



C.M.A.No.2217 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2217 of 2024

Deepa

... Appellant

..Vs..

1. Thirumurugaraj
2. M/s. The New India Assurance Co. Ltd.,
No.252/42, first floor, NM Arcade,
Opp. to ARRS Multiplex,
Meyyanoor bypass Road,
Salem 636 004

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 01.09.2023, passed by the Special Sub Judge, Motor Accident Claims Tribunal II, Salem, in M.C.O.P.No.1060 of 2022.

For Appellant : Mr.L.Ramanathan

For R2 : Mr.R. Neethi Perumal



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JUDGMENT

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The appellant is the claimant in M.C.O.P.No.1060 of 2022 on the file of the learned Special Sub Judge, Motor Accident Claims Tribunal II, Salem, and she filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.80,00,000/- for the injuries sustained by her, in a road accident that took place on 27.06.2022.

2. The brief case of the appellant/claimant is as follows:

2.1. On 27.06.2022, at about 3.00 p.m, the appellant/claimant was travelling as a pillion rider in a Motor cycle bearing Registration No.TN 27 L 4368 on Erode-Salem Road. When the said two wheeler was waiting at the centre median point to cross the Sankari main Road, a speeding bus bearing Registration No.TN 52 J 7676, belonging to the first respondent, hit the same, as result of which the claimant fell down and sustained injuries all over her body. She was immediately rushed to Dharan hospital, Salem, and after getting first Aid she got herself admitted in Ganga hospital, Coimbatore, as an inpatient. On account of the said accident she sustained multiple grievous injuries, below right hand, elbow



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nerves bones and muscles were completely crushed and damaged and a major operation was performed and her right fore arm was amputated upto elbow level.

2.2. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration No.TN 52 J 7676 was the cause of the accident and that since the said bus was insured with the second respondent, The New India Assurance Co. Ltd., the owner of the bus (first respondent) and the insurer are jointly and severally liable to pay compensation to her.

3. In the Tribunal, the first respondent remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, directed the second respondent to pay compensation of Rs.27,18,006/- to the appellant/claimant together with interest at the rate of 7.5% per annum



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from the date of the petition till the date of realisation.

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5. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

6. Heard Mr.L.Ramanathan, learned counsel for the appellant and Mr.R. Neethi Perumal, learned counsel for the second respondent.

7. Mr.L.Ramanathan, learned counsel for the appellant contended that though the Medical Board assessed the Partial Permanent Disability of the appellant/claimant as 70%, the Tribunal had taken it as 60% without any basis. He also contended that the claimant was a first year B.Com student and the Tribunal had fixed her notional monthly income as Rs.10,000/-, which is on the lower side. He further contended that the Tribunal had granted meagre amounts under the other heads also and therefore, prayed for overall enhancement of compensation.

8. Per contra, Mr.R. Neethi Perumal, learned counsel appearing for the second respondent/Insurance Company contended that the Award



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passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

9. The claimant in the instant case was aged 18 years on the date of accident and she was a first year B.Com student. Since the accident took place in the year 2022, this Court feels that fixing the notional monthly income of the claimant as Rs.12,000/- would meet the ends of justice. To this sum, 40% is added towards future prospects as per the decision of the Constitution Bench of the Honourable Supreme Court of India in *National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601.*, and hence the monthly income of the claimant is fixed at Rs.16,800/- (12,000 + 4,800).

9.1. In the instant case, the appellant/claimant is a first year B.Com student, who suffered disability to the extent of 70%. Therefore, applying multiplier method is warranted as per the decision in *Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343*, wherein it has been held thus:-



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"6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities,



Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. ...

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 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.

In the instant case, the claimant had sustained the following injuries:

"Diagnosis

RTA with major crush injury right upper limb with skin and soft tissue loss of elbow, forearm and hand.

Type III C carpal bone fracture with bone loss with unstable metacarpal and metacarpophalangeal joint with precarious vascularity of thumb and other fingers of right upper limb.

Head injury left high parietal sah.

Multiple facial abrasions.

soft tissue injury bilateral knee."

Applying the ratio laid down in the above decision, multiplier method is adopted. The proper multiplier in the instant case is 18 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation***



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and another reported in **(2009) 6 SCC 121**. Accordingly the 'loss of earning capacity' is calculated as follows.

Calculation for loss of earning capacity

Notional income fixed	- Rs.16,800/-
Proper multiplier	- 18
Disability suffered by appellant	- 70%
Loss of earning capacity	- $16,800 \times 12 \times 18 \times 70/100$
	= Rs.25,40,160/- .

The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of earning capacity	18,14,400/-	25,40,160/-
2.	Medical Expenses	6,32,606/-	6,32,606/-
3.	Transportation, Nutrition & Attender's charges	20,000/-	50,000/-
4.	Pain and sufferings	1,00,000/-	2,00,000/-
5.	Marital prospects	1,00,000/-	2,00,000/-
6.	Loss of Amenities and enjoyment of	50,000/-	1,00,000/-



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
	life		
7.	Damages to clothes and articles	1,000/-	1,000/-
	TOTAL	27,18,006/-	37,23,766/-

10. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.27,18,006/-** to **Rs.37,23,766/-** which would carry interest at the rate of 7.5% per annum.

11. In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed. No costs.
- (ii) The compensation awarded by the Tribunal is enhanced from **Rs.27,18,006/-** to **Rs.37,23,766/-**.
- (iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- (iv) The second respondent, the New India Assurance Company Limited, Salem, is directed to deposit the enhanced compensation amount



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i.e., Rs.37,23,766/- (less the amount already deposited) together with

interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.1060 of 2022 on the file of the Special Sub Court, Motor Accident Claims Tribunal No.II, Salem, within a period of four weeks from the date of receipt of a copy of this order. The appellant/claimant is not entitled to claim any interest for the period of delay of 176 days in filing this appeal.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

14.08.2024

Index : Yes/No

Internet : Yes/No

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To

1. The Special Sub Judge No.II, Motor Accident Claims Tribunal No.II, Salem.
2. M/s. The New India Assurance Co. Ltd.,
No.252/42, first floor, NM Arcade,
Opp. to ARRS Multiplex,
Meyyanoor bypass Road,
Salem 636 004.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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