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C.M.A.(MD)No.30 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD)No.826 of 2021

and

C.M.P.(MD)No.7649 of 2021

The Branch Manager,
National Insurance Company Ltd.,
1st Floor, KRT Building,
No.33, Bharathidasan Salai,
Promenade Road, Cantonment,
Trichy – 1.

... Appellant

Vs.

1.I.Paul Samuel
2.S.Gomathi

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 19.03.2021 made in M.C.O.P.No.1699 of 2015, on the file of Motor Accident Claims Tribunal (Special Sub Judge), Trichy and allow this appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent No.1 : Mr.C.Padmaraj

For Respondent No.2 : No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award passed in M.C.O.P.No.1699 of 2015, dated 19.03.2021, on the file of Motor Accident Claims Tribunal (Special Sub Judge), Trichy.

2. It is a case of injury with partial permanent disability. The contention of the Insurance company is that the injured was 20 years old at the time of accident and he was studying 3rd year Bachelor of Engineering. After the accident, he was undergoing treatment. The nature of disability as certified by the Doctor is 50% partial permanent disability. The learned Counsel for the appellant submitted that the claimant is employed elsewhere and he is earning based on his educational qualification. In such circumstances, when there is no functional disability, the trial Court has erred in fixing multiplier method, for which the learned Counsel has relied on the judgment rendered by the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another*** reported in ***2011 ACJ 1***, wherein the Hon'ble Supreme Court has held in paragraph Nos.9 & 10 as follows:

“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 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.

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 disability [sic disability] (this is also relevant for awarding compensation under the head 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 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, 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 as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100 per cent as in the case of a driver or carpenter, nor 60 per cent 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 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 be 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 percent (or even anything more than 50 per cent), 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.”

3. In the present case, it is only partial permanent disability and the claimant is having earning capacity and is also permanently employed in a company. In such circumstances, the Tribunal has erred in applying multiplier method for granting compensation. The Tribunal has applied 18 as multiplier and erroneously granted Rs. 9,07,000/- for disability.

4. The partial permanent disability, even though as stated by the Doctor is 50%, however, this Court on perusal of the documents available on record is inclined to increase it as 60%. The



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compensation granted under S.Nos.2 to 7, of the award passed by the Tribunal are intact.

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5. Accordingly, the claimant is entitled for compensation as follows:

Sl. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For disability	Rs.9,07,000/- [18 x 1,00,800 x 50/100]	Rs. 3,00,000/- [5000 x 60]	Reduced
2.	For Pain and suffering	Rs.50,000/-	Rs.50,000/-	confirmed
3.	Extra Nourishment Expenses	Rs.10,000/-	Rs.10,000/-	confirmed
4.	Attender Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Damages to clothing and articles	Rs.2,000/-	Rs.2,000/-	confirmed
6.	Transport Expenses	Rs.57,625/-	Rs.57,625/-	confirmed
7.	Medical Bills	Rs. 3,77,400/-	Rs.3,77,400/-	confirmed
Total		Rs.14,14,025/-	Rs.8,07,025/-	

6. The Insurance company has already deposited 50% of the award amount and the same was already withdrawn by the claimant. After reworking, the Insurance Company is directed to deposit the balance amount, if any, with interest at 7.5% p.a., from the date of claim petition till the date of realization along with costs, within a period of eight [8] weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to



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withdraw the same, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal.

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7. With the above direction, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

30.01.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

MR

To

1. The Motor Accident Claims Tribunal,
(Special Sub Judge),
Trichy.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

MR

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