



C.M.A(MD)No.671 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:28.10.2024

CORAM
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)No.671 of 2018

G.Rajaram

... Appellant

Vs.

1.G.Pothiyamalai

2.The Claims Manager,
IFFCO Tokkio General Insurance,
Company Limited,
No.82, Piritham Plaza,
1st Floor, Chandra Gandhi Nagar,
Ponmeni, Bye Pass Road,
Madurai.

... Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 17.08.2017 and made in M.C.O.P.No.24 of 2016 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District, at Srivilliputhur, relating to the quantum of compensation granted under various heads.



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For Appellant : Mr.N.Tamilmani
For 2nd Respondent : Mr.V.Sakthivel

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.24 of 2016, dated 17.08.2017, by the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District, at Srivilliputhur.

2.The case of the claimant is that on 26.09.2015, at about 06.00 p.m., when the appellant was riding his Bajaj Discover two Wheeler bearing Registration No.67 AS 1795, from south to north keeping extreme left side of the Road on Alangulam to Srivilliputtur Road, the first respondent drove Ford Figo Car bearing registration No.TN 84 8368, in a rash and negligent manner and not adhering the traffic rules and dashed against the two wheeler of the appellant. Due to which, the appellant has sustained fracture of right shaft of femur with vascular injury, severely crushed fracture of right distal femoral bone and crushed



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fracture of tibia and fibula totally crushing soft tissues of right leg. Immediately, the appellant was taken to Srivilliputtur Government Hospital, and thereafter, he was referred to Madurai Rajaji Hospital, for further treatment. But, in order to get specialized treatment, the appellant was taken to Sakthibala Private Hospital, Rajapalayam, on 26.09.2015. Under spinal Anaesthesia to the petitioner, the right lower leg was amputated. After that, he was treated as inpatient till 03.10.2015. Regarding the above said occurrence, the Vanniampatti Police Officers registered a case against the first respondent in Crime No.157 of 2015 for the offences under Sections 279 and 338 of IPC and the criminal case is pending before the Judicial Magistrate No.II Court, Srivilliputtur. Therefore, the appellant filed the claim petition in M.C.O.P.No.24 of 2016, claiming compensation of Rs.40,00,000/-.

3.During trial, the appellant/claimant has examined himself as P.W.1 and one Mahadevan and V.Greemsman Daneil Vinothraj as P.W.2 and P.W.3 and exhibited 23 documents as Ex.P.1 to Ex.P.23. On the side of the first respondent, he neither produced any documents nor examined any witnesses. The Court side document is marked as Ex.C1.



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4.The learned trial Judge, upon considering the evidence both oral and documentary and on hearing arguments of both sides, has passed the impugned award dated 17.08.2017 holding that the accident had occurred only due to the rash and negligence driving of the first respondent, and directed the second respondent to pay compensation of Rs.11,31,558/- to the appellant for which no interest carries for the amount of Rs.2,05,614/- and for balance amount of Rs.9,25,944/- the appellant is entitled for interest at the rate of 7.5% from the date of petition till realization to the appellant and the amount has to be credited within one month in the appellant's account. Aggrieved by the impugned award, the appellant/claimant has preferred this present appeal.

5.The learned counsel appearing for the appellant submitted that the claimant filed this appeal seeking enhancement of compensation. The appellant sustained injury in the accident that took place on 26.09.2015 at 06.00 p.m., as a result of rash and negligent driving of the first respondent, insured by the second respondent he suffered injury namely, in his right shaft of femur with vascular injury, severely crushed fracture



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of right distal femoral bone and crushed fracture of tibia and fibula totally crushing soft tissues of right leg. Thereafter, the right leg was amputated above the knee. Before the accident, he was working as the Operator of the pulverizing machine in Rajapalayam Chemicals, situated at Sankarankovil Road, Vembakottai. Due to that, he lost his job and also he is unable to do any job. In the said circumstances, the learned Tribunal without applying multiplier method granted only Rs,1,00,000/- to the appellant under the loss of earning capacity. Even though the competent Medical Board granted 90% disability, the learned Tribunal has not granted compensation calculating the loss of earning capacity by adopting multiplier method.

5.1.The learned counsel further submitted that the leg was amputated and hence, the Future Medical Expenditure amount of Rs.2,05,614/- is not adequate by considering the Future Medical Expenditure for changing the artificial leg and meeting artificial leg maintenance.



