

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 19.09.2022

Pronounced on : 31.10.2022

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

**C.M.A.(MD)No.524 of 2022  
and  
C.M.P.(MD)No.7919 of 2022**

M/s.The Oriental Insurance Company Limited,  
No.4, Prominent Road,  
Cantonment,  
Trichy. ...Appellant/Respondent No.2

Vs.

1.Ravi ...Respondent No.1/Petitioner No.1

2.Vinothkumar ...Respondent No.2/Respondent No.1  
(Respondent No.2 given up)

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act 1988, to set aside the order of the Motor Accident Claims Tribunal cum Special Sub Court, Thiruchirapalli made in M.C.O.P.No.968 of 2017 dated 10.01.2022 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.N.Sudhagar Nagaraj for R1

R2 – Given up

### **JUDGMENT**

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.968 of 2017 dated 10.01.2022 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Thiruchirapalli.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.7,83,887/- with interest at 7.5% per annum and costs to the injured/claimant for the disabilities suffered by him, consequent to an accident occurred on 30.04.2017, challenged the quantum of compensation arrived at by the Tribunal and more particularly, the application of multiplier method adopted by the Tribunal.

3. The learned counsel appearing for the appellant/Insurer would contend that the Tribunal has wrongly applied multiplier method for assessing the disability compensation, that the Tribunal has wrongly awarded Rs.4,68,000/- on the head of disability compensation for the

injuries sustained by the claimant/first respondent, that the Tribunal has failed to note that the claimant/first respondent has not suffered any functional disability, that there is no proof for permanent disablement and for functional disability for the claimant/first respondent, that there is no evidence to show that the injured is unable to carry out the avocation after the accident, that the Tribunal has excessively awarded Rs.50,000/- towards pain and suffering and wrongly awarded Rs.25,000/- on the head of discomfort and that the Tribunal without any justification has adopted the multiplier formula and awarded total compensation of Rs.8,70,985/- for the injuries sustained by the claimant/first respondent and the same is excessive and out of proportion.

4. The points that arise for consideration are :

- (i) Whether the Tribunal erred in applying and adopting the multiplier method in the absence of any evidence for permanent disablement and resultant functional disability for the injured/claimant?
- (ii) Whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?

Point Nos.(i) and (ii) :

5. At the outset, it is pertinent to note that the appellant/Insurer has not challenged the liability mulcted on it, but on the other hand, as

already pointed out, has only challenged the quantum of compensation awarded by the Tribunal.

6. The learned counsel appearing for the appellant/Insurer would strongly contend that the Tribunal without any justification and without any proof for permanent disablement and the resultant functional disability for the injured/first respondent has adopted the multiplier formula and that the Tribunal ought to have followed the principles laid down by the Hon'ble Supreme Court in ***Raj Kumar vs. Ajay Kumar and another*** reported in ***2010 (2) TN MAC 581.***

7. The learned counsel appearing for the claimant/first respondent would contend that the claimant/first respondent has suffered bone injuries on his right knee and right ankle, that initially, he was treated at Government Hospital, Trichy and thereafter he was treated at Maruthi Hospital, Trichy, that he had taken inpatient treatment initially at Government Hospital, Trichy and thereafter at Maruthi Hospital, Trichy for the periods between 03.05.2017 and 20.05.2017, 23.06.2017 and 25.06.2017 & 02.08.2017 and 07.08.2017, that after surgery, a plate was fixed on his right leg and hence, he is not in a position to do his day to day routine work, that the claimant/first respondent was working as a security at Gajapriya Hotel and was aged 48 years at the time of accident

and that the Tribunal, after analyzing entire evidence, has rightly applied the multiplier method.

8. Before entering into further discussions, it is necessary to refer the decision of this Court in ***United India Insurance Company Limited vs. Veluchamy and another*** reported in ***2005 (1) CTC 38,***

*"11. The following principles emerge from the above discussion:*

*(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.*

*(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?*

*(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.*

*(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.*

*(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."*

9. The Hon'ble Supreme Court in ***Raj Kumar vs. Ajay Kumar and another*** reported in ***2010 (2) TN MAC 581*** relied on by the learned counsel appearing for the appellant/Insurer has held 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 the 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.*

....

