(2013) 11 MAD CK 0033

In the Madras High Court

Case No : C.M.A. No. 2298 of 2011 and Cross Objection No. 76 of 2012 and M.P. No. 1 of 2011

The New India Assurance Co. Ltd. APPELLANT

Vs

B. Karthik Raja and E. Sampath
B. Karthik Raja Vs The New India Assurance Co. Ltd. and E. Sampath RESPONDENT

Date of Decision : 04-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0033

Hon'ble Judges : R. Banumathi, J;K. Kalyanasundaram, J

Bench : Division Bench

Advocate : S. Manohar for Mr. Elveera Ravindran in C.M.A. No. 2298 of 2011 and Mr. M. Mohan for Mr. K. Varadha Kamaraj in Cross Objn. No. 76 of 2012 for Cross Objector, for the Appellant; M. Mohan for Mr. K. Varadha Kamaraj for R1, R2 exparte before the Tribunal in C.M.A. No. 2298 of 2011 and Mr. S. Manohar for Mr. Elveera Ravindran in Cross Objn. No. 76 of 2012, for the Respondent

Judgement

Future loss of income/earning power,". Rs. 9,72,000.00",

Transport charges,". Rs. 5,000.00",

Extra nourishment,". Rs. 5,000.00",

Damages to clothing and articles,". Rs. 1,000.00",

Medical expenses,". Rs. 6,77,000.00",

Pain and suffering,". Rs. 1,00,000.00",

Total,". Rs. 17,60,000.00",

employment opportunities and future earning power of the claimant and therefore, held that it is a fit case for adopting multiplier method. The",,

Tribunal has taken the monthly income of the claimant at Rs. 7,500/- per month and taking the disability at 60% and adopting multiplier 18,",, calculated the future loss of income/earning power at Rs. 9,72,000/- (Rs. 7,500/- x 12 x 18 x 60% = Rs. 9,72,000/-).",,

11. As discussed earlier, when the claimant was admitted in Apollo Hospitals for the second time in 2005 for implant removal and the fracture",,

shaft right femur with plate was removed. By perusal of Ex. P5, it is seen that at the time of discharge, normal physical activities was advised to the",,

claimant. By perusal of Ex. P5 disability certificate, it is seen that even though the claimant had sustained 60% disability, there is no impairment or",,

deprivation with respect to the whole body. Of course, because of the accident, the claimant could not continue his studies at that time. But after",,

completing the course of treatment, the claimant could have continued his studies.",,

12. In Raj Kumar Vs. Ajay Kumar and Another, , it was held that the Tribunal/ Courts should adopt multiplier method only if there is permanent",,

disablement with respect to the whole body. Considering the steps in deciding the permanent disability and also the quantum of loss of future,,

earning capacity, the Honourable Supreme Court held as under:",,

12. 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.,,

12. 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.,,

The same principle was reiterated in the case of Govind Yadav Vs. The New India Insurance Company Limited, and Sri Laxman @ Laxman",,

Mourya Vs. Divisional Manager, Oritl. Ins. Company Ltd. and Another, .",,

13. In this case, though the claimant had sustained 60% disability, there is no impairment with respect to the whole body in carrying on the",,

avocation. We are of the view that the Tribunal was not right in adopting the multiplier method. Having regard to the nature of injuries and the,,

disability suffered by the claimant, we are of the view that a lumpsum compensation of Rs. 5,00,000/- could be awarded towards future loss of",,

income/earning power and accordingly, Rs. 5,00,000/- is awarded for future loss of income/earning power.",,

14. As pointed out earlier, the claimant sustained fracture injuries and the fractures are malunited and the claimant has difficulty in walking, stiffness",,

in the right leg and knee joint and there is also shortening of the right leg by two inches. The Tribunal has not awarded any compensation towards,,

loss of amenities and therefore, a sum of Rs. 2,00,000/- is awarded towards loss of amenities.",,

15. The Tribunal has not awarded any compensation towards attendant charges. Having regard to the nature of treatment taken by the claimant, an",,

amount of Rs. 25,000/- is awarded towards attendant charges.",,

16. For the injuries sustained by the claimant, he had taken treatment as inpatient for about 78 days and considerable amount would have been",,

spent by his family members towards transport charges. Therefore, the amount of Rs. 5,000/- awarded by the Tribunal towards transport charges",,

is maintained as reasonable.,,

17. In the accident, the claimant was dragged to some distance by the lorry, after being hit by the same and his clothes have been damaged.",,

Considering the same, the Tribunal has awarded Rs. 1,000/- towards damages to cloth and articles and the same is maintained.",,

18. Considering the fact that the claimant has taken treatment in the hospital for more than two months, the Tribunal has awarded Rs. 5,000/-",,

towards extra nourishment and the same is maintained.,,

19. The claimant was admitted in the hospital on 31.07.2003 and discharged on 18.10.2003 and again in the year 2005, he was admitted on",,

20.10.2005 and discharged on 21.10.2005. Taking into account the nature of treatment taken by the claimant and relying upon Ex. P6 series -,,

medical bills, the Tribunal has awarded Rs. 6,77,000/- towards medical expenses and the same is maintained as reasonable.",,

20. The claimant has sustained fracture of pelvis, right femur and L5 in his back and he has also sustained injury in the urinary path. The claimant",,

was treated as inpatient and for nearly more than two months he was in the hospital and he underwent number of surgeries. Even after treatment,",,

Head,"Amount awarded by the

Tribunal Rs.","Amount now

awarded Rs.

Future loss of income/earning power,"9,72,000/-","5,00,000/-

Loss of amenities,---,"2,00,000/-

Attendant charges,---,"25,000/-

Transport expenses,"5,000/-","5,000/-

Extra nourishment,"5,000/-","5,000/-

Damages to clothing and articles,"1,000/-","1,000/-

Medical expenses,"6,77,000/-","6,77,000/-

Pain and suffering,"1,00,000/-","1,00,000/-

TOTAL,"17,60,000/-","15,13,000/-

