



C.M.A.(MD) No.882 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.882 of 2023

P.Chokkalingam

... Appellant/Petitioner

vs.

1.Sakthikumar,
2.Divisional Manager,
New India Assurance Company Limited ...
Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award, dated 14.09.2022 made in M.C.O.P.No.2242 of 2017, on the file of the Motor Accidents Claims Tribunal/Special Subordinate Court, Madurai.

For appellant : Mr.N.Ramamoorthy

For Respondents
for R1 : No appearance
for R2 : Mr.R.Ramadurai



WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimant against the award dated 14.09.2022 made in M.C.O.P.No.2242 of 2017 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Madurai, for enhancement of compensation.

2. Despite the receipt of notice, the first respondent neither appeared nor represented through his counsel.

3. The case as set out in the claim petition is stated in brief:

On 04.01.2010, at about 8.45 p.m., while the petitioner was riding his two-wheeler bearing registration No.TN-07-AD-2100 along Kamuthi road from Manadala Manickam from west to east direction and when he was crossing Pudupatti diversion road, an auto bearing registration No.TN-65-Z-4833, came in a rash and negligent manner from the opposite direction, hit upon the two-wheeler. Due to the said impact, the claimant sustained serious injuries. Due to the rash and negligent driving of the driver of the said auto, the accident occurred. Therefore, the first respondent, who is the owner and the second respondent, who is the insurer of the erred Auto are jointly and severally liable to pay



C.M.A.(MD) No.882 of 2023

compensation to the claimant herein. An amount of Rs.8,00,000/- was claimed as compensation by the claimant.

4. Per contra, it was contended by the second respondent that the manner, in which the accident happened as given in the claim petition, was not admitted. At the time of accident, the driver of the first respondent-vehicle did not possess licence to drive the vehicle. The claimant is put to strict proof of his age, avocation and monthly income.

5. At trial, on the petitioner side, two witnesses were examined and 21 documents were marked. Ex.C1 is the disability certificate issued by the Medical Board of Madurai Rajaji Government Hospital. On the second respondent side, neither any oral evidence was let in nor any document was marked.

6. Upon consideration, the Tribunal has fastened the liability on the second respondent and granted compensation of Rs.2,76,900/- to the claimant under the following heads. Against which the claimant herein has filed this appeal for enhancement of compensation:



WEB COPY



C.M.A.(MD) No.882 of 2023

Sl. No.	Description	Amount awarded by the Tribunal
1	For partial permanent disability Rs.2,000/- X 85 %	Rs.1,70,000/-
2	For pain and sufferings	Rs. 10,000/-
3	For medical expenses	Rs. 89,000/-
4	For extra nourishment	Rs. 3,000/-
5	For attendant charges	Rs. 900/-
6	For loss of amenities	Rs. 3,000/-
7	For Transport charges	Rs. 1,000/-
Total		Rs.2,76,900/-

7. The learned counsel for the appellant/petitioner would, strenuously argue that on account of the accident, he suffered right femur and tibia fractures and the partial permanent disability is fixed at 85%. Therefore, considering the disability suffered by the claimant, multiplier method ought to have been adopted by the Tribunal. He would further contend that after the accident, due to the fractures suffered by the claimant, he is not in a position to work as night watchman as he did before. Hence, his loss of income can only be compensated, if multiplier method is invoked. His main argument is focused on invoking of the multiplier method.



8. It has come on record through the evidence of P.W1/claimant that on account of the accident, he suffered fractures over right femur and right tibia besides fractures in the 3rd and 5th metacarpal shaft and right ulna injury. Soon after the accident, he was given first aid at Kamuthi Government Hospital and the next day of the accident, he was admitted at Miet hospital, Madurai, where he was given treatment from 05.01.2010 to 31.01.2010 as an inpatient. He had undergone surgery for the fractures. He would further state that at the relevant point of time, he was aged about 47 years and was working as night watchman, after retiring from Army and was earning a sum of Rs.15,000/- p.m.

