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CMA.No.3062 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.02.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA No.3062 of 2021**

R.Venkateswaran

... Appellant

**Vs.**

1. Ramasamy

2. M/s United India Insurance Company Limited,  
Divisional Office HUB, No.104-A,  
Peramanur Main Road, Salem 636 007.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 08.01.2020 made in MCOP No.285 of 2018 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Omalur.

For appellant : Mr.S.P.Yuvaraj

For Respondent : Mr.J.Chandran for second respondent

No appearance for first respondent



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### **JUDGMENTis**

This appeal has been filed by the claimant, seeking enhancement of compensation awarded by the Tribunal.

2. The appellant met with an accident on 17.06.2015, while he was driving TVS Scooty Pep bearing Registration No. TN 30 AU 3802. The driver of the motor cycle, bearing registration No. TN 30 BA 9711, belonging to the first respondent, has driven the vehicle in a rash and negligent manner and dashed against the appellant. As a result of accident, the appellant received a crush injury in his right leg and as a consequence, his right leg was amputated below the knee level. Therefore, the appellant has filed MCOP No.285/2018 seeking compensation of Rs.65,00,000/-.

3. The first respondent remained exparte and the claim petition was resisted by the second respondent/ Insurance company by filing counter affidavit, denying the averment contained in the original petition.



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4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's vehicle.

5. The learned counsel for the appellant would submit that right leg of the victim was amputated below knee level and therefore, disability suffered by him should have been taken as 100% disability. In support of his contention, the learned counsel relied on the judgment of the Apex Court *in Parminder Singh Vs. New India Assurance Co. Ltd. and others reported in CDJ 2019 SC 747*

6. The learned counsel for the appellant would further submit that the appellant has to replace his prosthetic limb periodically once in fifteen years and he has to maintain the same every year. The expenses for regular maintenance of prosthetic limb and its replacement has not been considered and no amount was granted to the same by the Tribunal. He also submitted that the amount awarded by the Tribunal under the head of Loss of Marital Prospects is very much on lower side.



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7. The learned counsel for the second respondent would submit that the appellant was employed as a clerk in Aircel Limited and therefore, due to the amputation of his leg, he has not suffered any loss of earning capacity and hence, the amount of compensation awarded under the head ' Permanent Disability' need not be disturbed. The learned counsel further submits that the compensation awarded by the Tribunal under other heads were fixed, by taking into consideration the facts and circumstances of the case and hence, the award passed by the Tribunal need not be interfered with.

8. Based on the evidence available on record, the Tribunal came to the conclusion that the appellant was employed as a Collection Clerk and he was in receipt of salary at Rs.9,000/- per month. The Tribunal applied multiplier method by fixing disability at 65%. Accordingly, by adding 40% to the income of the appellant and applying multiplier '16', has arrived at compensation of Rs. 15,72,480/- (1,51,200 x 16 x 65%).



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9. The learned counsel for the appellant, though relied on the judgment of the Apex Court *in Parminder Singh Vs. New India Assurance Co. Ltd. and others reported in CDJ 2019 SC 747*, the facts of the said case are not applicable to the present case. In the above said case relied on by the appellant, the victim was employed as a driver. By taking into consideration his avocation, the Hon'ble Supreme Court came to the conclusion that the amputation of one leg will result in disability at 100%. The said ratio cannot be extended to the present case on hand, because, admittedly, the appellant was employed as a clerk. In the claim petition, the appellant clearly pleaded that he was employed as clerk in the Aircel Office and the same was supported by a salary slip issued by the employer and evidence of its official who was also examined as PW2. A person employed as a clerk can continue his desk top job even after amputation. Therefore, the judgment relied on by the counsel for the appellant is not helpful to him. The Tribunal fixed the disability at 65% for loss of amputation of right leg of the appellant below knee level and the same appear to be correct. Hence, the compensation under the head permanent disability need not be disturbed.



