



C.M.A.No.738 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.738 of 2021
and
C.M.P.No.4383 of 2021

The Manager,
Shriram General Ins. Co. Ltd.,
No.66, City Centre Complex,
Tirumalaipillai Road, T.Nagar, Chennai – 17. ... Appellant

Vs.

1.V.Praveen Kumar

2.A.Mohammed Rafic ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 30th September 2019 passed in M.C.O.P.No.8202 of 2013 by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.C.Bhuvanasundari

For Respondents : M/s.P.T.Saleem Fathima [R1]
Not Ready in Notice [R2]



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JUDGMENT

WEB COPY The Insurance Company has filed this appeal challenging the adoption of multiplier method by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P.No.8202 of 2013 for calculating the loss of earning due to disability especially when disability has no impact on the earning capacity of the claimant.

2. On 01.11.2013 at about 17.30 hours, the claimant was proceeded in a two wheeler bearing Regn.No.TN-20-BQ-2261 from south to north direction in Korattur east Avenue road on the western side of the road. At that time, a TATA Ace bearing Regn.No.TN-32-T-5176 belonging to the first respondent and insured with the second respondent, came from west to east direction in a rash and negligent manner endangering to public safety in lightning speed unmindful of the main road traffic entered the western half of the korattur east avenue road and while attempting to take a right turn on seeing the bus proceeding, suddenly and abruptly stopped the vehicle in the middle of the road, due to which, the vehicle was dashed against the two wheeler and in this impact, the claimant sustained multifarious fractures and injuries. Therefore, the claimant filed a claim petition claiming a total compensation of a sum of Rs.46,00,000/- for the

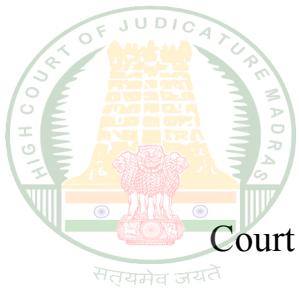


injuries sustained by him in the road accident.

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3. Before the Tribunal, the claimant had examined himself as P.W.1 and examined the doctor as P.W.2 and marked 23 documents viz., Ex.P.1 to Ex.P.23. On the side of the respondents, they have not examined any witness but, marked one document viz., Ex.R.1. Apart from that, Disability certificate issued by the medical board was marked as Ex.C.1. After adjudication, the Tribunal allowed the petition in part and awarded a sum of Rs.14,86,300/-. Aggrieved by the same, the insurance company had filed the present appeal.

4. Learned counsel appearing for the appellant/Insurance Company submitted that, though the FIR was registered against the 1st respondent/claimant, however, the Tribunal had erroneously fastened the entire negligence on the part of the driver of the offending bus, which is wholly unsustainable and the same requires to be interfered with. Further, he submitted that the Medical Board assessed permanent disability as 25% of the 1st respondent, however, the Tribunal has erroneously adopted multiplier method and awarded a sum of Rs.11,73,000/- towards functional disability, which is contrary to the ratio laid down by the Apex



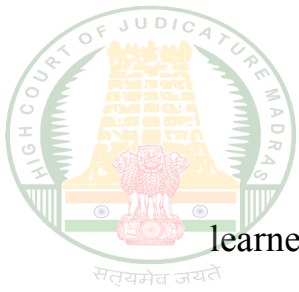
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Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in **2011**

WEB COPY (1) SCC 343 and the same requires interference. Accordingly, she prays for allowing the appeal.

5. Per contra, learned counsel appearing for the 1st respondent submitted that, the 1st respondent/claimant had driven the motorcycle in a careful manner, however, the driver of the offending vehicle driven the same in a rash and negligent manner, thereby, the accident had happened. He further submitted that, mere filing of FIR against the 1st respondent is not sufficient to hold that the 1st respondent is at fault. Therefore, the Tribunal had rightly fixed the entire negligence on the part of the driver of the offending vehicle, which cannot be interfered with. Further, he submitted that, by applying the ratio laid down by the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in **2011 (1) SCC 343**, the Tribunal had awarded compensation by adopting multiplier method by accepting the disability assessed by the Medical Board, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the



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learned counsel appearing on behalf of the 1st respondent and also
perused the materials available on record.

