BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.04.2024

PRONOUNCED ON : 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.145 of 2017

V.Palavesam .....Appellant/Petitioner

Vs.

1.N.Babulal

2.Kailash Kumar

3.United India Insurance Company Ltd.,
Represented by its Branch Manager
Branch Office at 3/33-B
P.P.K.Buildings
Main Road
Marthandam
Kanyakumari District

4.United India Insurance Company Ltd.,
Represented by its Divisional Manager
Divisional Office at Xavier's Building
P.W.D.Road
Nagercoil
Kanyakumari District ....Respondents/Respondents

(1st and 2nd Respondents were called as absent and set exparte before the Tribunal. Hence, the 1st and 2nd respondents may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to allow the appeal and modify the award passed in MCOP.No.32 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Kanyakumari at Nagercoil dated 25.10.2016.

For Appellant	: Mr.N.Sudhagar Nagaraj
R1 & R2	: Dispensed with
R3 & R4	: Mr.N.Dilip Kumar

J U D G M E N T

The instant appeal has been filed by the claimant in MCOP.No.32 of 2015 on the file of the Moto Accident Claims Tribunal/Chief Judicial Magistrate, Kanyakumari at Nagercoil.

2.A 65 year old injured person had filed the claim petition seeking a compensation of Rs.15.00 lakhs for the injuries sustained by him in an accident that has taken place on 20.03.2013. The claimant had sustained moderate head injury, Grade 111 B compound fracture in both bone left leg, Grade 11 compound fracture in both bones right leg.

3.Since there is no dispute with regard to the negligence or liability, this Court is not delving into the said aspects.

4.The claimant had filed Exhibit P12 disability certificate which reveals that the claimant had sustained 70% permanent disability. The author of Exhibit P12 has been examined as PW3 who is the Senior Assistant Professor at Tirunelveli Medical College Hospital. Considering the fact that the claimant was working as a poojari in a temple, the Tribunal had arrived at a functional disability at 50%. Considering the injury sustained by the claimant in the head, the Tribunal felt that he requires further medical supervision.

5.On the above said findings, the Tribunal had fixed Rs.1.00 lakh towards permanent disability by granting Rs.2000/- per percentage of disability. Rs.10,000/- was awarded towards transport expenses. The Tribunal fixed the monthly income at Rs.6000/- and added future prospects at 25% and arrived at a monthly income of Rs.7500/- and applied multiplier of 7 and the total loss of income was arrived at Rs.6,30,000/-. Since the claimant had sustained 50% disability, the award was fixed at Rs.3,15,000/- towards loss of earning. After adding the conventional damages, the claim amount was arrived at Rs.9,00,000/- to be paid with 7.5% interest. Challenging the same, the claimant had filed this appeal for enhancement of compensation.

6.According to the learned counsel appearing for the appellant, the claimant was a part time clerk in a private company and he was a poojari in two temples. His monthly income was Rs.14,250/-. As per Exhibit P14, the physical disability of the claimant is at 70% and the functional disability is at 50%. The notional income should have been fixed at Rs.10,000/- per month and the attender charges should have been added to the compensation.

7.Per contra, the learned counsel for the respondent/Insurance Company had contended that once an amount is awarded under the head of permanent disability, the question of again awarding under the head of loss of income would not arise. The loss of income is always based upon the percentage of permanent disability sustained by the injured claimant. The entire percentage of permanent disability can never be taken as loss of income. It varies from person to person and it depends upon the avocation of the concerned person. In the present case, the injured claimant being 65 years old, the question of adding future prospects or treating him on par with any other young man would not arise. No records have been placed to prove that he was a part time clerk in a private company or he was performing the poojari services in a temple. Therefore, the question of fixing the notional income at Rs.10,000/- per month does not arise. The quantum of compensation awarded by the Tribunal is already on the higher side.

Therefore, there are no merits in the appeal and the appeal may be dismissed.

8.I have considered the submissions made on either side and perused the material records.

9.The learned counsel for the appellant/claimant had contended that the notional income should have been fixed at Rs.10,000/- and based upon which the amount towards loss of earning should have been enhanced. However, the learned counsel appearing for the respondent/Insurance Company had contended that a sum of Rs.1.00 lakh has been awarded under the head of permanent disability and a sum of Rs.3,15,000/- was awarded under the head of loss of earning capacity which is not permissible under the law. The learned counsel for the respondents had relied upon a Full Bench judgment of our High Court reported in ***2006 (2) TN MAC 342 (FB) (Cholan Roadways Corporation Ltd., rep.by its Managing Director Vs.Ahmed Thambi and others)*** and contended that once a compensation is awarded under the head of permanent disability, the question of again awarding compensation under the head of loss of earning capacity would not arise. However, the counsel appearing appearing for the appellant/claimant had relied upon the judgment of the Hon'ble Supreme Court reported in ***(2011) 6 SCC 420 (B.Kothandapani Vs. Tamil Nau State Transport Corporation Limited)*** and another judgment reported in ***(2012) 12 SCC 274 (K.Suresh Vs. New India Assurance Company Limited and another)*** and contended that after referring to the Full Bench judgement of our High Court, the Hon'ble Supreme Court had arrived at a finding that compensation can be awarded separately under the head of permanent disability as well as under the head of loss of earning capacity.

