



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.532 of 2025
and C.M.P.No.3936 of 2025

M/s. The New India Assurance Company Limited,
Motor Third Party Claims Hub,
N.M. Arcade' I floor,
Opposite to ARRS Multiplex,
No.252, Meyyanur Bye-Pass Road,
Salem – 636 004.

... Appellant

VS.

1.Mani

2.M/s.Narshi Roadlines,
Prop. Vijayaben Virendra Lodaya,
Outside Prem Darwaja,
Ahmedabad,
Gujarat – 380 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Final Award dated 07th February, 2024, passed in M.C.O.P.No.1141 of 2022 by the Motor Accident Claims Tribunal, (Special Sub Court – II for MCOP Cases), Salem.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Ms.D.Jeevitha



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J U D G M E N T

WEB COPY Aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Sub Court-II for MCOP Cases) in M.C.O.P.No.1141 of 2022, dated 07.02.2024, the Appellant/Insurance Company has come by way of this appeal.

2. It is the case of the 1st respondent/claimant that he met with an accident that had taken place on 29.04.2022, when he was driving his lorry bearing Registration No.TN-34 X 1285. When the 1st respondent/claimant was driving the Lorry slowly and cautiously on the left hand side of the road, the Lorry owned by the 2nd respondent herein bearing Registration No. GJ 01 JT 9927 insured with the Appellant-Insurance Company came in the opposite direction in a rash and negligent manner and dashed against the lorry of the 1st respondent-claimant. As a result of the said accident, the 1st respondent-claimant sustained grievous injuries all over his body. The right hand of the 1st respondent/claimant was fully amputated. Therefore, the 1st respondent/claimant filed a claim petition seeking a compensation of Rs.15,00,000/-.



3. The 2nd respondent herein remained *exparte* before the Tribunal.

WEB COPY The claim petition was resisted by the Appellant-Insurance Company by filing counter affidavit. It was the case of the Appellant-Insurance Company that the accident had occurred only due to the rash and negligent driving of the lorry by the 1st respondent/claimant. The Appellant-Insurance company also disputed the age, income and avocation of the 1st respondent/claimant.

4. Before the Tribunal, the 1st respondent/claimant was examined as PW.1. The Artificial Limb Expert from the Ottobock Heath Care India Limited, Kovai, who had provided prosthetic hand for the claimant was examined as PW.2. On the side of the 1st respondent/claimant, 20 documents were marked as Exs.P1 to P20. On the side of the appellant/insurance company, no witness was examined and the Medical Bills Investigation Report was marked as Ex.R1 on the side of the appellant-Insurance Company. The Disability Certificate issued to the claimant was marked as Ex.C1. The Letter from Ottobock Health Care India Private Limited was marked as Ex.X1 and the Identity Card of PW.2 was marked as Ex.X2.



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5. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the lorry by the driver of 2nd respondent's vehicle. The Tribunal came to the conclusion that the disability suffered by the claimant is 100% and applied multiplier method. Ultimately, the Tribunal awarded a sum of Rs.67,21,261/- as compensation to the 1st respondent/claimant. Aggrieved by the said award, the Appellant-Insurance Company has come by way of this appeal.

6. The learned counsel appearing for the Appellant-Insurance Company would submit that Ex.C1-Disability Certificate issued by the Medical Board opined the disability to the extent of 87%, but the Tribunal committed an error in fixing the functional disability at 100% and applying multiplier method. He further submitted that claimant has not produced any documentary evidence to prove his avocation and income and hence, the notional income of Rs.19,000/- fixed by the Tribunal is very much on higher side.



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7. The learned counsel appearing for the 1st respondent/claimant would submit that the claimant is a heavy vehicle driver and due to the amputation of his right hand, his avocation is completely affected. Therefore, the Tribunal is justified in fixing the functional disability as 100%. The learned counsel further submitted that taking into consideration the avocation of the claimant and the date of accident, the Tribunal should have fixed a higher sum as notional income of the deceased.

8. In the claim petition, it was averred by the claimant that he was a lorry driver earning a sum of Rs.50,000/- per month. However, in order to prove the avocation and income of the claimant, no documentary evidence had been let in before the Tribunal. Therefore, the Tribunal was constrained to fix the notional income by taking into consideration the facts and circumstances of the case. In the case on hand, the accident had occurred in the year 2022. Taking into consideration the year of accident, the cost of living and other factors, this Court feels that the amount of Rs.19,000/- per month fixed by the Tribunal is reasonable and the same is confirmed. The Tribunal correctly applied 40% future prospects and adopted multiplier as '17' and arrived at the conclusion that the claimant was entitled to

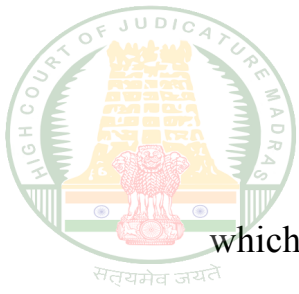


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Rs.54,26,400/- towards loss of earning power due to 100% functional disability. The said finding is confirmed.

