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C.M.A.Nos.269 & 2937 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.06.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

and

THE HONOURABLE MR.**JUSTICE R.SAKTHIVEL**

C.M.A.Nos.269 AND 2937 OF 2021

CMA No.269 of 2021

The Branch Manager,
New India Assurance Co. Ltd.,
No.584, Virudhunagar Main Road,
Thiruthangal 626 130

: Appellant

versus

1.M.Jayaprakash
2.A.N.Raghavan

: Respondents

CMA No.2937 of 2021

M.Jayaprakash

: Appellant

versus

1.A.N.Raghavan

2.The Branch Manager,
New India Assurance Co. Ltd.,
No.584, Virudhunagar Main Road,
Thiruthangal 626 130

: Respondents



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PRAYER: Civil Miscellaneous Appeals filed against the judgment and decree in MCOP No.128/2015 dated 26.06.2018 on the file of the Special Sub Court for Motor Accident Claims Tribunal, No.II, Tiruvallur.

Appearance :-

Mr.K.Varadha Kamaraj, for appellant in CMA No.2937 of 2021 and Respondent No.1 in CMA No.269 of 2021

Mr.J.Chandran, for appellant in CMA No.269 of 2021 and Respondent No.2 in CMA No.2937 of 2021

COMMON JUDGMENT

(made by R.SUBRAMANIAN, J.)

Both the insurance company and the injured claimant are on appeal, aggrieved by the award of a sum of Rs.32,47,705/- as compensation for the injuries and disabilities suffered by the claimant in a road accident that occurred on 11.01.2007.

2. For the purpose of convenience, the parties will be referred to as per their rank before the Tribunal.

3. It is the case of the claimant that on 11.01.2007 at about 3.30 pm, when he was driving his two wheeler on the extreme left side of Avadi – Tiruvallur Road, a lorry bearing registration No.TNR 6611,



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belonging to the first respondent, came in a rash and negligent manner from the opposite direction and while attempting to overtake another vehicle, hit against the claimant. As a result of the collision, the claimant suffered grievous injuries. The injuries he suffered resulted in loss of function of the right hand and a major disability in the right leg. The claimant, who is a practicing lawyer, would contend that because of the injuries, he is unable to travel to various courts and his legal practice has dwindled, resulting in loss of income. It is also claimed that he was completely immobilized for nearly three years, being the treatment period, and has lost entire income for that period. On the above contentions the claimant sought for a compensation of Rs.32,50,000/-.

4. The claim was resisted by the insurance company contending that the driver of the vehicle bearing registration No.TNR 6611 was not holding a valid and effective driving license and therefore, the company cannot be made liable. The claim regarding the manner in which the accident had occurred was also denied. The quantum of compensation as claimed is highly excessive.

5. At the trial before the Tribunal, the claimant examined himself



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as P.W.1 and three other witnesses, including two medical practitioners, who were examined as P.Ws.3 and 4. Exs.P-1 to P-43 were marked on the side of the claimant. The insurance company did not let in any evidence. Two disability assessment certificates were filed as Exs.C-1 and C-2.

6. The Tribunal, on a consideration of the evidence on record, concluded that the nature of injuries are such that they will have a permanent disability, which will in turn affect the profession of the claimant as an advocate. Taking into account the nature of injuries, as certified by the two medical boards in Exs.C-1 and C-2, the Tribunal fixed the functional disability at 60%. The Tribunal took the monthly income of the injured claimant at Rs.12,000/-, after taking into account the income tax returns that were submitted by him as Ex.P-24. The Tribunal awarded a sum of Rs.4,32,000/- at Rs.12,000/- p.m. for a period of three years towards loss of income and a sum of Rs.1,57,500/- for permanent disability at Rs.3,500/- per percentage of disability for 45%. Towards the loss of earning capacity, the Tribunal awarded a sum of Rs.14,04,000/- being 60% of the income, applying the multiplier of 13. The Tribunal awarded the following amounts under various heads as conventional damages :



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Head	Amount in Rs.
Medical Bills	6,76,051
Pain and suffering	2,00,000
Future medical expenses	1,35,000
Attender charges	95,000
Transport expenses	82,260
Extra nourishment	10,000
Damage to clothing and articles	5,894
Loss of happiness and amenities	50,000

Thus, the total compensation arrived at by the Tribunal worked out to Rs.32,47,705/-

7. We have heard Mr.J.Chandran, learned counsel for the appellant in CMA No.269 of 2021 and the second respondent in CMA No.2937 of 2021 and Mr.K.Varadha Kamaraj, learned counsel for the appellant in CMA No.2937 of 2021 and the first respondent in CMA No.269 of 2021.