*13. 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."*

10. Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic and that the Tribunal is duty bound to take into consideration the various factors such as nature of extent of disablement, avocation of the injured and the impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

11. As rightly pointed out by the learned counsel appearing for the claimant/first respondent, it is evident from the discharge summaries issued by M.G.M. Government Hospital & K.A.P.V. Government Medical College, Trichy and Maruthi Hospital, Trichy that the claimant/first respondent was initially admitted in Government Hospital, Trichy on 30.04.2017 and at his request, was discharged on 02.05.2017, that subsequently, he was admitted in Maruthi Hospital on 03.05.2017 and

after necessary surgeries, was discharged on 20.05.2017, that he was subsequently admitted on 23.06.2017 and after removal surgery, was discharged on 25.06.2017 and that again he was admitted on 02.08.2017 and after completing the procedure of open reduction and internal fixation with bone grafting, was discharged on 07.08.2017.

12. It is not in dispute that the Medical Board attached to the Office of the Joint Director of Health Services, Trichy has assessed the claimant/first respondent's disability at 40%.

13. Admittedly, the claimant/first respondent had bone injuries on his right knee and right ankle.

14. As rightly contended by the learned counsel appearing for the appellant/Insurer, the Tribunal without assigning any reason has come to the conclusion that since the Medical Board has assessed the disability at 40%, he was taking the same as the functional disability. In the absence of any evidence to show that the claimant/first respondent has suffered functional disability, the decision of the Tribunal in applying the multiplier method is not proper and is very much against the settled legal position.

15. Considering the nature of the injuries and the disabilities suffered, this Court is of the view that this is a fit case to apply the percentage method and as such, the claimant/first respondent is entitled to get Rs.5,000/- per percentage and the disability compensation comes to Rs.2,00,000/- (Rupees Two Lakhs only) (40 x 5000).

16. The learned counsel appearing for the appellant/Insurer would submit that the amounts awarded under the heads of pain and suffering and discomfort are also on higher side and the same are liable to be reduced.

17. But as already pointed out, the claimant/first respondent had taken inpatient treatment thrice in a private hospital and once in a Government hospital and suffered two bone injuries. Considering the nature of the injuries, period of treatment, disabilities sustained and other attending circumstances, the amount of Rs.50,000/- awarded for pain and suffering and Rs.25,000/- awarded towards discomfort cannot be said to be excessive and are very much reasonable. Moreover, the appellant/Insurer has not challenged the amounts awarded in other heads. Hence, this Court concludes that the disability compensation awarded at Rs.4,68,000/- is to be reduced to Rs.2,00,000/- and the amounts awarded in other heads are to be confirmed. Consequently, the compensation

amount assessed at Rs.8,70,985/- is to be reduced to Rs.6,02,985/- and since the Tribunal has directed the claimant/first respondent to bear 10% (Rs.6,02,985/- x 10% = Rs.60,299/-) for his negligence, the claimant/first respondent is entitled to get Rs.5,42,686/- (Rs.6,02,985/- – Rs.60,299/-) and the above points are answered accordingly.

18. In the result, this Civil Miscellaneous Petition is partly allowed and the compensation amount awarded to the claimant/first respondent at Rs.6,02,985/- is reduced to **Rs.5,42,686/- (Rupees Five Lakhs Forty Two Thousand Six Hundred and Eighty Six only)**. The appellant/Insurer is directed to deposit the modified and reduced award amount with interest at 7.5% per annum, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the claimant/first respondent is permitted to withdraw the said amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

**31.10.2022**

Index :yes/No  
Internet:yes/No  
csm

*C.M.A.(MD)No.524 of 2022*

**K.MURALI SHANKAR,J.**

csm

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