7. There is no quarrel that the 1st respondent/claimant had suffered the injuries as a result of the accident, in which the second respondent's vehicle was involved, which has been insured with the appellant/insurance company. The Tribunal, considering the materials placed before it has rightly come to the conclusion that it was due to the rash and negligent driving of the driver of the second respondent's vehicle, the accident had happened and therefore, it is the duty of the appellant/insurance company as insurer of the offending vehicle, to compensate the 1st respondent/claimant. When the Tribunal has found that the offending vehicle was driven rashly and negligently, in the absence of any contra evidence to show the rashness and negligence on the part of the injured in driving his vehicle, merely because the FIR was registered against the 1st respondent/injured, cannot form the basis to hold that the injured was also driving the vehicle rashly and negligently, as the issue of rash and negligent driving is a question of fact, which has to be established and not presumed for the reason that the FIR has been registered against the injured. Therefore, the finding recorded by the



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Tribunal that the vehicle insured with the appellant had been driven in a rash and negligent manner does not require any interference and the said finding recorded by the Tribunal is confirmed.

8. Now, the only grievance of the appellant is with regard to adoption of multiplier method for the disability suffered by the claimant. Ex.C.1 is the disability certificate issued by the medical board, in which, the medical board assessed the disability at 25% permanent disability. However, the Tribunal, by accepting the same, had awarded compensation towards functional disability by adopting multiplier method. In this regard, it is relevant to extract paragraph Nos.9 to 13 of the judgment passed by the Apex Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr.** reported in **2011 (1) SCC 343** :-

"9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability



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then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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 disability (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 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



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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.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of



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permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above :

(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-



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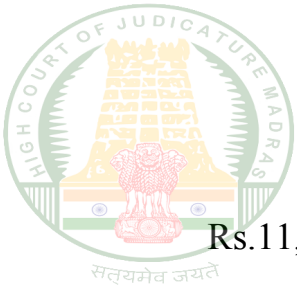


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claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal 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."

9. A perusal of the above reveals that, the Tribunal has power to fix functional disability based on the oral evidence placed before it. However, in order to establish the functional disability the claimant has not examined any expert either from the medical board or any independent doctor. Without any expert opinion, the Tribunal had arrived at a conclusion that the claimant had suffered functional disability and awarded compensation by adopting multiplier method, which is wholly unsustainable and hence, the same is liable to be interfered with. Hence, this Court is of the opinion that percentage method is to be adopted in this case and not the multiplier method and, therefore, fixing a sum of Rs.3,000/- per percentage of disability and accepting the disability of the 1st respondent/claimant assessed by the Medical Board at 25%, the loss of earning power is reassessed on percentage basis at Rs.75,000/- (Rs.3000/- * 25) and, accordingly, loss of earning power is reduced from



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Rs.11,73,000/- to a sum of Rs.75,000/-.

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10. Further, the Tribunal has awarded a sum of Rs.1,50,000/- towards pain and suffering; Rs.15,000/- towards extra nourishment; Rs.7,500/- towards transport to hospital; Rs.1,000/- towards damages to clothes; Rs.1,000/- towards attender charges; Rs.85,705/- towards medical expenses; Rs.10,000/- towards future medical expenses; Rs.23,000/- towards loss of income and Rs.20,000/- towards loss of amenities. This Court is of the view that the compensation awarded by the Tribunal under the heads extra nourishment, damages to clothes, medical expenses and future medical expenses are just and reasonable and the same are confirmed.

11. However, the compensation awarded by the Tribunal towards pain and suffering, which in the opinion of the Court is high and the same is reduced to Rs.50,000/-. Further, the compensation awarded by the Tribunal towards transport to hospital, attender charges and loss of income, which in the opinion of the Court are low and the same are enhanced to Rs.30,000/-, Rs.20,000/- and Rs.70,000/- respectively. There is no basis on which the Tribunal has awarded compensation towards loss



of amenities, and hence, the same is set aside.

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12. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>S. No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of earning power	11,73,000/-	75,000/- (reduced)
2	Pain and suffering	1,50,000/-	50,000/- (reduced)
3	Extra nourishment	15,000/-	15,000/-
4	Transport to Hospital	7,500/-	30,000/- (enhanced)
5	Damages to clothes	1,000/-	1,000/-
6	Attender charges	1,000/-	20,000/- (enhanced)
7	Medical expenses	85,705/-	85,705/-
8	Future Medical Expenses	10,000/-	10,000/-
9	Loss of income	23,000/-	70,000/- (enhanced)
10	Loss of amenities	20,000/-	-
	Total	14,85,205/-	3,56,705/-

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed in the aforesaid terms and the impugned award of the Tribunal is modified, reducing the compensation amount from **Rs.14,86,300/-** to **Rs.3,56,705/-**. The appellant/Insurance Company is directed to deposit the modified award amount to the credit of M.C.O.P.No.8202 of 2013



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along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected civil miscellaneous petition is closed.

04.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To
The Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

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The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

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