

C.M.A.(MD) No.904 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.904 of 2024

T.Sangili.

... Appellant

VS.

1.P.M.Mathai,

2.The United India Insurance Company Ltd.,
Represented by its Branch Manager,
Noornal Building, Mysore Road,
Wayanad, Karala state.

3.The United India Insurance Company Ltd.,
Represented by its Branch Manager,
Periyakulam Road,
Theni.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award, dated 05.01.2023 in M.C.O.P.No.259 of 2019, on the file of the Motor Accidents Claims Tribunal/Chief Judicial magistrate, Theni.



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For appellant : Mr.S.Karthick Ramkumar

For Respondent
for R1 : dispensed with
for R2 & R3 : Mr.B.Rajesh Saravanan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant against the award dated 05.01.2023, made in M.C.O.P.No.259 of 2019, by the Motor Accidents Claims Tribunal/Chief Judicial magistrate, Theni, for enhancement of compensation.

2. The case details as set out in the claim petition are stated in brief:

On 05.09.2019, at about 10.30 a.m., at Kamayakoundanpatti, P.M.S. Crusher, while unloading the blocks from the Tipper lorry bearing Registration No.KL-12L-7267 by the petitioner, the driver of the said lorry, carelessly closed the door of the lorry. Due to the said impact, the claimant's right hand was cut and he was taken to the Government Medical Hospital and thereafter, for further



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treatment, he was admitted as an inpatient at Madurai Rajaji Government Hospital from 05.09.2019 to 14.10.2019, where skin drafting was done. As his right hand is amputated, he is not in a position to do any work and he lost his total income and claimed compensation of Rs.30,00,000/- from the respondents. Per contra, the details were counteracted by the second respondent by filing counter and it has been stated that the claim is put to strict proof of his age, avocation and income.

3. At trial, on the petitioner side, one witness/petitioner was examined and six documents were marked. On the respondents side, no witness was examined and no documents were marked.

4. Upon consideration, the Tribunal by fixing his age at 40 years, notional income as Rs.9,000/- p.m and his disability was assessed at 90%. Multiplier method was invoked for computing the loss of future income. For 'loss of future income', a sum of Rs. 15,12,000/-. For pain and sufferings, a sum of Rs.50,000/- was granted. Under the heads 'extra nourishment', 'attendant charges'



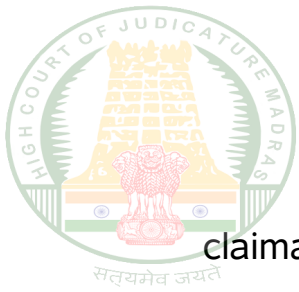
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and 'transport expenses', a sum of Rs.10,000/- under each head was granted. For 'damages to clothes', a sum of Rs.5,000/- was granted. In all, the Tribunal granted a sum of Rs.15,97,000/-. Against which the claimant has come forward with this appeal for enhancement of compensation.

5. The learned counsel for the appellant would, strenuously, argue that as held in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TNMAC 1 (SC)***, the person, whose age is about 40 years, the relevant multiplier is '15' and the income fixed at Rs.9,000/- is on the lower side.

6. It is his further argument that no amount was granted for medical expenses, for pain sufferings and attendant charges, the amounts awarded by the Tribunal are not sufficient and hence, sought for an overall enhancement of the compensation.

7. Whereas, the learned counsel for the respondents 2 and 3 would vehemently contend that taking into consideration the year of the accident, the fixation of monthly income at Rs.9,000/-, as the

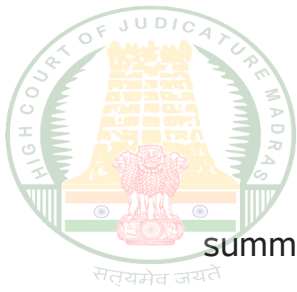


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claimant was said to be a load man is reasonable and the amounts awarded under different heads as mentioned supra are acceptable and hence, prayed to dismiss the appeal.

8. It has come on record through the testimony of P.W.1 that on the relevant date, he was working as a load man and earning a sum of Rs.12,000/- p.m. As his right hand was cut off and his right hand above the elbow was amputated and being a load man, he is not in a position to go to work and he lost his income in toto.

