



C.M.A.(MD).No.166 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.166 of 2022
and C.M.P.(MD).No.1466 of 2022

The Manager,
M/s. Shriram General Insurance Company Limited,
No.66, 2nd Floor, City Center Complex,
Thirumalaipillai Road,
Chennai – 600 017. ... Appellant/2nd Respondent

Vs.

1.Navaneetham ... Respondent/Petitioner
2.Santhosh ... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment award made in M.C.O.P.No.1370 of 2019, dated 30.06.2021, on the file of the Motor Accidents Claims Tribunal cum Special Subordinate Judge, Thanjavur.

For Appellant : Mr.N.Shyllappa Kalyan

For Respondents : Mr.J.Prabhu for R1
R2 – Exparte



C.M.A.(MD).No.166 of 2022

JUDGMENT

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This appeal has been filed to set aside the decree and judgment award made in M.C.O.P.No.1370 of 2019, dated 30.06.2021, on the file of the Motor Accidents Claims Tribunal cum Special Subordinate Judge, Thanjavur.

2.The facts in brief:

On 15.06.2019, the claimant went to Chennai and returning to his village, at the early morning at about 2.15 p.m.,they were travelling on Chennai to Trichy Main Road. At that time, nearing the place of occurrence, the driver of the van bearing registration No.TN 49 BY 1098 was driven by its driver in rash and negligent manner and hit the vehicle on the left hand side. As a result of which, the petitioner sustained grievous injuries. He suffered fracture on both the hands and apart from suffered injuries all over the body. He was taken to the Thanjavur Medical College Hospital and admitted as inpatient on 16.05.2019 to 27.05.2019. He underwent surgery. Claiming compensation amount of Rs.10,00,000/- the claim application was filed, stating that she was working as an Assistant under a mason and earning not less than Rs.



C.M.A.(MD).No.166 of 2022

15,000/- per month. Because of the accidental injuries, he could not continue his work as before.

3.That was resisted by the appellant herein stating that the first respondent vehicle driver was not owning proper driving licence on the date of accident. Totally 25 persons travelling at the time of occurrence, in violation of the policy condition. So the appellant is not liable to indemnify the insured.

4.Regarding the first point of negligence the Tribunal recorded a finding that the very nature of the occurrence, itself indicates the rash and negligent driving on the part of the first respondent's vehicle's driver. According to them, he fastened the liability upon the insurance company.

5.Regarding the compensation amount noting that there was 75% of permanent disability, it adopted multiplier method and awarded a total compensation amount of Rs.8,90,960/- by adding other customary amounts. Against which, this appeal has been preferred by the insurance company.



C.M.A.(MD).No.166 of 2022

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6.The learned counsel for the appellant would submit that the quantum is disputed. Multiplier method adopted by the Tribunal is not proper. He is a daily wages. By considering the nature of injury suffered by him, the amount must be reduced.

7.Regarding the negligence, no discussion is required, since the finding is very nature of occurrence itself indicates the rash and negligence driving on the part of the offending vehicle's driver. So this part of the finding requires no interference.

8.Now coming to the main issue of quantum, the claimant is a daily wager by profession, who was working under a mason and earning not less than Rs.15,000/- per month. we cannot expect the documentary evidence to show the correct income. The tribunal adopted the notional income and have taken Rs.8,000/- per month. Considering the age of the petitioner/claimant and the wage structure during the relevant period the notional income may not be found fault.



C.M.A.(MD).No.166 of 2022

9.No discussion was made by the tribunal as to the nature of injuries suffered by the claimant. It is simply stated that the claimant was referred to the Medical Board attached to the Medical College Hospital, and assessed the disability as 75% under Ex.P10. But there is severe injury on the right hand. Now we can go to the evidence available on record.

10.The learned counsel for the respondent per contra relied upon the judgment of the Honourable Supreme Court in the case of ***Rajkumar Vs. Ajay Kumar and another*** reported in ***(2011) 1 SCC 343***, wherein detailed guidelines has been issued in respect of the assessment of compensation in case of injuries.

“19.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-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.

20. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration `A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the



consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs.36,000/-.*
- b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.*
- c) Multiplier applicable with reference
to age : 17*
- d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-*

Illustration 'B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

- a) Annual income prior to the accident : Rs. 36,000/-.*
- b) Loss of future earning per annum (75%
of the prior annual income) : Rs.27000/-.*



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C.M.A.(MD).No.166 of 2022

c) Multiplier applicable with reference

to age : 17

*d) Loss of future earnings : (27000 x 17) : Rs.
4,59,000/-*

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

a) Minimum annual income he would have

got if had been employed as an Engineer : Rs.60,000/-

b) Loss of future earning per annum (70% : Rs.42000/-

Raj Kumar vs Ajay Kumar & Anr on 18 October, 2010

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7

of the expected annual income)

c) Multiplier applicable (25 years) : 18

*d) Loss of future earnings : (42000 x 18) : Rs.
7,56,000/-*

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in



Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

11.Per contra, the learned counsel for the appellant would rely upon the judgment of this Court in the case of ***National Insurance Co. Ltd., Madurai Vs. K.Kannan and another*** reported in ***2022 (1) TN MAC 538***, and contend that adopting multiplier method in mechanical manner is not proper. In the light of the above said rival submissions now let us go to the evidence available on record. The nature of disabilities suffered by the claimant and whether the multiplier method adopted by the Tribunal is proper.

12.PW1 has stated that in the accident, she suffered fracture on the right forehead. There is a dislocation in the joint. Suffered injury on the left thigh region, apart from other portions of the body. She stated in her evidence that before the occurrence, she was a construction worker and earning Rs.15,000/- per month as noted above. Medical record under Ex.P2 shows that there was fracture on the right fore arm region. Apart from laceration on the right fore arm. There was a fracture on the right



C.M.A.(MD).No.166 of 2022

humerus bone. She underwent surgery on 17.05.2019 in Thanjavur Medical College Hospital, admitted on 16.05.2019 and discharged on 29.07.2019. At the time of admission, the respondent was found the floating upper limb with bone loss. The medical records supports her oral evidence with regard to the grievous injury on the right form arm. Since she suffered grievous injury due to the loss of bone the assessment of disability by the medical board shows that it was correctly assessed. The disfigurement of the right fore arm is visible. For the construction worker the use of the right hand is the material. So considering the above said, the assessment of disability made by the tribunal can not be interfered and so also the multiplier method adopted by the Tribunal. Appeal fails.

13.Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

Index : Yes / No
Internet : Yes / No
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10/12



C.M.A.(MD).No.166 of 2022

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1.The Special Subordinate Judge, Motor Accidents Claims Tribunal cum
Special Subordinate Court, Thanjavur.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A.(MD).No.166 of 2022

G.ILANGO VAN,J.

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C.M.A.(MD).No.166 of 2022

31.07.2024