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6.The learned counsel for the insurance/second respondent made submission that as per the law, the learned Tribunal already granted Rs.2,70,000/- under the head of the Permanent Disability and hence, the loss of income for applying multiplier is not maintainable. The loss of earning capacity by adopting the multiplier method is awarded. Then, there is no authority to grant compensation for the 90% disability. According to the learned counsel for the insurance, this Court has no power grant both under head of permanent disability and the loss of earning capacity. The learned counsel further submitted that the leg was amputated and hence, as per the Workmen Compensation Act, only 6% to be calculated. Hence, he seeks for dismissal of the appeal. The learned counsel relied the following judgment of the Honourable Supreme Court of the India and the High Court of Kerala:

6.1.(i).In the case of T.J.Parameshwarappa @ Parameshwarappa @ J.T.Parameshwarappa Vs. The Branch Manager, New Indian Assurance Co. Limited and others reported in 2022 CJ (SC) 934.

6.1.(ii).In the case of Oriental Insurance Co. Limited Vs. Hariprasad reported in 2006 (1) CTC 81.



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7.This Court considered the submissions made on either side and perused the record and also the medical records and Ex.P.15 namely photograph of the appellant with amputated leg.

8.The following point arise for consideration of this appeal:

8.1.Whether the compensation awarded under various heads in the impugned award in M.C.O.P.No.24 of 2016 is liable to be interfered?

9.Loss of earning capacity in the case of amputation of leg:

On 26.09.2015, appellant met accident and sustained fracture of right shaft of femur with vascular injury, severely crushed fracture of right distal removal bone and crusted fracture of fibia totally crushing soft tissues of right leg. Therefore, the right leg was amputated above knee. He also deposed that before accident he was working as the operator of the pulverizing machine in Rajapalayam chemicals situated at Vembakottai. As result, he lost his job and also he is unable to do any job. This has virtually incapacitated him to get alternative employment. It is not the case of insurance company that he has availed any other job and



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no such evidence is available on record. His job was operating pulverizing machine. Once his leg is amputated, there is no question of continuing the said job. There is no evidence of offering of alternative job in the said company to the appellant. Hence, the case of appellant that he lost his job and also he is unable to do any job can be accepted. The permanent disability is also assessed as 90% by competent medical board. There is no dispute on this also. The above said factual circumstances warrant the application of multiplier method to determine “loss of earning capacity” apart from awarding compensation under head of both “Permanent disability”. It is no longer *res integra*, as per the law laid down by Hon’ble Supreme Court in **2011 (6) SCC 620, 2012 (10) SCc 171, 2013 (12) SCC 603** and **2015 (1) SCC 539**, in deserving cases the court, has power to grant compensation under both heads namely “Permanent disability” and “loss of earning capacity”. Therefore this court declines to accept the argument of learned counsel for insurance company that there is bar to grant compensation under both heads of “permanent disability” and loss of earning capacity” on the basis of the Hon’ble Full Bench of this court and Kerala High Court reported in **2006 (1) CTC 81** and **2006 (4) CTC 433** on the premises, the same had been



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disapproved and over ruled by Hon'ble supreme Court in the **2011 (6) SCC 620, 2012 (10) SCC 171** and **2013 (12) SCC 603**.

9.1.This Court has looked into the nature of the job, percentage of the disability and more specifically in the amputation case, the nature of job he was doing has been lost. The basic principle of the compensation rests on the maxim that “restitution integram”. So, the Court ought to have granted compensation to place the injured in the same position where the injured was before the accident. In the said circumstances, considering that the appellant was working as the Operator of the pulverizing machine, he cannot discharge the said duty without leg. Therefore, this Court considered the nature of job and determining the loss of income relating to the amputation happened in the right leg of the injured person, the percentage of the disability is not a criteria to determine the loss of earning capacity, but the nature of the job is a material. In this case, the appellant was working as the Operator of the pulverizing machine and he lost his earning capacity for the reason that he cannot discharge his duty without leg. The medical Board assessed 90% disability. Even though the Medical Board assessed 90% disability,



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the disability caused loss of the earning capacity to the extent of 100%.

