



Civil Miscellaneous Appeal No.2066 of 2022

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DATED : 10.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2066 of 2022

S.Arunkumar

... Appellant

Vs.

1. Sathish

2. United India Insurance company Limited,
regional Office Legal Department,
Silingi Buildings New No.134,
Old No.40 – 42 Greaves Road,
Chennai 600 006

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award dated 02.03.2021 made in M.A.C.T.O.P No.2971 of 2017 on the file of the Motor Accident Claims Tribunal II Judge, Small Causes Court, Chennai.

For Appellants : Mr.S.R.Suga

For Respondents : R1-Exparte
Mr.K.Swaminathan for R2

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant against the award passed by the Motor Accident Claims



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Tribunal II Judge, Small Causes Court, Chennai in MACT OP No.2971
of 2017 dated 02.03.2021.

2. The case of the claimant is that on 14.04.2017 at about 22.05 hours, the claimant was riding the motor cycle at T.H.Road and at that time, the offending vehicle, which was coming from the opposite direction was driven in a rash and negligent manner and it dashed on the two wheeler of the claimant and as a result, the claimant was thrown away from the two wheeler and he sustained grievous injuries. The claimant suffered fracture shaft of femur left. His disability was assessed by the Board as 19%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, fixed the total compensation of Rs.1,70,750/- in the following manner :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount</i>
1.	Disability	Rs.57,000/-
2.	Pain and Sufferings	Rs.25,000/-



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<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount</i>
3.	Transportation	Rs.5,000/-
4.	Extra Nourishment	Rs.10,000/-
5.	Attender Charges	Rs.3,750/-
6.	Loss of Earnings	Rs.45,000/-
7.	Loss of Future Prospects	Rs.25,000/-
	Total compensation	Rs.1,70,750/-

The above compensation was directed to be paid by the Insurance company with interest at the rate of 7.5% per annum.

4. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. Heard Mr.S.R.Suga, learned counsel for appellant/claimant and Mr.K.Swaminathan, learned counsel for second respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.



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7. This Court also carefully went through the award passed by the Tribunal.

8. The learned counsel for the appellant submitted that the appellant was working as a sales representative and after the accident, he was relieved from his job due to the fact that the appellant was not able to do the job because of the injury sustained. A relieving letter was also given by the employer. These documents were marked as Ex.P9 and Ex.P10. The learned counsel submitted that the appellant thereafter rejoined in a different company at which point of time, the salary that was fixed for the appellant was Rs.2,000/-, lesser than the earlier salary that was earned by the appellant. In view of the same, the learned counsel submitted that the Tribunal ought to have calculated the loss of earning capacity by applying the multiplier method. To substantiate this submission, the learned counsel for appellant relied upon the judgement of the Apex Court in ***[Raj Kumar Vs.Ajay Kumar and another]*** reported in ***2010 (2) TN MAC 581 (SC)*** and placed specific reliance upon Paragraph 10 of the judgment, which is extracted hereunder :-



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10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a



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claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the



duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

9. The learned counsel further submitted that the compensation that has been fixed under the other heads also requires enhancement, since it is on the lower side.



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10. Per contra, the learned counsel for insurance company submitted that there is absolutely no ground to calculate loss of earning capacity by applying the multiplier method, since the appellant has joined in yet another company for the same job. If lesser salary has been fixed in that company, that is not a ground for applying multiplier method and to come to the conclusion that there is loss of earning capacity because of the disability sustained by the Appellant. The learned counsel further submitted that the compensation that has been fixed under various other heads is also reasonable and it does not require the interference of this Court.

11. In the instant case, the disability certificate that has been given by the board was marked as Ex.C1, which shows that the appellant has suffered 19% disability. It is also seen from the medical records that the appellant has sustained fracture shaft of femur left.

12. The appellant was working as a sales representative and was earning a sum of Rs.20,000/- per month. In order to substantiate the



same, the appellant has marked the relevant document under Ex.P7. After the accident, the appellant has resigned from the company and he was also been relieved from the said company, which is evident from Ex.P9 and Ex.P10. Thereafter, the appellant had applied for a new job and the offer letter has been marked as Ex.P11. According to the appellant, in the next job that was offered to the appellant, his salary came down by Rs.2,000/-. This was as a result of the disability suffered by the appellant due to the accident.

13. The judgement that was relied upon by the learned counsel for appellant in *Raj Kumar case* referred supra talks about a situation where on account of the disability suffered, the concerned person is shifted to some other suitable but lesser post with lesser emoluments. There may also be a scenario where the injured may not find the suitable post for discharging the duties attached to the post after the accident. In such a situation, the Apex Court has held that compensation can be granted under the head of loss of future earning capacity.

14. In the instant case, the above judgement can never come to



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the aid of the appellant. The appellant was working as a sales representative in one company and he resigned from this company and thereafter, joined yet another company where he was offered salary which was Rs.2,000/- lesser than the earlier salary. That by itself, is not a ground to come to a conclusion that such a lesser salary was given to the appellant only because of the disability suffered by the appellant. It will be too far fetched to come to such a conclusion. Therefore, there is absolutely no ground to apply the multiplier method in this case and calculate the loss of future earning capacity.

15. Having rendered the above findings, this Court finds that the amount that was fixed by the Tribunal per percentage is very low. The Tribunal has fixed the amount at Rs.3000/- per percentage. The accident had taken place in the year 2017 and hence, the amount per percentage must be fixed at Rs.7,000/-. Useful reference can be made to the judgement of the Division Bench of this Court in CMA No.3334 of 2021 dated 15.06.2021. Thus, under the head of disability, the total compensation can be fixed at Rs. 7,000 x 19 =Rs.1,33,000/-.



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16. The appellant had undergone an operation and he was taken treatment as an inpatient for nearly 15 days. Taking that into consideration, the compensation under the head of pain and sufferings, can be enhanced to Rs.50,000/-. Similarly, the compensation under the head of transportation can be enhanced to Rs.15,000/-. Even insofar as Extra nourishment is concerned, it can be enhanced to Rs.25,000/- The attender charges can also be enhanced to Rs.10,000/-. The compensation fixed under the other heads are reasonable and it does not require the interference of this Court.

17. In the light of the above discussion, the compensation fixed by the Tribunal is modified/ enhanced as follows :-

<i>Sl.No.</i>		<i>Amount</i>
1.	Disability [Rs.7000 x19]	Rs.1,33,000/-
2.	Pain and Sufferings	Rs.50,000/-
3.	Transportation	Rs.15,000/-
4.	Extra Nourishment	Rs.25,000/-
5.	Attender Charges	Rs.10,000/-
6.	Loss of Earnings	Rs.45,000/-



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<i>Sl.No.</i>		<i>Amount</i>
7.	Loss of Future Prospects	Rs.25,000/-
	Total compensation	Rs.3,03,000/-

18.. The compensation awarded by the tribunal at Rs.1,70,750/- is enhanced to Rs.3,03,000/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.1,32,250/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of realization within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

19. This Civil Miscellaneous Appeal is allowed in the above terms. No costs.

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Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To
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Motor Accident Claims Tribunal II Judge, Small Causes Court, Chennai.

N.ANAND VENKATESH, J.

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