9. It is his specific evidence that he has drawing monthly pension of Rs.20,000/- as pension. He has further deposed that on account of the injuries and fractures sustained by him, he is not in a position to earn subsequent to the accident.

10. In injury cases, under what circumstances, multiplier method can be invoked has elaborately been dealt with by the Apex Court in ***Raj Kumar vs Ajay Kumar*** reported in ***[(2011) 1 SCC 343]***.



The principles have also been summarised, which are given hereunder:

"(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."



WEB COPY 11. This Court is conscious of the fact that the same partial permanent disability would result in different percentage of loss of earning capacity in different persons. It also depends upon the nature of job, age, gender, education and such other factors.

12. In this case, it is the evidence of P.W1 that at the relevant point of time, he was working as a night watchman in the temple and was earning a sum of Rs.15,000/- p.m. Though proof for the said factum was marked as Ex.P8, as the document was not proved in the manner known to law, the Tribunal has not relied upon the said document (Ex.P8). There is no locomotor disability and he had sustained the said fracture at the age of 47 years. As the claimant has claimed that he was working as a night watchman, the disability suffered would not have prevented him from carrying on his avocation as a night watchman, though it might impede to some extent in his functioning. Because of the said reason, the Tribunal has not invoked multiplier method, which cannot be found fault with.

13. The claimant has stated that he was working as a night



C.M.A.(MD) No.882 of 2023

watchman in the temple and earning a sum of Rs.15,000/- at the relevant point of time. Date of the accident is 04.01.2010. Though Ex.P8/certificate received from the Police was not proved by the claimant, his monthly income is notionally fixed at Rs.6,000/- p.m. Upon consideration of the fractures that he suffered and the period of treatment, an amount of Rs.30,000/- is granted under the head 'loss of income' during the treatment period (5 months). For pain and sufferings, an amount of Rs.25,000/- is granted in addition to the amount already awarded by the Tribunal. For attendant charges and extra nourishment and for loss of amenities, an amount of Rs. 10,000/- under each head, and for loss of amenities, a sum of Rs. 20,000/- is granted in addition to the amounts already awarded by the Tribunal. In all other aspects, the compensation awarded by the Tribunal appears to be reasonable and acceptable and need not be interfered with. The compensation granted is reworked and tabulated as given hereunder:



WEB COPY

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For partial permanent disability Rs.2,000/- X 85	Rs.1,70,000/-	Rs.1,70,000/-	Confirmed
2	For pain and sufferings	Rs. 10,000/-	Rs. 35,000/-	Enhanced
3	For medical expenses	Rs. 89,000/-	Rs. 89,000/-	Confirmed
4	For extra nourishment	Rs. 3,000/-	Rs. 13,000/-	Enhanced
5	For attendant charges	Rs. 900/-	Rs. 10,900/-	Enhanced
6	For loss of amenities	Rs. 3,000/-	Rs. 23,000/-	Enhanced
7	For Transport charges	Rs. 1,000/-	Rs. 1,000/-	Confirmed
8	For loss of income (Rs.5,000 x 5 months)	---	Rs. 30,000/-	Granted
	Total	Rs.2,76,900/-	Rs.3,71,900/- Rounded off Rs.3,72,000/-	Enhanced by Rs.95,100/-

14. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,76,900/- to Rs.3,72,000/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

15. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed. No costs.
(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,76,900/- to Rs.3,72,000/-.



WEB COPY

(iii) The Insurance Company/second respondent is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.3,72,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs to the credit of M.C.O.P.No.2242 of 2017 on the file of Motor Accidents Claims Tribunal / Special Sub Court, Madurai within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimant/appellant is permitted to withdraw the amount now determined by this Court along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(v) The claimant is directed to pay the Court fee for the enhanced compensation amount, if required.

(vi) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

31.12.2024

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

To

1.The Motor Accidents Claims Tribunal / Special Sub Court, Madurai.



C.M.A.(MD) No.882 of 2023

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

R.KALAIMATHI,J



C.M.A.(MD) No.882 of 2023

apd

WEB COPY

Pre-delivery order made in
C.M.A.(MD) No.882 of 2023

31.12.2024