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C.M.A.No.1784 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1784 of 2018
and C.M.P.No.13754 of 2018
and
CROS OBJECTION No.48 of 2022

C.M.A.No.1784 of 2018:

The Divisional Manager,
M/s.United India Insurance Company Limited,
TKM Complex,
Katpadi Road,
Vellore.

... Appellant / 2nd Respondent

vs.

1.Mr.Durai Murugan
2.Mr.S.Suresh

... 1st Respondent/Petitioner
... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 15.04.2016 passed in M.C.O.P.No.327 of 2011 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore.

For Appellant : Mr.J.Michael Visuvasam

For Respondent : Mr.R.Nalliyappan

CROS OBJECTION No.48 of 2022



C.M.A.No.1784 of 2018

Mr.Durai Murugan

... Cross Objector

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vs.

1. The Divisional Manager,
M/s.United India Insurance Company Limited,
TKM Complex,
Katpadi Road,
Vellore.

2.Mr.S.Suresh ... Respondents

PRAYER: This Cross Objection is filed under Order 41 Rule 22 of CPC against the Judgment and Decree dated 15.04.2016 passed in M.C.O.P.No.327 of 2011 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore.

For Appellant : Mr.R.Nalliyappan

For Respondent : Mr.J.Michael Visuvasam

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the judgment and decree dated 15.04.2016 passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, at Vellore in M.C.O.P.No.327 of 2011.

2. The claim petition was filed under Section 166 of Motor Vehicles Act claiming compensation of Rs.13,00,000/- for the injuries sustained by the claimant in a road accident that occurred on 16.02.2011.



C.M.A.No.1784 of 2018

WEB COPY

3. The Tribunal after evaluating the evidence has passed an award for an amount of Rs.5,78,000/- to the petitioner with interest at the rate of 7.5% per annum from the date of petition till the date of payment.

4. The learned counsel appearing for the appellant/Insurance Company Mr.J.Michael Visuvasam would strenuously contend that the Tribunal by adopting multiplier method has granted loss of income is totally unwarranted. The injured suffered fracture of ribs, dislocation of calvicular joint, fracture of right pelvic bone. He was treated conservatively for eight days. Dr.Shanmugasundaram/PW2 after four years of accident has assessed the disability at 50% is on the higher side. The Tribunal has not discussed as to how the impairment has resulted in loss of earning capacity and sought for a change.

5. Whereas, the learned counsel appearing for the claimant Mr.R.Nalliyappan, would vehemently argue that because of the above said injuries sustained by the claimant, his right side movement was considerably restricted. The claimant was a Manager. Due to the said injuries and fractures, the injured is not in a position to lift his right hand.



C.M.A.No.1784 of 2018

The Tribunal has rightly adopted the multiplier method for computing loss of earning power. The Tribunal reduced the disability to 40% is not correct.

The income of the claimant was fixed at Rs.6,000/- is less. The amount awarded for pain and sufferings is also not sufficient and for attender charges no amount was awarded.

6. Heard the arguments of the learned counsels for either side and perused the entire materials available on record.

7. At trial, on the side of the petitioner, PW1 to PW3 were examined and Exs.P1 to P13 were marked. On the side of the respondents two witnesses were examined. Exs.R1 to R5 were marked.

8. It is the evidence of PW1 that on 16.02.2011, at 11.30 a.m., due to the mechanical failure, the petitioner had parked his lorry bearing Reg.No.TN-21-M-4999 near Manthangal near Pachiappan Naicker Land on the left side of the road, a truck bearing Reg.No.TN-36-X-8524 came in a rash and negligent manner and hit the lorry from behind, the petitioner sustained fracture of his right pelvic bone, dislocation of right clavicle joint fracture of right ribs 2 to 9. As per Ex.P7 discharge summary issued by



C.M.A.No.1784 of 2018

Christian Medical College Hospital, Vellore, he was treated as inpatient from 17.02.2011 to 24.02.2011. Initially treatment was taken at Government Hospital, Wallajah and thereafter, he took treatment at CMC, Vellore. For the fracture of pelvic bone, he had undergone surgery.

9. PW2-Dr.Shanmugasundaram, an Orthopaedic Surgeon would state that the claimant suffered from malunion as regards pelvic bone fracture. He has assessed the disability at 50%. He has opined that due to the above said fractures and injuries the injured would find it difficulty in lifting the objects while doing his work, he cannot stand or walk continuously for half an hour.

10. The Tribunal has fixed the monthly income of the claimant at Rs.6,000/-, applied multiplier 15, for 40% disability and calculated loss of earning power as Rs.4,32,000/- . The multiplier method adopted by the Tribunal is sought to be challenged stating that adopting multiplier method is totally unwarranted.

11. The Hon'ble Supreme Court in ***Raj Kumar v.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:

"(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 to 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."



C.M.A.No.1784 of 2018

12. PW2 - Dr.Shanmugasundaram has assessed the disability as partial permanent disability. He has not assessed the functional disability of the claimant.