8. The owner of the vehicle who figures as the second respondent in CMA No.269 of 2021 and the first respondent in CMA No.2937 of 2021 is reported dead, and we dispense with the necessity



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of bringing on his legal representatives since he remained *exparte* before the Tribunal and the insurance company does not dispute its liability to pay the compensation.

9. Pending appeals, the claimant was referred to medical board at the Rajiv Gandhi Government General Hospital, Chennai and the medical board, after examining the claimant on 06.03.2023, has given a disability certificate, certifying that the claimant has suffered 80% disability. We find that apart from the injuries that have been taken into account by the two medical boards which have issued Exs.C-1 and C-2, one of which is medical board of the Rajiv Gandhi Government General Hospital, the medical board which has examined the claimant on 06.03.2023 has also found certain other injuries which were not recorded by the earlier medical boards, which examined the claimant in the years 2012 and 2018. The accident occurred in the year 2007. The claimant was examined by the medical board as late as 06.03.2023, which is nearly 16 years after the accident. There is a possibility of the claimant having suffered other injuries due to some other reason not attributable to the accident also.

10. We, therefore, do not think we could safely accept the report



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of the medical board which is based on an examination done 16 years after the accident. From the two reports of the medical board, one done in the year 2012 by the District Headquarters Hospital, Tiruvallur, and the other done by Rajiv Gandhi Government General Hospital, Chennai, we find that the claimant has incurred a disability of roughly about 84% in the upper and lower limbs on the right side. Though the permanent disability is certified to be at 84%, according to Mr.J.Chandran, the entire permanent disability will not translate into functional disability, so as to affect the earning capacity of an individual. The Hon'ble Supreme Court has repeatedly pointed out that each and every permanent disability will not translate into a functional disability so as to affect the earning capacity. Drawing our attention to the avocation of the claimant, viz., an advocate, the learned counsel would submit that even if we acknowledge that there would be some difficulty, it cannot be said that he would be totally incapacitated from carrying on his profession as an advocate. Therefore, according to the learned counsel, the Tribunal was not right in adopting 60% as functional disability. He would also fault the Tribunal for having granted a compensation of Rs.1,57,500/- for permanent disability at Rs.3,500/- per percentage of disability for 45%, while granting compensation on the ground of loss of earning capacity, by applying



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multiplier method. This, according to the learned counsel, would amount to duplication of compensation. The learned counsel would also submit that the compensation awarded under the other heads is also on the higher side and would seek reduction.

11. Contending contra, Mr.K.Varadha Kamaraj, learned counsel for the appellant in CMA No.2937 of 2021, would submit that the Tribunal must have taken the functional disability at 100% considering the fact that the claimant, who is an advocate, is unable to practice. He would also seek to sustain the award under the head of permanent disability contending that these are two different heads which could be awarded simultaneously. The learned counsel would draw our attention to the disability certificates issued and claim that both the right hand and right leg of the claimant have been rendered useless and therefore, the Tribunal was not right in reducing the disability certified by the two medical boards under Exs.C-1 and C-2. According to him, the Tribunal should have taken at least 84% as functional disability.

12. Learned counsel would also contend that the award under the head 'pain and suffering' should have been much more, as it is in evidence that the claimant had taken treatment for almost 3½ years,



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from 11.01.2007 to June, 2020. He would also fault the Tribunal for having awarded only Rs.50,000/- towards loss of amenities. He would point out that the claimant was aged about 48 years that the time of the accident. He will have to endure the pain and suffering and the agony of living with a limp for the rest of his life. Therefore, according to the learned counsel, the award under the head 'happiness and amenities' at Rs.50,000/- is abysmally low and the same will have to be enhanced.