9. It is an injury case. The claimant has suffered amputation on his right hand above his elbow. Due to the accident that occurred on 05.09.2019 as deposed by P.W.1, having suffered amputation of hand, that too right hand, it would not be possible for anyone in similar circumstances to do any sort of work. As a load man, certainly, he is totally handicapped on doing any similar work, as he did before. In this regard, the Hon'ble Supreme Court, has elaborately dealt with in ***Raj Kumar vs. Ajay Kumar***, reported in ***[(2011) 1 SCC 343]***, that under what circumstances, multiplier can be invoked in case of injury. The principles have also been



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summarised, which are given hereunder:

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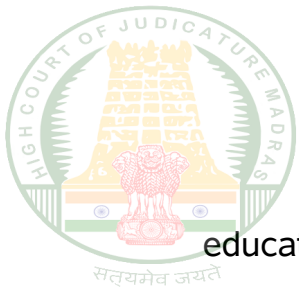
“(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(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.”

10. This Court is conscious of the fact that the same permanent disability would result in different percentages of loss of earning capacity in different persons. It also depends upon the nature of job, age, gender,



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education and such other factors.

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11. In this case, Disability Certificate has been issued for the complainant by Theni Medical College and his disability was assessed at 90%. Considering the fact that if a manual labour loses his right hand, then it will not be possible to do any similar work thereafter. Therefore, the functional disability is taken as 90% by the Tribunal is acceptable and reasonable.

12. As per Ex.P6/PAN Card copy, his date of birth was mentioned as 01.01.1981. His age is fixed at 38 years at the relevant point of time. As held by the Apex Court in **Sarala Varma's** case (cited supra), for the age group between 36 and 40 years, the relevant multiplier to be adopted is '15m'. In this case, the relevant multiplier to be adopted as per the age of the claimant is '15m'.

13. The date of accident is 05.09.2019. It has come on record through the evidence of P.W.1 that at the relevant point of time, he was working as a load man and was earning a sum of Rs.12,000/- p.m.



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WEB COPY 14. Upon consideration of the aforesaid details, his monthly salary is fixed at Rs.12,000/- p.m. The Apex Court has standardised the details that in case the person is below 40 years, 40% has to be added towards future prospects while computing the monthly income. Based on the aforesaid details, 'loss of income' is computed as given hereunder:

A	Monthly Income	Rs.12,000/-
B	Future Prospects (40% of monthly income)	Rs.4,800/-
C	Total income (A + B)	Rs.16,800/-
D	Annual Income (C x 12)	Rs.2,01,600/-
E	Age Multiplier	15
F	Loss of Income (D x E)	Rs.30,24,000/-
G	10% of Income Tax	Rs.3,02,400/-
	Loss of income (F - G)	Rs.27,21,600/-

15. In consideration of the nature of injury suffered by the claimant, a sum of Rs.25,000/- is granted for 'pain and sufferings', in addition to the amount granted by the Tribunal.

16. The learned counsel for the respondents 2 and 3 would, strenuously, contend that as the claimant had taken treatment at



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the Government Hospital, he would have been given medicines and the other things in the hospital itself. He would not have spent any amount towards medical expenses. This Court totally disagrees with the arguments of the learned counsel for the reason that in reality if any medicine or other things are not available in the hospital pharmacy, then it is for the patient to purchase the relevant medicines and other things from outside. The claimant was in hospital as an inpatient for about 39 days. A sum of Rs.10,000/- is granted for medical expenses, as no amount was granted by the Tribunal under that head. With regard to the other heads, the amounts granted by the Tribunal appears to be reasonable and hence, no interference is called for. After revisit, the compensation details are tabulated hereunder:

Sl. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For loss of future income	Rs.15,12,000/-	Rs.27,21,600/-	Enhanced
2	For pain and sufferings	Rs. 50,000/-	Rs. 75,000/-	Enhanced
3	For extra nourishment	Rs. 10,000/-	Rs. 10,000/-	Confirmed



Sl. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
4	For attendant charges	Rs. 10,000/-	Rs. 10,000/-	Confirmed
5	For transport charges	Rs. 10,000/-	Rs. 10,000/-	Confirmed
6	For damages to clothes	Rs. 5,000/-	Rs. 5,000/-	Confirmed
7	For medical expenses	---	Rs. 10,000/-	Granted
	Total	Rs.15,97,000/-	Rs.28,41,600/-	Enhanced

17. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,97,000/- to Rs.28,41,600/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

18. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.15,97,000/- to Rs.28,41,600/-.

(iii) The Insurance Company/second respondent is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.28,41,600/- (less the amount already deposited if any)



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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.259 of 2019 on the file of Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Theni within a period of six 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



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To

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1.The Motor Accidents Claims Tribunal/Chief Judicial magistrate,
Theni.

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



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R.KALAIMATHI,J

apd

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