13. PW2 - Dr.Shanmugasundaram has opined that the pelvic bone is malunited and due to the rib fracture, the claimant has restricted movement of shoulders. It has also been stated that the injured cannot stand or walk continuously for half an hour and he cannot lift the objects and cannot do manual work. The claimant was aged above 37 years at the time of accident. He was working as a lorry driver. As per the evidence of PW2 Dr.Shanmugasundaram, due to the malunion of pelvic bone, definitely he would also find difficulties to stand and walk. It is evident that due to the fracture and injuries, it will be difficult for him to drive heavy duty vehicle probably he can carry lesser scale of activities, in order to earn his livelihood. In these circumstances, considering the effects of injuries on him, as a lorry driver, his functional disability is assessed at 40%. The driver of the lorry might have to drive his vehicle for a long distance for a day or too at times. After the accident, with these difficulties as mentioned supra, he cannot continue to work as a lorry driver. Considering the age of the claimant and the effects of the injuries on him, invoking of multiplier



C.M.A.No.1784 of 2018

method by the Tribunal cannot be found fault with.

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14. The petitioner has claimed that he was earning Rs.10,000/- per month as a lorry driver, the Hon'ble Supreme Court has fixed the income of a 24 year old vegetable vendor / injured at Rs.6,500/- per month, for the accident occurred in the year 2008 in **Syed Sadiq v. Divisional Manager, United India Insurance Company Limited** reported in **2014 (1) TN MAC 459 (SC)** and for the injured, while adopting multiplier method, the Hon'ble Supreme Court has added 50% towards future prospects following Santhosh Devi's case.

15. This Court deems fit to fix the monthly income of the claimant at Rs.8,000/-. As per the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd., v. Pranay Sethi and others** reported in **2017 (2) TN MAC 609 (SC)**, for the persons aged below 40 years, 40% is to be added as future prospects, while computing the monthly income. In **Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another** reported in **2009 (2) TN MAC 1 (SC)**, the Apex Court has standardized the relevant multiplier is 15. Based on the above said details, for loss of earning power, the formula emerges as follows:



C.M.A.No.1784 of 2018

WEB COPY

Age of the injured : 37 years

Monthly income fixed : Rs.8,000/-

Future Prospects : 40%

Notional Income Arrived at : Rs.8,000/- + 40%
Rs.11,200/-

Multiplier to be adopted : 15

Functional Disability assessed: 40%

For Loss of earning power : Rs.11,200/-X12X15X40%
: Rs.8,06,400/-

16. That apart, for Transportation and Extra Nourishment an amount of Rs.10,000/- is granted in addition to the amounts already granted. The Tribunal has granted Rs.4,32,000/- for loss of earning power, an amount of Rs.25,000/- was granted under the head of partial loss of earnings. Which is not correct, the same is rejected. In all other aspects, the amount awarded by the Tribunal appears to be reasonable and hence, needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Pain and Sufferings	Rs. 50,000/-	Rs. 50,000/-	Confirmed



C.M.A.No.1784 of 2018

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
2	For Food and Extra Nourishment	Rs. 10,000/-	Rs. 20,000/-	Enhanced
3	For Medical Expenses	Rs. 58,500/-	Rs. 58,500/-	Confirmed
4	For Transportation	Rs. 2,500/-	Rs. 12,500/-	Enhanced
5	For Loss of Earning Power	Rs.4,32,000/-	Rs. 8,06,400/-	Enhanced
6	For Partial Loss of Earnings	Rs. 25,000/-	NIL	Rejected
	Total	Rs.5,78,000/-	Rs.9,47,400/-	
	Rounded of to		Rs.9,47,000/-	

17. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.5,78,000/-** to **Rs.9,47,000/-** which would carry interest at the rate of 7.5% per annum.

18. In the result,

(i) The Civil Miscellaneous Appeal is dismissed.

(ii) Cross Objection No.48 of 2022 preferred by the claimant stands allowed.

(iii) The compensation awarded by the Tribunal is enhanced from **Rs.5,78,000/-** to **Rs.9,47,000/-**.



C.M.A.No.1784 of 2018

(iv) The Appellant / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.9,47,000/-** (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.327 of 2011 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore, within a period of eight weeks from the date of receipt of a copy of this Judgment, in the first instance and later recover the same from the 1st respondent / Owner of the insured vehicle.

(v) On such deposit being made, the Claimant/Cross Objector is permitted to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The claimant/cross objector is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant. Consequently connected miscellaneous petition is closed. No costs.

24.01.2024

Index : Yes/No
Speaking / Non-speaking order
ssn



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C.M.A.No.1784 of 2018

R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Vellore.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

C.M.A.No.1784 of 2018
and C.M.P.No.13754 of 2018
and

CROS OBJECTION No.48 of 2022



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C.M.A.No.1784 of 2018

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