



C.M.A. No. 3684 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3684 of 2021

C. Baskar

... Appellant / Petitioner

Vs.

1. V. Satheeskumar

2. M/s. Abirami Roadways,
No.16, Budder Street,
Erode Main road,
Pudhupalayam Post,
Gobichettipalayam Taluk,
Erode District.

3. The Branch Manager,
Oriental Insurance Company Limited,
No.59, Raja Street,
Gobichettipalayam Town and Taluk,
Erode District.

4. The Branch Manager,
New India Assurance Company Limited,
Annapoorna Building,
Ooty Main Road,
Mettupalayam Taluk,
Coimbatore District.

... Respondents / Respondents



C.M.A. No. 3684 of 2021

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 16.12.2020 M.C.O.P. No. 505 of 2014 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Gobichettipalayam.

For Appellant : M/s. S.P. Yuaraj
For RR 1 & 2 : No Appearance
For R3 : M/s. J. Chandran
For R4 : M/s. R. Sivakumar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 505 of 2014, dated 16.12.2020 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Gobichettipalayam.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 24.07.2014, at about 1:20 PM, the claimant was riding a Bajaj Pulsar motor cycle bearing Registration No.TN-36-AB-4798 from Atthani to Gobi main road, while he reached near Mettuvalavu bus stop, a



Mini Bus bearing Registration No.TN-36-AB-3336 came in the opposite direction, driven by its driver in a rash and negligence manner, hit on the claimant's vehicle, thereby causing grievous injuries to the claimant. The claimant was immediately admitted in Gobi Government Hospital and subsequently, he was admitted in the Ganga Hospital, Coimbatore. In the accident, the claimant has lost two fingers on his right hand and severe muscle tear on the right palm. A criminal case was registered in Cr.No.348/2014 U/s.279 and 337 of IPC on the file of Gobi Police Station. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.6,00,000/- under section 166 and 140 of the Motor Vehicles Act.

4. The first, second and third respondents are the driver, owner, insurer of the Mini Bus bearing Registration No.TN-36-AB-3336, respectively. The fourth respondent is the insurer of the Bajaj Pulsar motor cycle bearing Registration No.TN-36-AB-4798. The third respondent - insurance company of the bus filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the claimant, who has ridden the two wheeler in high speed, thereby lost his



control and hit on the Mini bus and invited the accident. The insurance company also disputed the age, income, occupation, nature of injuries sustained and disability of the claimant and further contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. The fourth respondent - insurance company of two wheeler filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the driver of the Mini bus and also disputed that no premium was paid for the owner and rider of the two wheeler in the insurance policy and the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant P.W.1 was examined and Exs.P.1 to P.14 and Ex.C.1- disability certificate of the claimant were marked. On the side of the respondent, no witnesses were examined and Exs.R.1 and R.2 were marked.

7. Based on the evidence placed on record, the Tribunal in point



no.1, has held that the rash and negligence on the part of the first respondent, who is the driver of the Mini bus is responsible for the accident.

In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.3,61,910/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

8. Aggrieved over the quantum of compensation, more particularly claiming enhancement under the head disability, the claimant has filed this appeal. The respondents have not preferred any appeal against the award.

9. The learned counsel appearing for the claimant submitted that, it is the case of amputation of two fingers, degloving injury to palmar aspect and left upper limb the Medical Board has assessed 80% disability on his right hand and the injuries restricts the claimant from doing his earlier avocation, but this was not properly appreciated by the Tribunal and granted compensation by adopting percentage method. The Tribunal ought to have adopted multiplier method and granted compensation under the head loss of earning capacity and further submitted that the compensation awarded



under other heads are on the lower side, hence prays to modify the award.

WEB COPY

10. Per contra, the learned counsel appearing for the insurance company submitted that the percentage of disability assessed by the Medical Board is for the right hand and not for the whole body, hence the same could not be considered as disability to the extent of 80%. He also fairly considered that as per the Employee Compensation Act, the injuries sustained by the claimant is schedule injury, hence the percentage made in the schedule has to be taken for assessing the disability and he also contended the injuries sustained by the claimant does not leads to loss of his earning.

11. I have considered the submissions made on both sides and perused the materials available on record.

12. This Court has directed the claimant to appear before this Court and accordingly, he has appeared in the presence of both the counsels and the nature of injuries sustained by him in the accident was investigated and it is admitted by both sides that there is amputation of two fingers in his



right hand, degloving injury on his right palmar and left upper limb, which clearly shows that his injured hand could not be effectively used, more particularly, he could not hold or carry any object effectively. Ex.C.1- disability certificate issued by Government IRT-Perundurai Medical College Hospital shows that the claimant has sustained 80% disability and this Court also verified the same.

