



CMA.No.3069 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :24.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.3069 of 2021

M.Karthik

... Appellant

Vs.

1.P.V.Saranraj

2.M/s.United India Insurance Company Limited,
No.104-A, Ranga Building, Peramanur Main Road,
Near Four Road,
Salem – 636 007.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.775 of 2015, dated 09.01.2020 by the (Motor Accident Claims Tribunal) Additional District Court (FAC), Namakkal.

For Appellant : Mr.Ma.Pa.Thangavel

For Respondents : Mr.J.Micheal Visuwasam for R2
R1-Dismissed as not pressed



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J U D G M E N T

The appellant/injured claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal Additional District Court (FAC), Namakkal in MCOP.No.775 of 2015, dated 09.01.2020, has come by way of this Civil Miscellaneous Appeal.

2. It is not in dispute that the appellant suffered an injury in a road accident that had taken place on 18.04.2015. According to the petitioner on the fateful day, the petitioner was travelling in a two wheeler as a pillion rider and the TATA Indica Vista Car bearing registration No.TN-09AZ-4181 owned by the first respondent and insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against the two wheeler in which the appellant was travelling. As a result of the accident, the appellant suffered fracture in both the legs. Hence, the Motor Accident Claim petition was filed by the appellant seeking compensation of Rs.20,00,000/-.



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3. The Tribunal awarded a compensation of Rs.6,69,800/-. Not satisfied with the quantum, the injured claimant has filed this appeal. Both the counsel for the appellant and the counsel appearing for the contesting second respondent have not made any arguments on the questions of negligence as well as liability. Hence, facts necessary for deciding those two questions are not discussed in this judgment.

4. Heard the learned counsel for appellant/claimant and the learned counsel for second respondent/Insurance Company.

5. The learned counsel appearing for the appellant/claimant submits that the evidence of PW.3 who treated the claimant and the disability certificate issued by him, Ex.P15 clearly prove that the claimant had suffered 66% disability and the same interferes with the avocation of the claimant. The learned counsel submitted that in the light of the said evidence, the Tribunal ought to have applied the multiplier method. The learned counsel further submitted that the evidence of PW.3 was not challenged in cross examination and therefore the Tribunal ought not have



discarded the same. In support of his contention, the learned counsel appearing for the claimant relied on the following judgments:

(i) *New India Assurance Company Limited, Mettupalayam, Coimbatore District Vs. C.K.Ramesh, and others* reported in 2009 (6) CTC 589;

(ii) *V.Manoharan (died), and others Vs. The Managing Director, Marudhupandiyar Transport Corporation Limited, Karaikudi* reported in 2011 (1) TN MAC 416;

(iii) *Anita Sharma and others Vs. New India Assurance Company Limited and another* reported in (2021) 1 SCC 171;

(iv) *Aabid Khan Vs. Dinesh and others* reported in 2024 SCC OnLine SC 521;

(v) *Hare Krushna Mahanta Vs. Himadari Sahu and another* reported in 2025 SCC OnLine SC 262.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company would submit that as per the law laid down by the Division Bench of this Court in the ***Branch Manager, TATA AIG General Insurance Company Limited Vs. Prabhu and another*** reported in



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2017 ACJ 285, it is obligatory on the part of the claimant to get the disability certificate from the Medical Board in all road accident cases from 01.08.2016 and in the present case, PW.1 was examined only on 19.06.2017, subsequent to coming into force of said procedure. However, the claimant has not taken any steps to get opinion of the Medical Board and therefore, the evidence of PW.3 and the disability certificate issued by him can be considered by the Tribunal only subject to the credibility of the witness as per the law laid down by the another Division Bench of this Court in the ***Branch Manager, TATA AIG General Insurance Company Limited***, reported in ***2017 (1) TN MAC 106 (DB)***.

7. The learned counsel further submitted that though PW.3 issued certificate fixing the disability at 66% on the basis that the right knee of the claimant has only flexibility of 10 degrees, the photographs marked before the Tribunal in Ex.P8 would falsify the flexibility of the knee noted as 10 degrees in the disability certificate. Therefore, the learned counsel submitted that the Tribunal was justified in not applying multiplier method and calculating the compensation under the head disability by following per percentage basis.