13. We have considered the rival submissions. From the evidence on record, it is clear that the claimant had suffered disabilities both on the right upper and lower limbs. While the evidence goes to show that the right hand has been rendered useless, the right leg is still functional to a certain extent. Ex.C-2, report of the medical board of the District Headquarters Hospital at Tiruvallur, would show that there is a restriction on the movement of the right leg at the knee level. Even in his evidence, the claimant had stated that he is unable to squat on the floor or use Indian toilet. From his evidence, it can be inferred that the right leg is functional to a certain extent, though not as that of a normal person.



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14. As rightly contended that by Mr.J.Chandran, learned counsel for the Insurance company, referring to the judgment of the Hon'ble Supreme Court in *Rajkumar vs. Ajay Kumar*, reported in 2011 (1) SCC 343, 'every permanent disability will not translate into a functional disability'. There may be cases where even an amputation would not have any impact on the earning capacity of the person. Therefore, will deciding the quantum of disability in such cases, the Tribunal as well as this Court will have to necessarily engage in certain guess work in order to ascertain the impact that the disability would have on the earning capacity of the victim.

15. The earning capacity of the victim would definitely depend upon the nature of job that the victim does. If we are to give an example, if a right handed carpenter loses his right thumb, it will result in 100% disability as he will not be able to do the work of a carpenter in future. The same may not be the case for an advocate or any other professional. Loss of a thumb or a finger may not have any effect on their earning capacity.

16. In the case on hand, we find that the right hand of the



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claimant has been rendered completely useless and the right leg is also partially affected. As deposed by him in his evidence, it would definitely have an effect on his ability to travel from one court to another and also his ability to discharge his duties as an advocate, since he may not be able to write freely with his right hand. The Tribunal has considered all these aspects and has taken the disability at 60%. Though both the counsel would implore us either to increase or decrease the percentage of disability, we do not find any material circumstance, which would enable us to interfere with the conclusions of the Tribunal on the percentage of disability as assessed by it. We, therefore, sustain the percentage of functional disability taken by the Tribunal at 60%.

17. We must say that the monthly income adopted by the Tribunal though on the lower side, since it has the backing of evidence in the form of income tax returns, we do not think we can interfere with the conclusion on the quantum of income. We, therefore, affirm the award on the head of loss of earning capacity granted at Rs.14,04,000/-.

18. Adverting to the grant of Rs.1,57,500/- as permanent



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disability at Rs.3,500/- per percentage of disability, we find the contention of Mr.J.Chandran, acceptable. Once compensation is granted for the disability by adopting the multiplier method, grant of compensation at a fixed rate per percentage of disability, over and above the compensation awarded for loss of earning capacity would amount to duplication. We are therefore unable to affirm the grant of compensation on the ground of permanent disability at Rs.1,57,500/-.

19. Regarding the compensation granted under other heads, we find that the compensation granted under the heads of pain and suffering and loss of happiness and amenities is on the lower side. It is seen that the claimant has undergone treatment for almost 3½ years from January, 2007 to June, 2010. Even if we have to grant a sum of Rs.1,00,000/- per year, the compensation for pain and suffering should at least be Rs.3,00,000/-. Therefore, the compensation for pain and suffering is enhanced to Rs.3,00,000/- from Rs.2,00,000/-.

20. As regards compensation awarded under the head 'Loss of happiness and amenities', we have already adverted to the fact that the claimant was only 48 years at the time of accident and he has to spend the rest of his life with a limp and a completely useless right



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hand. Therefore, we enhance the compensation under the head 'Loss of happiness and amenities' to Rs.1,00,000/- from Rs.50,000/-. Therefore, the total compensation as worked out by us would be Rs.32,40,205/-. What is granted by the Tribunal is Rs.32,47,705/-. The difference being only Rs.7,500/-, we do not think we should interfere with the award.

21. In the result, both the appeals are dismissed. There will be no order as to costs. Consequently, CMP 1812 of 2021 is closed.

(R.S.M., J.) (R.S.V., J.)
07.06.2024

Index : Yes/no
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To

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Motor Accident Claims Tribunal,
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R.SUBRAMANIAN, J.

and

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