



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on : 03.02.2025

Pronounced on : 30.04.2025

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**THE HON'BLE MR.JUSTICE R.SURESH KUMAR  
AND  
THE HON'BLE DR.JUSTICE A.D.MARIA CLETE**

**C.M.A. No. 2617 of 2019**

Rathinam (Died)

2. R. Dhanasekar

3. R. Sivakumar ... Appellants

[ Sole Appellant died, Appellants 2 & 3 are brought on record as Lrs of the deceased sole appellant, viz., Rathinam, Vide Court Order dated 19.07.2024 made in C.M.P.Nos.15350, 15353 and 15355 of 2024]

Versus

1. Manglitya Fusekhan

2. IFFCO Tokio General Insurance Co., Ltd.

No. 28, 2<sup>nd</sup> Floor, North Usman Road,

T. Nagar, Chennai – 17.

... Respondents

[ The 1<sup>st</sup> respondent set remained ex-parte before the Tribunal. Hence notice may be dispensed with in this appeal.]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation in the Judgment and Decree dated 29.10.2018 made in M.C.O.P.No.6527 of 2015 on the file of the MACT/IV- Chief Small Causes Court at Chennai.



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For Appellants : Mr. Ma.P. Thangavel

For Respondents : Mr. C.R. Krishnamurthy – for R2

: Ex-parte – for R1

### **J U D G M E N T**

(This Judgement was delivered by Dr. A.D. Maria Clete, J.)

Heard the learned counsel for the appellants as well as the learned counsel for the second respondent-Insurance Company and perused the materials placed on record.

2. The Appellant, being aggrieved by the quantum of compensation awarded by the learned Motor Accident Claims Tribunal (MACT), IV Chief Small Causes Court at Chennai, in MCOP No. 6527 of 2015, has filed this appeal seeking an enhancement of compensation. The appellant contended that the Tribunal failed to correctly assess the earning capacity of the Appellant who was employed as a Mason and earned Rs.15,000/- per month and this has led to the erroneous calculation of the quantum of compensation. It was also contended that the appellant sustained serious injuries leading to 90% permanent disability, as per medical evidence. However, the Tribunal arbitrarily reduced the disability to 75 %. Therefore the appellant sought to



enhance the compensation awarded by the Tribunal in the light of the above submissions.

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3. The Assistant Professor of Thiruvannamalai Medical College Hospital examined the claimant, assessed the disability at 90% and issued a Disability Certificate (Ex.P9). However, the Tribunal found that the doctor who evaluated the disability was not the treating doctor and had not provided supporting documents or guidelines for arriving at the 90% disability rating. Consequently, the Tribunal reduced the disability percentage to 75%, stating that the claimant's condition was non-progressive.

4. As regards the Income of the Claimant, before the Tribunal, the claimant asserted that he was working as a construction laborer and earned Rs. 15,000 per month. However, no documentary evidence (such as salary slips or employer testimony) was provided to substantiate this claim. Since the respondent did not provide any contrary evidence, the Tribunal assessed the monthly income at Rs. 10,000/-. The Tribunal then applied a 75% loss of earning capacity and used the multiplier method (age: 53 years, multiplier: 11) to calculate the compensation for loss of earnings.



5. The appellant has sought an enhancement of compensation, challenging the arbitrary reduction of disability percentage and fixation of income by the Tribunal. The respondent Insurance Company has not filed an appeal, thereby implicitly accepting the 75% disability percentage fixed by the Tribunal. However, the appellant has rightly raised concerns over the unjustified reduction of the disability percentage from 90% (as per medical certification) to 75%, without any acceptable reasoning provided by the Tribunal.

6. Concerning the income determination, the Tribunal fixed the monthly income at Rs. 10,000/-, which is considered arbitrarily low. Even if an earning calculation is drawn based on minimum wages, a fair estimation would be Rs. 14,000/- per month, assuming 20 working days. Therefore, the court finds merit in the appellant's claim for enhancement.

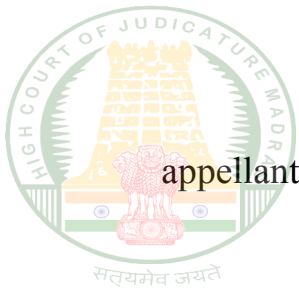
7. The Tribunal's reduction of disability percentage and fixation of income are set aside. Accordingly, this Civil Miscellaneous Appeal (CMA) is awarded in favor of the appellant and compensation is revised appropriately with the following calculation without interference to the other heads of computation already made by the Tribunal:



| <i>S.No.</i> | <i>Description of heads</i>    | <i>Amount Awarded</i> |
|--------------|--------------------------------|-----------------------|
| 1.           | Loss of Earning Capacity       | Rs.16,63,200/-        |
| 2.           | Transportation and Nourishment | Rs.30,000/-           |
| 3.           | Attender Charges               | Rs.17,500/-           |
| 4.           | Medical Expenses               | Rs.15,000/-           |
| 5.           | Pain and Suffering and Trauma  | Rs.1,00,000/-         |
| 6.           | Loss of Amenities              | Rs.50,000/-           |
|              | <b>Total Compensation</b>      | <b>Rs.18,75,700/-</b> |

8. The award of the Tribunal is modified by enhancing the compensation amount from **Rs.1,301,500/-** to **Rs.18,75,700/-** (Rupees Eighteen Lakhs Seventy Five Thousand and Seven Hundred Only). The enhanced amount shall also carry interest at the rate and terms as per the award passed by the Tribunal. The terms of interest shall be as per the award passed by the Tribunal. The delay that occurred in filing the appeal can be deducted while calculating the interest. The appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.

9. The respondent Insurance Company is directed to disburse the revised compensation amount with applicable interest and the said amount shall be deposited to the credit of M.C.O.P. No.6527 of 2015 on the file of the Motor Accidents Claims Tribunal, Chennai, within a period of **eight weeks** from the date of receipt of a copy of this order, less the amount of any already deposited. On such a deposit being made, the same can be withdrawn by the



appellant/claimant without any further proceedings.

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10. In the result, the Civil Miscellaneous Appeal is allowed and the impugned Award dated 29.10.2015 made in MCOP No.6527 of 2015, is modified as indicated above. No costs.

(R.S.K.,J.) (A.D.M.C.,J.)  
30.04.2025

Index : Yes/No

Speaking Order : Yes/No

Neutral Case Citation : Yes/No

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To

1. The Motor Accidents Claims Tribunal, Chennai.
2. IFFCO Tokio General Insurance Company Ltd.,  
No. 28, 2<sup>nd</sup> Floor, North Usman Road,  
T. Nagar, Chennai – 17.
3. The Section Officer, V.R. Section, High Court of Madras.



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**R.SURESH KUMAR, J.**

**and**

**A.D.MARIA CLETE, J.**

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**Pre-Delivery Judgment in**

**C.M.A.No.2617 of 2019**

**30.04.2025**