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8. This Court carefully considered the submissions made on

either side and perused the materials available on record.

9. In order to prove the disability suffered by the petitioner, he examined PW.2, Doctor and the disability certificate issued by him was marked as Ex.P13. A perusal of Ex.P13 would indicate that PW.2 Doctor assessed the disability at 60%. Since PW.2 is not the Doctor who treated the claimant, subsequently, the claimant has chosen to examine PW.3 who treated him when he got admitted to Aishwaryam Speciality Hospital, Salem. PW.3 in his evidence had stated that he treated him in the year 2015 and after four years, he examined him in the year 2019 and found that he suffered 66% of disability. The disability certificate issued by him has been marked as Ex.P15. PW.3 has been extensively cross examined by the second respondent regarding the disability certificate issued by him. He was also cross examined with regard to the aspect, subsequent to treatment in his Aishwaryam Hospital, petitioner got admitted in Ganga Hospital and Doctor who treated the petitioner in Ganga Hospital alone was competent to issue disability certificate.

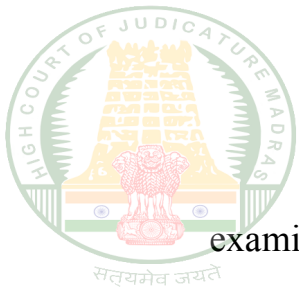


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10. A close scrutiny of the disability certificate issued by PW.3

would indicate that the claimant has got difficulty in standing, walking, climbing upstairs, walking downstairs and squatting. It is also stated that he has got restriction of right knee joint movements. In his disability certificate, PW.3 noted that in the left knee, the petitioner has got normal movement to the extent of 140 degrees. However, in the right knee, the claimant has got movement only to the extent of 10 degrees as against 140 degrees. Based on the same, he fixed the disability at 33% on the basis of loss of range of movement. After taking into consideration muscle strength, stability component etc., the total disability was fixed as 66%. A perusal of photograph marked by the claimant as Ex.P8 would indicate that the claimant is sitting in a stool and his right leg is bent to the extent of 70 degrees. Therefore, the disability noted in the disability certificate issued by PW.3 that the right knee has got movement only to the extent of 10 degrees may not be correct.

11. In the Branch Manager, TATA AIG General Insurance Company Limited Vs. Prabhu and others reported in 2017 (1) TN MAC 106 (DB), while considering the question, whether the evidence of Doctor



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examined by the claimant can be taken into consideration in the absence of disability certificate issued by the Medical Board, it is observed as follows:

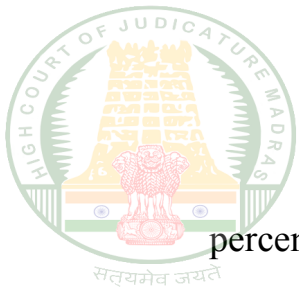
“15. Therefore, while directions have been issued to the Tribunals to refer the matter to the Medical Boards, the Tribunals, will bear in mind, that, if the Witnesses produced by the Claimants are credible and the Presiding Officers are satisfied that the matter ought not to be referred to the Medical Boards, then they should proceed in the matter based on the appreciation of the material placed before them.”

12. Therefore, it is clear that if the expert witness produced by the claimant is credible and the Presiding Officers are satisfied that the matter need not to be referred to the Medical Board, then they can proceed with the matter based on the appreciation of the material placed before them. In the case on hand, the enquiry in the main original petition has commenced only after directions issued i.e., after 01.08.2016. No steps have been taken either by the claimant or by the second respondent to refer the claimant to the Medical Board. However, the claimant has examined the Doctor who treated him as PW.3 and he issued disability certificate fixing the disability at 66%. Though, PW.3 in his disability certificate mentioned that the claimant has got flexibility of movement only to the extent of



