal cannot be found fault with.

17. The learned counsel for the appellant/insurance company stoutly contended that for loss of earning power and for future prospects under two heads, amounts were awarded, which is totally not correct. It is relevant to note that the main grievance of the learned counsel for the appellant is on two fold:

(i) Invoking of multiplier method is unwarranted in injury case.
(ii) Amounts have been awarded for loss of earning power and for future prospects is totally incorrect.

18. Now, loss of earning power has to be arrived at. For which, the Tribunal has fixed the monthly income at Rs.10,000/-. Date of accident is 13.07.2014. As per the Medical Records, his age is fixed at 26 years at the relevant point of time. As per the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, the relevant multiplier is 17. The Hon'ble Supreme Court has standardised the details of future prospects in respect of the person who is self-employed, in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN***

***MAC 609 (SC***). Future prospects for the age group of persons below 40 years is 40%. After adding future prospects with income, the loss of earning power has to be computed. For computing the earning power, based on the above said details, the following formula emerges:

Rs.10,000/- + 40% = Rs.14,000/-.

Rs.14,000/- X 17 X 12 X 50% = Rs.14,28,000/-.

The Tribunal has arrived at the loss of earning power without adding future prospects under separate head as mentioned by the learned counsel for the appellant. While computing the same, there is no difference in the quantum.

19. In the result, this appeal necessarily has to be dismissed. In fine, this Civil Miscellaneous Appeal stands dismissed and the judgment and decree dated 18.09.2019 made in M.C.O.P.No.264 of 2017 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Hosur, is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

29.01.2024

Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
ssn

**R.KALAIMATHI, J.,**

ssn



To:

1. The Motor Accident Claims Tribunal,
   Additional District Judge, Hosur.

2. The Section Officer,
   V.R.Section,
   High Court of Madras,
   Chennai.

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