9. Though the learned counsel appearing for the appellant-insurance company submitted that the Medical Board issued Ex.C1-Disability Certificate fixing the disability at 87% and hence, the Tribunal ought not have adopted the functional disability at 100%, this Court is not inclined to accept the argument. As per the pleadings and also the evidence of PW.1, the claimant was a heavy vehicle driver at the relevant point of time. Therefore, after amputation of one hand, he will not be in a position to continue with his avocation and his earning capacity is fully affected. Hence, the Tribunal is justified in taking functional disability at 100% and adopting multiplier method.

10. The amount awarded by the Tribunal under various other heads like medical expenses, nutrition and attender charges, pain and sufferings, loss of amenities and enjoyment of life, damages to clothing and articles are reasonable having regard to the facts and circumstances of the case. The Tribunal awarded a sum of Rs.9,93,861/- under the head Medical Expenses



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which includes a sum of Rs.6,28,861/- and the same is based on Medical Bills marked as Ex.P12 and hence, the same is confirmed.

11. As far as a further sum of Rs.3,65,000/- is concerned, based on the estimation slip produced by the claimant marked as Ex.P19 and evidence of PW.2, the Tribunal granted a sum of Rs.3,65,000/- towards rehabilitation of the claimant by providing prosthetic limb. However, the Tribunal has not awarded any sum towards regular maintenance of the prosthetic limb and the future replacement. Taking into consideration the said fact, this Court fixes a sum of Rs.3,00,000/- which shall be added to the amount awarded by the Tribunal towards maintenance of future artificial limb.

12. Even though the 1st respondent-claimant has not filed any cross appeal, this Court can exercise its power under Order XLI Rule 33 of Civil Procedure Code (as held by this Court in ***Tamil Nadu State Transport Corporation Ltd., vs. Karupathal and others*** made in C.M.A.No.1845 of 2017, dated 27.06.2017) in order to fix just compensation. By invoking the said power, the amount awarded by the Tribunal is enhanced by



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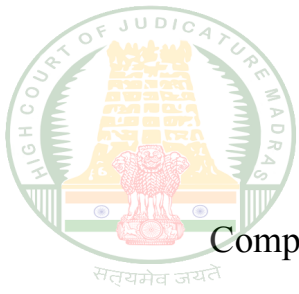
Rs.3,00,000/-. Therefore, the award passed by the Tribunal is enhanced to

Rs.70,21,261/-. Accordingly, the award passed by the Tribunal is modified

as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of earning power due to functional disability	Rs.54,26,400/-	Rs.54,26,400/-	Confirmed
2.	Medical Expenses (6,28,861+3,65,000=9,93,861)	Rs.9,93,861/-	Rs.9,93,861/-	Confirmed
3.	Nutrition and Attender Charges	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
4.	Pain and Sufferings	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
5.	Loss of Amenities and Enjoyment of life	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
6.	Damages to clothing and articles	Rs.1,000/-	Rs.1,000/-	Confirmed
7.	Amount granted towards maintenance of future artificial limb	-	Rs.3,00,000/-	Granted
	Total	Rs.67,21,261/-	Rs.70,21,261/-	Enhanced by Rs.3,00,000/-

13. In view of the discussions made earlier, the Civil Miscellaneous Appeal filed by the Appellant-Insurance Company is dismissed and award passed by the Tribunal is modified as stated above. The Appellant-Insurance



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Company is directed to deposit the enhanced award amount of Rs.70,21,261/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.1141 of 2022 on the file of the Motor Accident Claims Tribunal (Special Sub-Court No.II), Salem, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the 1st respondent/claimant is entitled to withdraw the award amount by making formal application.

14. It is made clear that the amount of Rs.3,00,000/- awarded by this Court towards future medical expenses shall not carry any interest. No costs. Consequently, the connected civil miscellaneous petition is closed.

24.02.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

To

- 1.The Motor Accident Claims Tribunal,
(Special Sub Court – II for MCOP Cases), Salem.
- 2.The Section Officer,
VR Section, High Court, Madras.

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S.SOUNTHAR, J.

dm

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