

C.M.A.(MD) No.828 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.828 of 2024

and

C.M.P.(MD)No.9057 of 2024

United India Insurance Company Limited
Pudukkottai.

... Appellant/3rd respondent

VS.

1.Murugan

...1st respondent/petitioner

2.Muthukumar @ Kumar

...2nd respondent/1st respondent

3.Balakrishnan.

... 3rd respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against judgment and decree dated 29.08.2023 made in M.C.O.P.No.179 of 2014 passed by the Motor Accidents Claims Tribunal/Additional Subordinate Court, Tenkasi.

For appellant

: Mr.J.S.Murali

For Respondents

For R1

: Mr.T.Thirumurugan

For R2 & R3

: Dispensed with



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company/second respondent against the Award dated 29.08.2023 passed in M.C.O.P.No.179 of 2014 passed by the Motor Accidents Claims Tribunal/Additional Sub Court, Tenkasi on the issue of liability as well as on quantum.

2. Heard arguments of the learned counsel for the appellant and the learned counsel for the first respondent.

3. The claimant herein had filed a claim petition under Sections 140 and 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/- for the injuries sustained by him in a road traffic accident that occurred on 24.07.2010.

4. Upon consideration of the entire evidence and on hearing the arguments on either side, the Tribunal fastened the liability on the third respondent/Insurance Company and granted



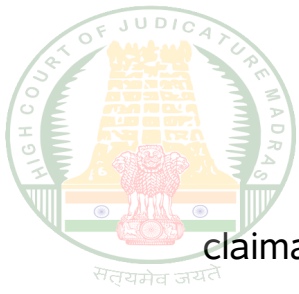
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compensation of Rs.6,89,000/-.

WEB COPY 5. The learned counsel for the appellant would mainly contend that the Medical Board assessed the disability of the claimant at 40%. For the said disability, the Tribunal has invoked multiplier method for computing loss of future income, which is totally incorrect.

6. The second contention of the learned counsel for the appellant is that the rider of the motorcycle did not possess valid driving licence at the relevant point of time. Therefore, as the policy condition is violated, the insurance company is not liable to pay compensation to the claimant herein.

7. It has come on record through the evidence of P.W.1 that on account of the accident, he suffered fracture of two meta tarsal bones over the left leg and after treatment, he finds it difficult to walk. He is not able to bend his leg and the Medical Board has assessed his disability at 40%. He would further depose that he was earning a sum of Rs.16,000/- by working as a photographer. In consideration of the abovesaid details, as a photographer, the



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claimant would find difficult even to walk and stand, the Tribunal has taken the functional disability at 40% and adopted multiplier method for computing loss of future income.

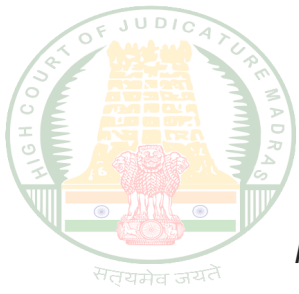
8. Hon'ble Supreme Court has observed as to how the disability details to be appreciated in ***Raj Kumar Vs. Ajay Kumar*** reported in **2011 (1) SCC 343**, as follows:

“(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



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persons, depending upon the nature of profession, occupation or job, age, education and other factors."

9. The accident took place in the year 2010. The disability was assessed by the Medical Board after 13 years, only in the year 2023. It has been observed by the Medical Board that the claimant is not in a position to walk and not able to bend his leg. He finds difficult in walking. This Court is conscious of the fact that not all the injuries would result in loss of earning capacity.

10. In consideration of these aspects, the functional disability is taken at 40% by the Tribunal. The claimant, as a photographer, on account of the fracture suffered over the right leg, would definitely find difficult while doing his photographer work. The disability will have a negative impact upon his work. Therefore, the Tribunal has invoked multiplier method, which cannot be found fault with.

11. As regards the quantum, P.W.1 would depose that he was earning a sum of Rs.16,000/- p.m., as a photographer. As per



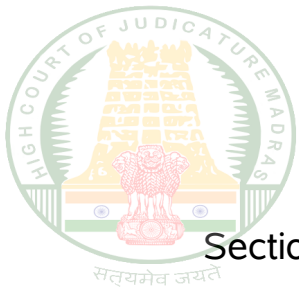
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the Medical Board records, the age of the claimant is fixed as 47 years. The Tribunal has fixed the notional income of the claimant at Rs.8,000/- p.m. As per law laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***2017 (2) TNMAC 609 (SC)***, for future prospects for the age group of the persons between 40-50, 25% is to be added and the relevant multiplier to be adopted is '13'. The Tribunal has computed the loss of future income as given hereunder:

$$\text{Rs.8,000/-} + \text{Rs.2,000/- (25\%)} \times 12 \times 13 \times 40\% = \text{Rs.6,24,000/-}$$

12. The notional income fixed by the Tribunal appears to be reasonable and acceptable. This Court does not find any infirmity or perversity in the finding of the Tribunal and this Court does not find any good reason to disturb the finding and hence, the computation of loss of future income by the Tribunal is confirmed.

13. As regards the second contention raised by the learned counsel for the appellant, it has been averred in the counter that the first respondent did not possess valid driving licence. As per



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Section 101 of the Indian Evidence Act, 1872, once pleadings has to prove. On the second respondent side, neither any oral evidence was let in nor any document was marked to substantiate the same.

14. No notice was issued by the Insurance Company to the first respondent herein (owner of the two wheeler) to cause proof of his driving licence. Mere averments in the counter will not suffice and in the absence of proof, it should not lie in the mouth of the appellant/Insurance Company that the Insurance Company is not liable to pay compensation. As the said fact is not considerable, the arguments put forth by the learned counsel for the appellant falls on the ground.

15. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The compensation of Rs.6,89,000/- awarded by the Tribunal is confirmed.



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(iii) The appellant is directed to deposit the compensation amount of Rs.6,89,000/- (less the amount already deposited if any) with interest at 7.5% p.a. from the date of filing of the claim petition till the date of realisation to the credit of M.C.O.P.No.179 of 2014 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Tenkasi, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimant/first respondent is permitted to withdraw the compensation amount, with interest, after adjusting the amount, if any already withdrawn by filing necessary application before the Tribunal.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd



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1.The Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
The Additional subordinate Court, Tenkasi.

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



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R.KALAIMATHI,J

apd

Pre-delivery order made in
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