



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A(MD)No.1499 of 2024

and

C.M.P(MD)No.15907 of 2024

The Divisional Manager,
The New India Assurance Company Limited,
Divisional Office, Jerome Building,
Second Floor, Fort Station Road,
Trichy

...Appellant/Second Respondent

.Vs.

1.A.Sathish Kumar

...First Respondent/Petitioner

2.R.Murugan

...Second Respondent/First Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the order made in M.C.O.P.No.262 of 2023, dated 8.8.2024, on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge, Tiruchirappalli insofar as the quantum of compensation is concerned.

For Appellant : Mr.V.Sakthivel

For Respondent-1 : Mr.N.Sudhagar Nagaraj



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JUDGMENT

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the award, dated 8.8.2024 passed in M.C.O.P.No.262 of 2023, on the file of the Motor Accidents Claims Tribunal(Special Sub-Court), Trichy, as regards the quantum of compensation.

2.The case set out in the claim petition is given in brief:

On 11.04.2023 at about 9.30 a.m., while the Petitioner was travelling as a pillion in a two wheeler bearing Registration No. TN 48 AK 0676 and it was driven by one Jayaraj(Claimant in M.C.O.P.No.191 of 2023) along TVS Tollgate to Mannarpuram Service Road near Sakthi Kaliyamman Kovil, Trichy towards western direction, a bus bearing Registration No.TN 45 BK 9444 which belongs to the first respondent and insured with the second respondent, came at a high speed and in a rash and negligent manner dashed on the Petitioner's two wheeler from behind and caused the accident. Due to the said impact, the Petitioner suffered fracture over right tibia Grade-I open and right popliteal artery(mild Popliteal level occlusion).The accident occurred due to the rash and negligent



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driving of the driver of the first respondent bus and the first respondent, who is the owner of the said erred vehicle and the second respondent who is the insurer of the said bus are jointly and severally liable to pay compensation.

3.Claim petition was filed by the claimant claiming of Rs15,00,000/- for the injuries sustained in the accident that occurred on 11.04.2024

4.Per contra, it was contended by the second respondent that the rider of the two wheeler in order to over-take the bus turn on the left side and dashed on the left side of the bus and caused the accident. It is because of the negligence of the rider of the two wheeler, the accident took place. Therefore, the driver of the bus was not at fault and the second respondent is not liable to pay any compensation.

5.The rider and pillion rider of the two wheeler had filed petitions in M.C.O.P.No.262 of 2023(A.Sathish Kumar) and the rider of the two wheeler had filed M.C.O.,P.No.191 of 2023(A.Jeyaraj, son of Appavu). Both claimed compensation for the injuries sustained in the accident. As the claim petitions



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have been filed based on one accident, both the cases were clubbed together and based on the common evidence, common order was passed by the Tribunal.

6. At trial, both the claimants have been examined as P.W.1 and P.W.2 and 17 documents have been marked. On the respondent side, two witnesses were examined. Through R.W.2 Ex.X1 to Ex.X5 have been marked.

7. Upon consideration, the Tribunal observed that because of the negligent driving of the driver of the bus, the accident had happened and fastened the liability on the insurer of the erred vehicle. As regards the quantum, the Tribunal fixed the disability at 30% and by fixing the notional income at Rs.16,000/- and 40% was added towards future prospects and the income is arrived at Rs. 2,24,000/-. By applying multiplier '16' for the 30% functional disability, the loss of income was arrived at Rs.12,90,240/-(Rs.2,24,000 x 12 x 16-mx30/100). For medical expenses based on the medical bills an amount of Rs. 4,46,612/- was granted. As regards the loss of income for six months at Rs. 16,000/- p.m was calculated at Rs.96,000/- was granted for the treatment period. For loss of amenities, an amount of Rs.50,000/- was granted. For loss of



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expectation of life and for pain and sufferings an amount of Rs.1 lakh in each head was granted. For Attendant charges, a sum of Rs.10,000/-, for transport expenses and for extra nourishment a sum of Rs.20,000/- under each head were granted by the Tribunal. Apart from that, a sum of Rs.2000/- was granted for damages to clothes and other valuables and for future medical expenses an amount of Rs.30,000/- was granted and in all, an amount of Rs.21,64,852/- was granted as compensation.

8.The learned counsel for the appellant would mainly focus on the grant of loss of income calculated by invoking multiplier method by the Tribunal.The learned counsel would strenuously argue that for the fracture suffered by the claimant, he is not prevented from doing the same work after the accident.The Tribunal has invoked multiplier method, which is totally unwarranted.

9.As regards the negligence issue, there is no dispute.

10.It is the evidence of P.W.1 that he is aged 33 years at the time of accident and by doing PVC Door Fixing Work, he was earning a sum of Rs.



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30,000/-p.m. It has come on record through the evidence of P.W.1 that on account of the accident, he suffered fracture of right tibia Grade-I open and after the accident, he is not able to sit, stand or walk and do his PVC Door Rixing work as he did before. As per the medical records, Ex.P3 and Ex.P8 copy of the Aadhaar card, his aged is fixed at 33 years at the relevant point of time.