13. It is claimed by the claimant that he is working in the Marketing Division in the Infra Cart company, but to prove his avocation, no witnesses were examined and it is also stated that since, he is working in the Marketing field, he used to go various places by using two wheeler to do his marketing but due to injuries sustained, he could not ride the two wheeler for carrying out his avocation. However, the Tribunal after considering the Medical Board report has held that the claimant has sustained non-functional permanent disability, adopted percentage method and granted Rs.3,000/- per percentage of injury and awarded Rs.2,40,000/- as compensation under the head disability. Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]*** has given a guidelines as well as illustration for fixing the disability and in Paragraph Nos.8, 10 and 13, it summarizes



the principles to be followed while assessing the disability and granting compensation under the head loss of earning capacity as follows:

“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. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage



WEB COPY



C.M.A. No. 3684 of 2021

of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* - 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* - 2010 (8) SCALE 567).

.....

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 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



WEB COPY



C.M.A. No. 3684 of 2021

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.

.....

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



WEB COPY



C.M.A. No. 3684 of 2021

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 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.”

14. Considering the age, nature of injuries, disability, percentage of injury fixed by the Medical Board and avocation of the claimant, this Court is of the view that the approach of the Tribunal is not proper, since, it is case of amputation of fingers, degloving injuries on the palmar and upper limb, this Court is of the view that granting compensation by adopting multiplier would be proper and thereby fix disability of 30% towards loss of earning capacity to the claimant. The Tribunal has fixed the monthly



notional income of Rs.12,000/- for the claimant for granting compensation under the head loss of income during the treatment period, considering the date of accident, the income fixed by the Tribunal is proper. On perusal of the Ex.P.13 - Aadhaar card, the age of the claimant shows 24 years at the time of accident, hence as per Hon'ble Apex Court judgments in *Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 SSCR 299 : 2020 ACJ 2159]*, future prospectus is fixed as 40% and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '18'. Accordingly, the loss of earning capacity is assessed as follows:

Monthly notional income	= Rs.12,000/-
Future prospectus @ 40%	= Rs.4,800/-
Total income with future prospectus	= Rs.16,800/-
Total annual income (Rs.16,800/- X 12)	= Rs.2,01,600/-
Applicable Multiplier	= 18
Total income (Rs.2,01,600/- X 18)	= Rs.36,28,800/-
Loss of earning capacity (disability @ 30%)	= Rs.10,88,640/-

15. This Court has awarded compensation under the head loss of earning capacity, hence the compensation awarded under the head loss of income during the treatment period is hereby rejected. The Tribunal has not



awarded compensation under the head loss of amenities, considering the nature of injuries, this Court is inclined to award Rs.30,000/- towards loss of amenities. The Tribunal has awarded Rs.5,000/- towards extra nourishment, which is on the lower side, hence this Court enhanced the same to Rs.10,000/-. The compensation awarded under other heads are concerned, the Tribunal has awarded a just compensation, hence the same are hereby confirmed.

16. Accordingly, the award passed by the Tribunal is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Temporary Disability/ modified to loss of earning capacity	2,40,000/-	10,88,640/-	Enhanced
2.	Medical bills	39,910/-	39,910/-	Confirmed
3.	Pain and suffering	30,000/-	30,000/-	Confirmed
4.	Loss of income during treatment period	36,000/-	---	Rejected
5.	Transportation expenses	5,000/-	5,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
6.	Extra Nourishment	5,000/-	10,000/-	Enhanced
7.	Damage to clothes	1,000/-	1,000/-	Confirmed
8.	Damage to vehicle	5,000/-	5,000/-	Confirmed
	Total Compensation	3,61,910/-	11,79,550/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,61,910/- is hereby enhanced to **Rs.11,79,550/- [Rupees Eleven Lakhs Seventy Nine Thousand Five Hundred and Fifty only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The third respondent - insurance company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.505 of 2014 on the file of the Subordinate Judge, Motor Accidents Claims Tribunal, Gobichettipalayam.



C.M.A. No. 3684 of 2021

On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

12.01.2024

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 3684 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 3684 of 2021



WEB COPY



C.M.A. No. 3684 of 2021

12.01.2024