10.The Hon'ble Supreme Court in a judgment reported in ***(2011) 1 SCC 343 (Raj Kumar Vs. Ajay Kumar and another)*** in paragraph No.19 had summarised the principles with regard to the payment of compensation under the head of permanent disability as follows:

> "19.*We may now summarize 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."

11.The Hon'ble Supreme Court in a judgment reported in ***(2012) 10 SCC 177 (Subulaxmi Vs. Managing Director, Tamil Nadu State Transport Corporation and another)*** in paragraph No.5 has held as follows:

"*5.At the outset, it is requisite to be stated that the facts as have been adumbrated are not in dispute. Therefore, first we shall advert to the issue whether the High Court was justified in awarding compensation on a singular head relating to permanent disability and loss of future earning.* ***In K. Suresh v. New India Assurance Co. Ltd. and Another[1], after referring to Ramesh Chandra v. Randhir Singh[2] and B. Kothandapani v. Tamil Nadu State Transport Corporation Ltd.[3], this Court expressed the view that compensation can be granted towards permanent disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.***

12.The Hon'ble Supreme Court in a judgment reported in ***(1995) 1 SCC 551 (R.D.Hattangadi Vs. Pest Control(India) Pvt., Ltd., and others)*** in paragraph No.9 has held as follows:

> *"9.Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."*

*13.*The Hon'ble Supreme Court in a judgment reported in ***(2018) 3 SCC 686 (ICICI Lombard General Insurance Company Limited Vs. Ajay***

Kumar Mohanty and another) in Paragraph No.8 has held as follows:

> ***"8.In arriving at the quantification of compensation, we must be guided by the well-settled principle that compensation can be granted both on account of permanent disability as well as loss of future earnings, because one head relates to the impairment of the person's capacity and the other to the sphere of pain and suffering on account of loss of enjoyment of life by the person himself."***

14.In a recent decision, the Hon'ble Supreme Court in a judgment reported in ***2022 2 SCC Online SC 1604 (T.J.Parameshwarappa alias Parameshwarappa.. Vs. Branch Manager, New India Assurance Co.,Ltd., and others)*** in Paragraph No.13 has held as follows:

> *"13.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 (this is also relevant for awarding compensation under the head of 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."

*15.*A perusal of the judgment of the Hon'ble Supreme Court reported in ***(2011) 6 SCC 420 (B.Kothandapani Vs. Tamil Nadu State Transport Corporation Limited)*** clearly reveals that after referring to the Full Bench decision of our High Court, the preposition of law that no compensation could be awarded under two different heads of permanent disability and loss of earning capacity has been disapproved.

16.The Hon'ble Supreme Court in a judgment reported in ***(2012) 12 SCC 274 (K.Suresh Vs. New India Assurance Company Limited and another)*** has again referred to the Full Bench judgment of our High Court and has held that the view expressed in Cholan Roadways Corporation Ltd., is not acceptable. Therefore, it is clear that the compensation could be awarded both under the heads of permanent disability as well as under the head of loss of earning capacity. However, the Hon'ble Supreme Court has laid down various guidelines as to how compensation could be awarded under these two heads.

17.The guidelines of the Hon'ble Supreme Court in the decisions cited supra could be summarised as follows:

(i) It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtly one has to forego other personal comfort and even for normal avocation they have to depend on others.

(ii)The compensation can be granted towards permanent disability as well as loss of future earnings, for one head relates to the impairment of persons capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by a person himself.

(iii) In some cases where on appreciation of evidence and assessing the percentage of loss of earning capacity, the permanent disability would be approximately same as the percentage of permanent disability, the Tribunal can adopt the said percentage for determination of compensation.

(iii)When the injury is of serious in nature, compensation can be awarded under the head of non pecuniary damages as pain and suffering and loss of amenities, loss of expectation of life and loss of marital prospects.

18.In view of the above said deliberations and the summarization of the judgements of the Hon'ble Supreme Court, it is clear that after awarding compensation for loss of future earning capacity under the head of pecuniary damages, further compensation could be awarded under the head of permanent disability for incurring certain non-pecuniary damages such as pain and suffering, loss of amenities, loss of expectation of life and loss of marital prospects.

19.In the present case, the Tribunal has already awarded a sum of Rs.3,15,000/- towards loss of future earning capacity. The Tribunal has also awarded a sum of Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities and thereafter, has proceeded to award another sum of Rs.1,00,000/- towards permanent disability. Therefore, it is clear that the contention of the learned counsel appearing for the respondent/Insurance Company that a double compensation has been awarded is legally sustainable in view of the judgments of the Hon'ble Supreme Court. However, considering the fact that the said award has not been challenged by the Insurance Company, this Court is not inclined to interfere in the said award.

20.Considering the age of the injured claimant as 65 at the time of accident, this Court does not find any scope to interfere in the said award and enhance the award. There are no merits in the appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

22.**04.2024**

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Motor Accident Claims Tribunal
/Chief Judicial Magistrate, Kanyakumari at Nagercoil

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

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.145 of 2017

22.04.2024