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C.M.A.No.1797 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on : 18.03.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A. No. 1797 of 2017

and

C.M.P.No.9612 of 2017

Reliance General Insurance Co.Ltd.,
10th cross, Thillai Nagar Main Road,
Trichy – 18.

...Appellant/second respondent

Vs.

1. M.Karthick

...respondent/Claimant

2. T.Senthil

...respondent/respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 27.04.2016 made in M.C.O.P.No.59 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

For Appellant	:	Mr.S.Arun Kumar
For R1	:	Mr. Gopinath
For R2	:	Mr.Senthil

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the judgment and decree dated 27.04.2016 passed in MCOP No.59



C.M.A.No.1797 of 2017

of 2015 on the file of the motor accidents claims Tribunal, Chief Judicial Magistrate Court, Perambalur, questioning the quantum of compensation awarded by the said Tribunal.

2. The parties herein are referred as per their ranking before the Tribunal.

3. The claimant filed claim application under Section 166 of the Motor Vehicles Act, 1988, claim compensation of Rs.20,00,000/- for the injuries sustained by him in road traffic accident that occurred on 11.10.2024. The Tribunal, upon consideration passed an award for a sum of Rs.10,51,094/- with interest at the rate of 7.5% per annum from the date of filing of the petition.

Though on behalf of respondents, counsels entered appearance, no argument was advance on behalf of them.

4. Mr.S.Arun Kumar, learned counsel appearing for the appellant submitted that the claimant suffered crush injuries over his left hand and wrist.



5. It is his further argument that the disability of the claimant was assessed as 65% by Dr.Selavaraj (P.W7) is on the higher side. The Tribunal, instead of granting compensation for partial permanent disability, wrongly chose to grant compensation for loss of earning power by awarding Rs.6,12,000/-.

6. The following MCOPs arise out of the same accident. For MCOP Nos.46,48,49,56,57 and 59 of 2015, common evidences was recorded and common judgments was passed.

7. The claimant Karthick was examined as P.W6 and Ex.P13 to Ex.P.17 and Ex.P22 and Ex.P23 were marked. On the side of the appellant/Insurance company no witnesses was examined.

8. It has come on record that on 11.10.2014 at about 9:45 a.m while the claimant along with the claimants' in other MCOPs were traveling in a tata city car bearing registration No. TN 49 AT 5529 from Sivankoil to Aranthagi, at the place near Periyamayakipuram, Kulakudikulam, Thiruchittrambalam, the driver of the said vehicle drove in a rash and negligent manner and while turning, the van capsized and all the claimants' sustained injuries, is not in dispute.



WEB COPY 9.

It is discernible from the perusal of the discharge summary (Ex.P14) issued by Kauvery Hospital, Trichy, that the claimant was admitted at Kauvery hospital on 20.10.2024 and on account of the accident he has suffered the following injuries/fractures:

- (i) Left Haemothorax with fracture multiple rib left chest
- (ii) Fracture left scapula
- (iii) Open acromio clavicular dislocation, left
- (iv) Crush injury of left hand and wrist with carpometacarpal and intercarpal dislocation with absent radial pulse
- (v) Segmental loss of extensor tendons of left hand (EPL, APL, ECRB, EDI, EDL)
- (vi) Radial artery cut injury at wrist level – left
- (vii) Brachial plexus palsy, left.

He got discharged on 20.10.2014. On 12.10.2014 for the left hand and left shoulder wound debridement was done. For the thumb alone another surgery was done on 16.10.2014. On 18.10.2014 skin grafting was done for the shoulder area. It is the evidence of Dr.Selvaraj (P.W7) that due to the above said injuries and fractures it is not possible for the claimant to do the work as he did before.



10. The claimant (P.W6) claimed that he was working as a Steel Fitter and earning a sum of Rs.10,000/- per month and the Tribunal has fixed his monthly income as Rs.6,000/-. From a careful perusal of the evidence of the claimant (P.W6) and Dr.Selvaraj (P.W7) coupled with the medical records, it appears that the claimant has suffered fractures over his left shoulder, left fore arm and he was under treatment for a long period. It is relevant to note that three surgeries were done to the claimant (P.W6). The Tribunal has fixed the disability at 50% and has adopted multiplier method for computing income.

The Hon'ble Apex Court, in ***Rajkumar vs Ajay Kumar and Another, 2011, 1 SCC 343***, has given certain guidelines for assessing the loss of future earning capacity:

"19.(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 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 the percentage of loss of earning capacity is the same as



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C.M.A.No.1797 of 2017

the percentage of permanent disability).

(iii) The doctor who treated an injured claimant of who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent or 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 percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

Basing on the evidence and medical evidence of the claimant coupled with the medical records, it is made clear that the claimant suffered with very many fractures suffered over the left hand, it would not be possible for the claimant to do his work like lifting objects, to do fitter work with both hands, as he did before. Therefore, computing loss of earning power by adopting multiplier method by the Tribunal cannot be found fault with.

11. The age of the claimant is taken as 25 years as per the medical records . As per the law laid down in **SMT.SARALA VERMA AND**



C.M.A.No.1797 of 2017

OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER

[2009 (2) TN MAC 1 (SC)], the multiplier to be adopted for the age group of persons between 25 – 30 years is 17. To compute the loss of earning power, the following formula emerges:

$$6000 * 12 * 17 * 50\% = 6,12,000/-$$

12. The Tribunal, has granted a sum of Rs.6,12,000/- towards loss of earning power. A sum of Rs.4,19,094/- was granted for medical expenses based on Ex.P15 - medical bills. The transportation charges and attender charges amounting to a sum of Rs.10,000/- each has been granted by the Tribunal.

13. Considering the nature of injuries suffered by the claimant (P.W6) the amounts passed under various heads is reasonable and needs no interference.

14. Based on the aforesaid discussion, this civil miscellaneous appeal stands dismissed and the orders of Tribunal in M.C.O.P.No.59 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur is confirmed. No costs.



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C.M.A.No.1797 of 2017

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Index: Yes/No
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Neutral Citation Case:Yes/No

To

1.The Judge,
Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Perambalur.

2.The Section Officer,
VR Section,
Madras High Court.



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C.M.A.No.1797 of 2017

R.KALAIMATHI,J.

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C.M.A.No.1797 of 2017



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C.M.A.No.1797 of 2017

18.03.2024