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10 degrees in his right knee, it is seen from the photograph that his right knee is bent to the extent of nearly 70 degrees, while he is sitting in the stool and he is also able to stand straight on his both the legs. Therefore, the disability of 66% assessed by PW.3, based on 10 degree movement in the right knee appear to be doubtful. Further, PW.3 in his evidence has not stated anything regarding the ability of the claimant to continue his avocation. It was claimed by the claimant that he was engaged as a welder but he has not produced any documentary evidence to prove his avocation. Even assuming the avocation as pleaded by the claimant is accepted, PW.3-Doctor has not said anything regarding the inability of the claimant to continue his avocation due to the disability suffered. In these circumstances, the Tribunal is justified in calculating the compensation on percentage basis. In the absence of anything in the evidence of PW3-Doctor that claimant is disabled from continuing his avocation as a welder, I do not think the claimant can press for adoption of multiplier method on mere assumptions. Taking into consideration the entire evidence available on record, this Court feels that the Tribunal is justified in adopting percentage basis. However, having regard to the date of accident, this Court feels it would be appropriate to give Rs.5,000/- as compensation for each



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percentage of disability. Therefore, under the head permanent disability, the appellant is entitled to a sum of Rs.3,30,000/- instead of Rs.1,98,000/- as ordered by the Tribunal.

13. The amount awarded by the Tribunal under the head medical expenses is confirmed as it is based on the evidence. It is seen from the discharge summaries Exs.P4 and P5, claimant was in hospital for nearly 43 days, he underwent surgery for internal plate fixation and then for removal of plate etc. Therefore, a sum of Rs.5,000/- awarded under the head pain and suffering is increased to Rs.25,000/-. Having regard to the length of hospitalization a sum of Rs.5,000/- awarded under the head extra nourishment is increased to Rs.15,000/-. The petitioner is also entitled to Rs.15,000 towards attender charges. The Tribunal granted only Rs.24,000/- under the head loss of income. The petitioner underwent first surgery on April 2015 and thereafter again he underwent another surgery in November 2015. Therefore, the injury suffered by the claimant would have disabled him to work for at least eight months. Having regard to the date of accident, if the income of the claimant is taken at Rs.15,000/- per month, he is entitled to a sum of Rs.1,20,000/- under the head loss of income during treatment



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period (15,000*8=1,20,000/-). The petitioner is also entitled to a sum of

Rs.10,000/- towards transport charges. The petitioner suffered fracture in

both the legs and the movement in his right knee is said to be restricted to

some extent, therefore, he cannot carry on his life in the same way as he did

before road accident. Therefore, the claimant is entitled to a sum of

Rs.25,000/- under the head loss of amenities. In all, the claimant is entitled

to a sum of Rs.9,77,773/- as against Rs.6,69,800/- awarded by the Tribunal.

14. 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)
1.	66% disability	1,98,000/-	3,30,000/-
2.	Medical bills	4,37,773/-	4,37,773/-
3.	Pain and sufferings	5,000/-	25,000/-
4.	Extra nourishment expenses	5,000/-	15,000/-
5.	Loss of income during treatment period	24,000/-	1,20,000/-
6.	Attender Charges	-	15,000/-
7.	Transport Charges	-	10,000/-
8.	Loss of amenities	-	25,000/-
	Total	Rs.6,69,773/- rounder off to Rs.6,69,800/-	Rs.9,77,773/-



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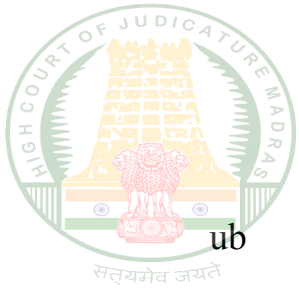
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15. In view of the discussion made earlier, the claimant is entitled to a sum of Rs.9,77,773/- as against a sum of Rs.6,69,800/- awarded by the Tribunal. The claimant is entitled to interest at the rate of 7.5% on the enhanced award. The respondents are directed to deposit the enhanced amount with interest within a period of four weeks from the date of a copy of this judgment, to the credit of MCOP.No.775 of 2015 in the (Motor Accident Claims Tribunal) Additional District Court (FAC), Namakkal. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, by making formal application before the Tribunal.

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

24.02.2025

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No



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To

1.The Motor Accident Claims Tribunal,
Additional District Court (FAC),
Namakkal.

2.The Section Officer
VR Section,
High Court, Madras.

S.SOUNTHAR, J.

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