



C.M.A(MD)No.1038 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.10.2022

PRONOUNCED ON:07.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1038 of 2021

and

C.M.P.(MD)No.9809 of 2021

P.Muthu

: Appellant / Claimant

Vs.

1.G.Subramani

2.The Divisional Manager,
United India Insurance Company Ltd.,
7-A, West Veli Street,,
3rd Party HUB,
Madurai – 625 001.

: Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order passed in M.C.O.P.No.389 of 2018, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Madurai, dated 19.09.2019 and for enhancement of compensation.



C.M.A(MD)No.1038 of 2021

WEB COPY

For Appellant : Mr.K.Kumaravel

For Respondent :Mr.A.Ilango
for R2

: R.1 – Exparte

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.389 of 2018, dated 19.09.2009, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court,Madurai.

2. The appellant/claimant, who was awarded with the compensation of Rs.3,79,000/- with interest at 7.5% p.a., and costs, for the disability suffered by him, consequent to an accident occurred on 17.03.2018, challenged the quantum of compensation arrived at by the Tribunal and claimed enhancement of the same.



C.M.A(MD)No.1038 of 2021

WEB COPY

3. The main contention of the appellant/claimant is that he suffered fracture on his right leg, that he was admitted in the Jeyam Hospital on 16.06.2021 and after surgery, he was discharged on 18.06.2021, that the Medical Board has assessed the disability and fixed the disability at 40% of partial permanent disability, that the claimant was a driver before the accident and he could not discharge his work as driver due to the accidental injuries, that since the claimant has suffered functional disability, the learned Tribunal ought to have adopted the multiplier formula in calculating compensation and that the amounts awarded under various heads by the Tribunal are also on lower side and the same are to be enhanced.

4. The points that arise for consideration are

(1) Whether the Tribunal erred in deciding that the claimant has not suffered functional disability and hence, the multiplier method for determining compensation cannot be applied? and

(2) Whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?

(3) Whether the documents filed by the appellant before this Court as additional documents are acceptable or not?



C.M.A(MD)No.1038 of 2021

WEB COPY

Points 1 to 3:

5. During enquiry, the claimant has examined himself as P.W.1 and one Thangamani as P.W.2 and exhibited 17 documents as Exs.P.1 to P.17. The first respondent remained exparte. The second respondent /Insurer has adduced neither oral nor documentary evidence. The hospital records have been marked as Exs.X1 and X.2

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned award, directing the respondent/Insurer to pay the compensation of Rs.3,79,000/- with interest at 7.5%p.a., from the date of the petition till the date of realization with proportionate costs. Aggrieved by the quantum of compensation awarded, the claimant has come forward with the present Civil Miscellaneous Appeal.

7. Pending appeal, the appellant has filed an application in C.M.P. (MD)No.9809 of 2021 under Order 41 Rule 27 of the Code of Civil Procedure for reception of additional evidence. The appellant/claimant,



C.M.A(MD)No.1038 of 2021

WEB COPY

in the above petition, has produced the documents to be received viz.,
(i) discharge summary issued by the Jeyam Hospital, Madurai; (ii) medical bills issued by the Jeyam Hospital; (iii) medical bills issued by the Vignesh Medical, attached to the Jeyam Hospital, Madurai and (iv) x-ray receipt voucher issued by the Jeyam X-ray Lab. In the affidavit filed in support of the above petition, the claimant has averred that after passing of award, he has been admitted in Jeyam Hospital, Madurai for removal of metal plate in his right leg on 16.06.2021 and after surgery, he was discharged on 18.06.2021, that he incurred a sum of Rs.78,622/- towards medical expenses and that since the documents now produced along with the petition are arising after the award, the same may be received as additional evidence in the above appeal.

8. Admittedly, the second respondent/Insurer has not filed any counter affidavit or objections to the above petition. Moreover, the second respondent has disputed neither the genuineness nor the contents of the said documents. It is not in dispute that the claimant had taken treatment at Madurai-Jeyam Hospital, after the accident and he has produced the discharge summary and other medical records relating to the Jeyam Hospital, Madurai. It is the specific contention of the claimant



C.M.A(MD)No.1038 of 2021

WEB COPY

that after passing of the award, he was admitted in the hospital for the removal of plate and after undergoing surgery, he was discharged.

9. Considering the above and also the facts that the above documents came into existence after passing of the award and that the second respondent has not raised any serious objections, this Court is inclined to permit the petitioner to adduce the additional evidence. Accordingly, the discharge summary, medical bills issued by the Jeyam Hospital, medical bills issued by Vignesh Medical and X-ray receipt voucher issued by the Jeyam X-ray Lab and Physio are ordered to be marked as Exs.P.18, P.19,P.20 series and P.21 respectively and the point No.3 is answered accordingly.

10. Admittedly, the second respondent/Insurer has not challenged the award passed by the Tribunal. Now, the only challenge is with respect to quantum of compensation. It is not in dispute that the claimant has produced the disability certificate issued by the medical board, whereunder the disability suffered by the claimant was fixed at 40%. The Tribunal, upon considering the disability certificate issued by the medical board, has awarded compensation for the disability at Rs.



