



C.M.A.(MD)No.675 of 2020

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 16.08.2023

Pronounced on : 29.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

**C.M.A.(MD)No.675 of 2020**

Brightus Raj

... Appellant/  
Petitioner

Vs.

1. Anantha Krishnan

2. Iffco-Tokio General Insurance Company Ltd.,  
through its Branch Manager,  
Thirupura Arcade 2<sup>nd</sup> Floor,  
No.75-A, Trivandrum Road,  
Palayamkottai,  
Tirunelveli.

... Respondents/  
Respondents

*(R1 ex parte before the Tribunal. Hence, notice dispensed with)*

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this appeal, enhance the award amount in M.C.O.P.No.338 of 2016 on the file of the Motor Accident Claims Tribunal, (Special Sub Court Dealing with MCOP Cases) Tirunelveli, dated 04.01.2020.



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For Appellant : Mr.T.Selva Kumaran  
For R1 : No appearance  
For R2 : M/s.K.R.Shivashankari

### **JUDGMENT**

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.338 of 2016 dated 04.01.2020 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court Dealing with MCOP cases, Tirunelveli.

2. The appellant/claimant, who was awarded with compensation of Rs.3,98,120/- (Rupees Three Lakhs Ninety Eight Thousand One Hundred and Twenty only) with interest at 7.5% per annum payable by the second respondent/insurer for the disability suffered by him, consequent to an accident occurred on 18.01.2016, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The case of the appellant/claimant is that he sustained multiple injuries all over the body besides fractures over the right leg, hip and right



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thigh and loss of muscles over the right leg, that he was immediately taken to CSI Bellpins Hospital, Palayamkottai and was admitted as inpatient, that he underwent surgery and iron rod and plates were inserted on the right leg and that he has spent more than Rs.3,00,000/- towards medical expenses.

4. It is the further case of the appellant/claimant that he was a B.E. engineer and also completed MBA course and was working as Senior Financial Analyst in HCL company and was getting monthly salary of Rs.25,000/-, that he was aged 25 years at the time of accident, that due to the disability, he is not able to stand for a long time and stretch or fold his right leg, that his right leg was shortened and that he is not able to continue his profession as before.

5. The defence of the second respondent/insurer is that the injuries allegedly suffered by the appellant/claimant will not result any permanent disablement, that the injuries suffered by the appellant/claimant have already been healed and he is doing his work as before, that the monthly income of the appellant/claimant has been highly boosted up for the



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purpose of the claim and that they are disputing the age, income and occupation of the appellant/claimant.

6. During trial, the appellant/claimant has examined himself as P.W.1 and examined 2 medical officers Dr.Sudalaimuthu and Dr.Poovalingam as P.W.2 and P.W.3 respectively and exhibited 17 documents as Ex.P.1 to Ex.P.17. The second respondent/insurer has adduced neither oral nor documentary evidence.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 04.01.2020 directing the second respondent/insurer to pay compensation of Rs.3,98,120/- with interest and costs. Aggrieved by the impugned award, the claimant has come forward with the present appeal.

8. The only point that arises for consideration is as to whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?



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9. It is evident from Ex.P.15-wound certificate that the appellant/claimant has suffered the following 8 types of injuries (1) laceration of size 0.5 x 0.5 x 0.5cm seen over right forearm, (2) laceration of size 4 x 1 x 0.5cm over left side of chin, (3) tenderness over right hip, (4) laceration of size 20 x 8 x 3cm over right knee, (5) laceration of size 8 x 3 x 1cm over anterior part of right ankle, (6) graze abrasion 6 x 3cm – above right knee, (7) graze abrasion 6 x 5cm – below right knee and (8) graze abrasion 6 x 2cm – right leg and the Doctor attended him has certified that the injuries No.3 and 5 are grievous in nature and other injuries are simple in nature.

10. It is evident from Ex.P.4-Discharge Summary issued by CSI Bellpins Hospital that the appellant/claimant was admitted on 18.01.2016 and surgery performed on 18.01.2016 itself and was discharged on 04.02.2016. In the Discharge Summary, it has been stated that the appellant/claimant was diagnosed to have the following main issues (1) right hip posterior dislocation with ischial spine fracture, (2) open right knee joint, (3) right open ankle with medial malleolus fracture and lateral collateral ligament grade 3 laceration and (4) right thumb radial collateral



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ligament injury of MCP joint. It is further evident that they have done the procedure of right hip closed reduction, debridement right knee, right ankle and right ankle syndesmostic screw fixation with EX-fix under S.A.

