BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13.11.2024

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THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A(MD)No.489 of 2024
and
C.M.P(MD)No.6545 of 2024

The Branch Manager,
M/s.United India Insurance Co., Ltd.,
No.4, Royal City,
Karur Road,
Trichy – 620 002. ... Appellant/Respondent 2

-Vs-

1.K.Subramani ...1st Respondent/Petitioner

2.S.Kandasamy ...2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1998, as against the judgment and decree dated 11.01.2023 passed in MCOP No.160 of 2019 on the file of the Motor Accident Claims Tribunal-cum-Additional Sub-Court, Palani.

For Appellant	:	Mr.C.Jawahar Ravindran
For R1	:	Mr.RM.Arun Swaminathan
For R2	:	Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company/Second respondent against the award dated 11.01.2023 passed in MCOP No.160 of 2019 by the Motor Accident Claims Tribunal-cum-Additional Sub-Court, Palani.

2.Heard Mr.C.Jawahar Ravindran, the learned counsel appearing for the appellant and Mr.RM.Arun Swaminathan, learned counsel appearing for the first respondent.

3.Despite the receipt of notice, the second respondent has neither appeared nor represented through the counsel.

4.The learned counsel appearing for the appellant would vehemently contend that for the fractures suffered by the claimant, who was 25 years old, the Tribunal invoked multiplier method and granted a sum of Rs.8,21,218/- as compensation. It is his further argument that instead loss of income may have been computed based on percentage method and prays for allowing the appeal.

5.Per contra, the learned counsel for the first respondent/claimant would strenuously argue that as the claimant suffered right femur and both born fracture of left leg, the Tribunal has rightly invoked the multiplier method. Disability was as assessed by the medical board at 25% and compensation was awarded for loss of income at Rs.6,04,800/-. He would further argue that the amounts awarded under various heads are quite reasonable and sought for dismissal of appeal.

6.It has come on record through the evidence of P.W.1 that the claimant was admitted at the Government Hospital at Palani, soon after the accident. Therefore, he was shifted to Adithya Hospital, Palani and he was admitted as inpatient and got discharged on 13.11.2018, as per Ex.P.5 and Ex.P.7 medical records. It is discernible from the medical records that the claimant sustained fractures on his left leg and right femur. As per Ex.C.1-Disability Certificate issued by the Medical Board and the disability is assessed at 25%. It is relevant to note that because of the fracture of shoft short of femur, the claimant has suffered locomotor disability on both legs. The claimant has stated that he was doing agricultural work and milk business and earning a sum of Rs.15,000/- per month. With these fractures, though disability is fixed at 25%, definitely the claimant would have some difficulties in sitting, standing and working etc.

7.Under what circumstances, the multiplier method could be invoked in injury cases, it has been explained in detail by the Hon'ble Supreme Court in ***Rajkumar Vs. Ajaykumar*** *reported in* ***[2011 (1) SCC 343]***. The principles which are summarized by the Apex Court in the said case is given hereunder:

> *"(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."

8.The claimant, who was doing agricultural work and milk vending business, as the fractures suffered considerably would affect his work, the Tribunal has invoked multiplier method for computing the loss of income. The date of accident is 06.11.2018. As per the medical records, the age of the claimant is fixed at 25 and as per the law laid down by the Apex Court in ***Sarala Verma and others Vs Delhi Transport Corporation and another***, reported in ***2009(2) TNMAC 1,*** the proper multiplier for the age group of persons between 20 – 25 is '18'. In the absence of proof of income, the notional income of the claimant is fixed at Rs.8,000/-. The Hon'ble Supreme Court has standardized the details of the future prospects in order to compute the income in ***National Insurance Company-Vs-Pranay Sethi and others***, reported in ***2013(1)TNMAC 481 SC*** and for the claimant 40% has to be added along with income towards future prospects. The loss of income was computed by the Tribunal as follows:

8,000 + 3,200(8000x40/100) x 12 x 18 x 25/100 = 6,04,800/-

9.For pain and suffering, a sum of Rs.50,000/-, for damage to clothes, a sum of Rs.3,000/-, for transportation a sum of Rs.10,000/-, for extra nourishment a sum of Rs.15,000/- and for medical expenses a sum of Rs.88,418/-(as per medical bills) and for future medical expenses a sum of Rs.30,000/-(as per Ex.P.9-certificate) for attendant charges, a sum of Rs.20,000/-. In all a sum of Rs.8,21,218/- has been awarded by the Tribunal. More specifically upon consideration of the fractures suffered in both legs, invoking multiplier method by the Tribunal cannot be found fault with and the amounts awarded under the other heads also appears to be reasonable and acceptable.

10.Based on the aforesaid discussions, I find no good reason to disturb the award of the Tribunal. Hence, this Civil Miscellaneous Appeal stands dismissed.

11.The appellant / Insurance Company is directed to deposit the award amount Rs.8,21,218/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.160 of 2019 on the file of Motor Accidents Claims Tribunal cum Additional Sub-Court, Palani, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

12.On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

13.11.2024

NCC:Yes/No
Index:Yes/No
Internet::Yes/No
To
1.The Motor Accident Claims Tribunal
-cum-Additional Sub-Court,
Palani.

R. KALAIMATHI,J.

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