C.M.A(MD)No.1038 of 2021

1,40,000/- by giving Rs.3,500/- per percentage of the disability (40% x Rs.3,500/-),

WEB COPY

11. The learned Counsel for the appellant/claimant would mainly contend that the claimant being the driver, after suffering fracture on his right leg and consequent disability at 40%, is not in a position to drive the vehicle and as such, he has suffered functional disability and that therefore, the Tribunal ought to have adopted the multiplier method for determining the disability compensation.

12. The learned Counsel for the second respondent would submit that the application of multiplier formula is not automatic in all the injury cases, that the Tribunal, after considering the evidence on record, has rightly awarded Rs.3,500/- per percentage of disability and that therefore, the question of adopting and applying multiplier formula does not arise at all.

13. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajaykumar and another***, reported in ***(2011) 1 Supreme Court Cases 343*** :



C.M.A(MD)No.1038 of 2021

“Para 12:

“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.



C.M.A(MD)No.1038 of 2021

Para 19:

19. 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.”



C.M.A(MD)No.1038 of 2021

WEB COPY

14. 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.

15. In the case on hand, the appellant/claimant suffered a fracture in Shaft of Femur R and hence, ORIF with IL Nailing Femur was done. It is evident from Ex.P.7 discharge summary that the appellant/claimant was admitted on 17.03.2018 and after surgery on 17.03.2018, was discharged on 29.03.2018. It is further evident from Ex.P.18 – discharge summary that the claimant was admitted on 16.06.2021 and after removal of implants, was discharged on 18.06.2021. As already pointed out, the Medical Board attached to the Government Rajaji Hospital, Madurai, has assessed and fixed the disability at 40% and in the said certificate, it has been stated that the claimant was evaluated for locomotor disability by clinically and radiological examination and disability was calculated to be 40%.



C.M.A(MD)No.1038 of 2021

WEB COPY

16. As rightly contended by the learned Counsel for the second respondent, the claimant has not shown that he suffered any permanent disability and consequent functional disability. In the absence of any evidence to show that the claimant has suffered functional disability, the decision of the Tribunal, in not applying the multiplier method cannot be found fault with. But at the same time, granting compensation at Rs. 3,500/- per percentage is very low and the same is fairly conceded by the learned Counsel for the second respondent. Hence, considering the nature of the injuries and the consequent disability suffered, this Court is of the view that the claimant is entitled to get Rs.5,000/- per percentage of disability.

17. The learned Counsel for the appellant/claimant would submit that the amounts awarded under the various heads are also very low and the same are liable to be enhanced.

18. The Tribunal has awarded Rs.10,000/- for pain and suffering, Rs.2,000/- for transport, Rs.3,000/- for extra nourishment and Rs.2,000/- for attendant charges. The learned Counsel for the appellant/claimant



C.M.A(MD)No.1038 of 2021

WEB COPY

has not raised any objections with regard to the amounts awarded for loss of income and for medical expenses.

19. As already pointed out, the claimant has taken inpatient treatment for the period between 17.03.2018 and 29.03.2018 and again for the period between 24.07.2018 and 25.07.2018. He has suffered bone injury on his right thigh, apart from other injuries. As per the medical records under Exs.P.18 to P.21, the claimant is entitled to get Rs.78,622/- towards medical expenses incurred after the award. Further, considering the nature of injuries, period of treatment, disability suffered and other attendant circumstances, this Court is of the view that the claimant is to be granted Rs.30,000/- for pain and suffering, Rs.20,000/- towards extra nourishment, Rs.15,000/- towards transport expenses, Rs.15,000/- towards attendant charges, all totalling Rs.5,80,622/- and the above points are answered accordingly. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:



C.M.A(MD)No.1038 of 2021

S. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of income (Rs.9,000 x4)	36,000/-	36,000/-	confirmed
2	Partial Permanent disability (40xRs.3,500/-)	1,40,000/-	2,00,000/-	enhanced
3	Medical Expenses	1,86,000/-	1,86,000/-	confirmed
4	Medical expenses after the award		78,622/-	granted
5	Pain and Sufferings	10,000/-	30,000/-	enhanced
6	Transport to Hospital	2,000/-	15,000/-	enhanced
7	Extra Nourishment	3,000/-	20,000/-	enhanced
8	Attendant charges	2,000/-	15,000/-	enhanced
	Total	Rs.3,79,000/-	Rs.5,80,622/-	Enhanced by a sum of Rs.2,01,622/-

Rounded off to Rs.5,80,600/-

20. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.3,79,000/- to Rs.5,80,600/- along with interest at 7.5%pa., and costs. The second respondent/Insurer is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.389 of 2018, on the file of the Motor Accident



C.M.A(MD)No.1038 of 2021

WEB COPY

Claims Tribunal / Chief Judicial Magistrate Court, Madurai, 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 appellant/claimant is permitted to withdraw the same on due application before the Tribunal. The parties are directed to bear their own costs.

..... .11.2022

Index : Yes : No

Internet : Yes : No

Additional documents marked before this Court:

Ex.P.18 - discharge summary issued by the Jeyam Hospital, Madurai;

Ex.P.19- medical bills issued by the Jeyam Hospital;

Ex.P.20 series - medical bills issued by the Vignesh Medical, attached to the Jeyam Hospital, Madurai and

Ex.P.21- x-ray receipt voucher issued by the Jeyam X-ray Lab

SSL



C.M.A(MD)No.1038 of 2021

To

WEB COPY

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



WEB COPY



C.M.A(MD)No.1038 of 2021

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.1038 of 2021

07.11.2022