11. P.W.2-medical officer would say that while he was working in CSI Bellpins Hospital, he had treated the appellant/claimant and he was discharged on 04.02.2016. In cross-examination, he would say that the appellant/claimant has not returned to the hospital after getting treatment in 2016 and that he was not aware of the position of the appellant/claimant at the time of his examination before the Tribunal. P.W.3-medical officer would say that he had not treated the appellant/claimant, but after examining him has issued the disability certificate under Ex.P.16. In cross-examination, he would say that the fractured bones got united and the other injuries got healed. P.W.3 has issued the disability certificate certified that the appellant/claimant has suffered partial permanent disability at 37.4%.

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



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*“9. 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.*

....

*13. 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.*



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(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. 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, 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



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disability on the avocation and that the multiplier method cannot be applied mechanically.

14. In the case on hand, as rightly observed by the Tribunal, there is absolutely no evidence to show that the appellant/claimant has suffered permanent disability and the consequent functional disability. Hence, the question of applying multiplier formula does not arise at all. The Tribunal has rightly applied the percentage method, but as rightly pointed out by the learned counsel appearing for the appellant/claimant, the Tribunal has only awarded Rs.4,000/- per percentage which is low and hence, this Court is inclined to award Rs.5,000/- per percentage of the disability and as such, the appellant/claimant is entitled to get Rs.1,87,000/- (37.4 x Rs.5,000/-) towards disability.

15. No doubt, the appellant/claimant has produced the records to show that he was working as Senior Financial Analyst and was getting monthly salary of Rs.18,550/- after deductions. Since the appellant/claimant has not produced any evidence to show that he was not paid salary during the treatment period, the Tribunal has rightly disallowed the compensation towards loss of income.



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16. The learned counsel appearing for the appellant/claimant would submit that the appellant/claimant is a sports man and he has produced Ex.P.13-certificates to prove the same and that because of the disability sustained, he lost his better opportunities. No doubt, the appellant/claimant has produced the certificates to show that he had won prizes in the athletic competitions in pentathlon, triathlon, long jump and 100 mts. hurdles. As rightly pointed out by the learned counsel appearing for the second respondent/insurer, the appellant/claimant, due to the disability, has not lost his job and even according to the appellant/claimant, he has been continuously working in the same concern. Moreover, as rightly pointed out by the learned counsel appearing for the second respondent/insurer, the appellant/claimant has produced the sports certificates under Ex.P.13 which were issued for the competitions held in the year 2006 and they have not produced any records for the subsequent period.

17. Considering the nature of injuries, period of inpatient treatment and the consequent disability sustained and other attending circumstances, this Court is inclined to award Rs.50,000/- for pain and suffering, Rs.30,000/- for extra nourishment, Rs.75,000/- for loss of convenience



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and amenities, Rs.15,000/- for attendant charges and Rs.10,000/- for transport expenses. The Tribunal, taking note of the bills produced, has rightly granted Rs.1,63,520/- towards medical expenses. Considering the above, the appellant/claimant is entitled to get total compensation of Rs.5,30,520/- and accordingly, the compensation awarded by the Tribunal is modified as follows:-

| S. No. | Description                       | Amount awarded by Tribunal (Rs.) | Amount awarded by this Court (Rs.) | Award confirmed or enhanced or granted or reduced |
|--------|-----------------------------------|----------------------------------|------------------------------------|---------------------------------------------------|
| 1.     | Disability                        | 1,49,600                         | 1,87,000                           | Enhanced                                          |
| 2.     | Pain and suffering                | 25,000                           | 50,000                             | Enhanced                                          |
| 3.     | Extra nourishment                 | 25,000                           | 30,000                             | Enhanced                                          |
| 4.     | Loss of convenience and amenities | 25,000                           | 75,000                             | Enhanced                                          |
| 5.     | Attendant charges                 | 5,000                            | 15,000                             | Enhanced                                          |
| 6.     | Transport expenses                | 5,000                            | 10,000                             | Enhanced                                          |
| 7.     | Medical expenses                  | 1,63,520                         | 1,63,520                           | Confirmed                                         |
|        | <b>Total</b>                      | <b>3,98,120</b>                  | <b>5,30,520</b>                    | <b>Enhanced by Rs.1,32,400/-</b>                  |



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18. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

19. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,98,120/- (Rupees Three Lakhs Ninety Eight Thousand One Hundred and Twenty only) is hereby enhanced to **Rs.5,30,520/- (Rupees Five Lakhs Thirty Thousand Five Hundred and Twenty only)**. The second respondent/Insurer is directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.338 of 2016 on the file of Motor Accident Claims Tribunal/ Special Subordinate Court Dealing with MCOP cases, Tirunelveli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. The appellant is directed to pay the court fee for the enhanced



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compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

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NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
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**To:**

1. The Motor Accident Claims Tribunal/  
Special Subordinate Court Dealing with MCOP cases,  
Tirunelveli.
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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**Pre-Delivery Order made in**  
**C.M.A.(MD)No.675 of 2020**

**Dated : 29.09.2023**