Hence, this Court inclines to adopt the multiplier method and calculate the loss of earning capacity as follows:

10. According to the documents, the appellant earned Rs.410 as daily wage. The Tribunal only had taken 20 days. But, as per the record, the duty is 26 days. Hence, this Court calculates the monthly income of the injured as Rs.10,660/- (410 X 26 days=10660). The appellant was aged about 32 years, on the date of accident. Therefore, the multiplier is adopted as 15 and calculating the same, the amount comes around Rs.18,90,000/- (10500X12X15= 18,90,000). But, the learned Tribunal Judge even though held that the appellant could not sit and walk as before the accident and resultantly he is unable to operate pulverizing machine and there is a functional disability, erroneously awarded a sum of RS.s1,00,000/- under the head of loss of earning capacity, without applying the multiplier method. Therefore, this Court calculates the multiplier method and arrived the above amount under the head of loss of earning capacity.



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11. The term 'permanent disability' refers to the residuary incapacity or the loss of use of some part of the body found existing at the end of the period of treatment/recuperation, which would remain forever without marked change in future. Therefore, as stated above, as per principle laid down by the Hon'ble Supreme Court in the precedents reported in **2011 (6) SCC 620, 2012 (10) SCC 171, 2013 (12) SCC 603** and **2015 (1) SCC 539**, the claimant is entitled to get compensation for both “permanent disability” and “loss of earning capacity”. But, the Tribunal has failed to grant any amount under the head of permanent disability. Earlier, this Court granted Rs.1,500/- per percentage of the disability and subsequently considering the inflation increased it to Rs. 3,000/- and further enhanced to Rs.5,000/- per percentage. This Court increased the said amount from Rs.3,000/- to Rs.5,000/- per percentage by considering the cost of living. Therefore, the claimant is entitled to get a sum of Rs.4,90,000/- under the head of permanent disability. $[90 \times 5000 = 4,50,000/-]$. In view of the above discussion, the contention of the learned counsel for the insurance that the Court has no power to grant compensation under both “permanent disability” and “loss of earning capacity” is not accepted. The Tribunal has power to grant both under the



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head of permanent disability and loss of earning capacity. Hence, this Court is inclined to grant both under the heads of permanent disability and also loss of earning capacity.

12.The learned Tribunal awarded only Rs.2,05,614/- under the head of Future Medical Expenditure. It is the case of the appellant that his right leg was amputated. Hence, the expenditure for artificial leg is around Rs.2,00,000/-. This Court takes judicial notice that in the case of artificial leg, the same is to be replaced periodically and the periodical treatment is also necessary, in order to avoid further complication. In the said circumstances, this Court enhances the amount under the heads of Future Medical Expenses from Rs.2,05,614/- to Rs.4,00,000/-.

13. In view of the above, this Court modifies the award of the Tribunal, as under:-

<i>S. No</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted</i>
1.	For permanent disability	Rs.2,70,000/-	Rs.4,50,000/-	enhanced



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2.	For Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
3.	For Loss of enjoyment and expectation of life	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
4.	For Loss of income	Rs. 32,800/-	Rs.32,800/-	Confirmed
5.	For Loss of Earning capacity	Rs.1,00,000/-	Rs.18,90,000/-	Enhanced
6.	Nutritious Food	Rs. 10,000/-	Rs.10,000/-	Confirmed
7.	Medical Expenses	Rs.2,88,144/-	Rs.2,88,144/-	Confirmed
8.	Attender Expenses	Rs. 25,000/-	Rs.25,000/-	Confirmed
9.	Future Medical Expenses	Rs.2,05,614/-	Rs.4,00,000/-	Enhanced
	Total	Rs.11,31,558/-	Rs.32,95,944/-	By enhancing a sum of Rs.21,64,386/-

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from **Rs.11,31,558 /-** to **Rs.32,95,944/-** along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation. The second respondent Insurance Company is directed to deposit the enhanced award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a



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period of four weeks from the date of receipt of a copy of this order. The claimant/appellant is directed to pay the excess court fee, if any. On such deposit being made, the appellant is entitled to withdraw the amount as per the order of the Tribunal. No costs.

[V.B.S.J] [K.K.R.K.J.]

28.10.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Virudhunagar District,
at Srivilliputhur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,
and
K.K.RAMAKRISHNAN.J.,

vsg

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