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10. The Tribunal fixed the compensation for the loss of marital prospects at Rs.50,000/-. The petitioner was aged about 35 years at the time of accident. It is not in dispute that he was not married at the time of claim petition. Therefore, this court feels that it would be appropriate to enhance the compensation under the head loss of marital prospects to Rs.1,50,000/-.

11. The Tribunal awarded a lump sum of Rs.1,00,000/- for fixing prosthetic limb for the appellant. However, the Tribunal has not taken into consideration the vital fact that the prosthetic limb has to be replaced once in 15 years. Further, within 15 years, the prosthetic limb needs to be maintained once in two years, as the size of the amputated limb will differ from time to time. Therefore, the petitioner is entitled to the cost for replacing and also maintenance of prosthetic limb. The petitioner was aged about 35 years at the time of accident. Taking into consideration the normal life expectancy in India, the petitioner may require to replace the limb at the age of 50 and 65 years. Further, taking into consideration the escalation in the price of the prosthetic limb, a sum of Rs.4,00,000/- is awarded towards replacement of



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prosthetic limb and a sum of Rs.1,00,000/- towards the cost of periodical maintenance of prosthetic limb. The amount of Rs.1,00,000/- awarded by the Tribunal towards cost of fixing prosthetic limb is confirmed, in addition to amount mentioned supra towards cost of replacement and cost of maintenance.

12. As far as the compensation awarded by the Tribunal under other conventional heads, pain and sufferings, transportation, loss of income, extra nourishment and medical expenses are concerned, the same are just and reasonable, in the light of amputation suffered by the victim and facts and circumstances of the case. Hence, this court is not inclined to disturb it.

13. The Victim suffered amputation of right leg below knee level. Hence, he cannot lead his normal life as before. Hence, reasonable amount shall be awarded under the head loss of amenities. The Tribunal awarded a sum of Rs.1,00,000/- under the head crush injury. The same is not sustainable and set aside. However, this court is inclined to award a sum of Rs.1,00,000/- under the head loss of



13. Accordingly, the revised compensation awarded by the Tribunal is tabulated as under:

| Sl. No | Description                        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Partial permanet disability        | 15,72,480                       | 15,72,480                         | confirmed                              |
| 2.     | Medical expenses                   | 2,40,595                        | 2,40,595                          | confirmed                              |
| 3.     | Crush injury                       | 1,00,000                        | -                                 | set aside                              |
| 4.     | pain and sufferings                | 1,00,000                        | 1,00,000                          | confirmed                              |
| 5.     | Loss of marital life               | 50,000                          | 1,50,000                          | enhanced                               |
| 6.     | Fixing Prosthetic limb             | 1,00,000                        | 1,00,000                          | confirmed                              |
| 7.     | for Replacement of prosthetic limb | -                               | 4,00,000                          | granted                                |
| 8      | Maintenance of prosthetic limb     | -                               | 1,00,000                          | granted                                |
| 9.     | Transportation                     | 10,000                          | 10,000                            | confirmed                              |
| 10     | Loss of income                     | 10,000                          | 10,000                            | confirmed                              |
| 11     | Nutrition                          | 10,000                          | 10,000                            | confirmed                              |
| 12     | Loss of amenities                  | -                               | 1,00,000                          | granted                                |
|        | Total                              | 21,93,075                       | <b>27,93,075</b>                  | enhanced by Rs.6,00,000/-              |



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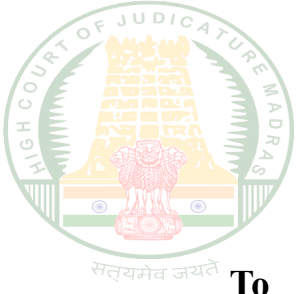
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14. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.21,93,075/- is hereby **enhanced to Rs.27,93,075/-** together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. **The award of the Tribunal with regard to clause-3 of the decree is confirmed and the insurance company is at liberty to proceed against the owner to realise the award amount.**

15. The second respondent is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less 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, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn. No costs.

**03.02.2025**

Index:Yes/No  
Internet:Yes/No  
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**S.SOUNTAR, J.**

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