11.As per Ex.P3 Accident Register and Ex.P4 Discharge summary, the Petitioner was admitted at Atlas Hospital Trichy and was discharged after treatment for the fracture of right tibia Grade-I open and right popliteal artery(mild Popliteal level occulusion). The Medical Board has assessed the disability at 40%.

12.In an injury case, under what circumstances multiplier method can be invoked have been specified by the Honourable Supreme Court in **Raj Kumar .vs. Ajay Kumar and another** reported in **2011 1 SCC 343** and the relevant portion culled out and given hereunder:

"(i) All injuries (or permanent disabilities arising from injuries), do



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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."

13. Therefore, on perusal of the records, it appears that the claimant, who was 33 years old man who was doing PVC Door Fixing Work, due to the fracture of right tibia suffered on account of the accident, he is not in a position to sit, stand and walk and to do his work as he did before. Tibia is the main bone



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between the knee and ankle. Of course, in order to attend the above said nature of work, one has to necessarily lift materials while attending the work and the claimant would definitely find some difficulties while doing the work. Whether the claimant is mainly disabled from earning by doing any kind of work, the answer is emphatic- -'no'. I am reminded of the words of the Honourable Supreme Court as regards the granting of compensation by the Tribunal in **Hattangadi .vs. Best Control of India reported in 1995 SCC(1) 551**. It has been held that *"in its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."*

14.Considering the nature of work, age of the claimant fracture suffered and the effects of the said fracture, this Court is of the considered view that in order to meet the ends of justice, the percentage method needs to be followed. The Medical Board, assessed the disability of the claimant at 40% The date of the accident is 11.04.2023. Based on the aforesaid factors, his functional



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disability is fixed at 35%. The Principal Bench of this Court(VMVJ) in ***C.M.A.No.4645 of 2019, dated 10.1.2020 (M.Chinnathambi .vs. S.Deepa and another) and C.M.A.No.3006 of 2019, dated 9.2.2021(Kanmani .vs. D.Nalini and another)*** fixed Rs.6,000/- per percentage of disability and awarded compensation. This Court following the same, fixed Rs.6,000/- per percentage of disability and assessed the loss of earning capacity at Rs.2,10,000/-(Rs.6,000 x 35% = Rs.2,10,000/-)

15.Considering the nature of injury, age of the Petitioner and the effects of the fracture upon the claimant for about four months, he would not have attended his work.The claimant is stated to be doing PVC Door Fixing Work and earning a sum of Rs.30,000/-per month. This Court deems it fit to fix his monthly income at Rs.18,000/- and for the loss of income during treatment period for four months an amount of Rs.72,000/- is granted. For loss of expectation of life, the Tribunal has granted Rs.1 lakh and for loss of amenities, an amount of Rs.50,000 was granted. Upon consideration of the age of the Petitioner, nature of his avocation and the effects of the fracture, for loss of amenities and for loss of expectation of life Rs.30,000/- has been granted for each head. As regards the other heads,



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the award of the Tribunal appears to be acceptable and reasonable and there are not interferred with. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of earning capacity	Rs. 12,90,240/-	Rs.2,10,000/-	modified
2	For Medical expenses	Rs.4,46,612	Rs.4,46,612/-	confirmed
3	For loss of income during treatment period	Rs.96,000/-	Rs.72,000/-	modified
4	For loss of amenities	Rs.50,000/-	Rs.30,000/-	modified
5.	For attendant charges	Rs.10,000/-	Rs.10,000/-	confirmed
6	For transport charges	Rs.20,000/-	Rs.20,000/-	confirmed
8	For pain and sufferings	Rs.1,00,000/-	Rs.1,00,000/-	confirmed
9	For extra nourishment	Rs.20,000/-	Rs.20,000	confirmed
10	For damage to clothes and other valuables	Rs.2000/-	Rs.2000/-	confirmed
11.	For future medical expenses	Rs.30,000/-	Rs.30,000/-	confirmed



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	Total	Rs. 21,64,852/-	Rs.9,40,612/- (rounded off to Rs. 9,41,000/-	Reduced
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16.In fine, the Civil Miscellaneous Appeal is partly allowed:and

(1)compensation awarded by the Tribunal is modified and reduced to Rs.9,41,000/- from Rs.21,64,852/- with interest at the rate of 7.5% p.a from the date of claim petition till the date of deposit.

(2)The appellant-Insurance Company is directed to deposit the modified award amount with proportionate accrued interest and costs, less the award amount, if any already deposited within a period of eight weeks from the date of receipt of a copy of this order.

(3)On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.



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(4) Excess award amount, if any deposited, shall be refunded to the appellant/Insurance Company.

(5) There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

31.12.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

vsn

To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Tiruchirappalli.

Copy to

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



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R.KALAIMATHI,J.

vsn

JUDGMENT MADE IN

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