IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

CORAM

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

C.M.A.No.2672 of 2024

R.Ramesh ... Appellant

Vs.

1.V.Praneshwaran

2.M.Prathebha

3.IFFCO Tokyo General Insurance Company Ltd
No.148, Vijayagar Palace, Perundurai Road
Palayapalayam, Erode-11. ... Respondents

Appeal under Section 173 of the Motor Vehicles Act to enhace the compensation by modifying the award of the Tribunal dated 29.11.2023 in MCOP No.153 of 2021 on the file of Motor Accidents Claims Tribunal (Special Subordinate Court), Erode.

For Appellant : Mr.S.Kalyanaraman
For Respondent : Mr.C.R.Krishnamurthy – for R3

J U D G M E N T

(Delivered by R.SURESH KUMAR,J.)

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims

Tribunal, Special Subordinate Judge, Erode in M.C.O.P.No.153 of 2021 dated 29.11.2023.

2. In view of the order that is going to be passed, notice to the respondents 1 and 2 is hereby dispensed with.

3. Due to the motor vehicle accident that took place on 10.01.2021, the appellant / claimant was injured and he had taken treatment as in-patient for 38 days. He was assessed to have suffered 55% disability by the Medical Board. Based on this disability that he suffered due to the accident, the claimant / appellant, who is an Advocate by profession, filed MCOP No.153 of 2023 before the Tribunal.

4. The learned Tribunal, having taken the functional disability at 100%, applied the correct multiplier, but had taken the monthly earning only at the rate of Rs.16,000/-, based on which the following award has been passed.

> *"As per the dictum in **2018 (1) TN MAC 731 (SC) ICICI Lombard General Insurance Co. Ltd., -vs- Ajay Kumar Mohanty and another"** , the petitioner is entitled for loss of earning as granted above.*

Headings	***Amount in Rs.***
1) Loss of Earnings	*NIL*
2) Transport to Hospital	*10,000*
3) Extra Nourishment	*15,000*
4) Attender Charges	*15,000*
5) Future Medical Expenses	*1,50,000*
6) Damages for Clothes and Articles	*5,000*
7) Medical Expenses	*2,43,000*
8) Pain and Sufferings	*1,00,000*
9) Permanent Disability and Loss of earning power	*13,73,000*
Total	***19,11,000***

13) a) In the result, this petition in MCOP No.153/2021 is allowed in part with proportionate cost and the petitioner is awarded compensation for a sum of Rs.19,11,000/- (Rupees Nineteen Lakhs and Eleven Thousand Only) together with interest at the rate of 7.5% per annum (Interest less future medical expenses Rs.1,50,000/-) from the date of the petition till the notice of deposit given to the petitioner, payable by the 3rd respondent on behalf of the 2nd respondent.

b) The petitioner is not entitled for any interest for the period of default if any.

c) The 3rd respondent is hereby directed to deposit the award amount to the credit of the "MACT' Special Subordinate Judge, which is the Bank Account of this Claims Tribunal specially being maintained for this purpose at ***State Bank of India Town Branch, Erode – 638 011, Account No.35981547810 and IFSC Code – SBIN0007897 directly by NEFT (or) RTGS mode.*"**

5. In the said award, under the head "Permanent Disability and Loss of Earning Power" only a sum of Rs.13,73,000/- has been awarded. Aggrieved over the same, the appellant / claimant has filed the present appeal seeking for enhancement.

6. Heard Mr.S.Kalyanaraman, learned counsel for the appellant and Mr.C.R.Krishnamoorthy for the third respondent.

7. The only area where enhancement is sought for by the appellant is with regard to the monthly income that has been fixed at Rs.16,000/- by the Tribunal through the impugned award, whereas the appellant being an Advocate has filed Income Tax Returns regularly and for the purpose of calculation of compensation, we have taken the Income Tax Returns filed by the appellant/claimant for the Assessment Years 2019-20 and 2020-21.

8. For the Assessment Year 2019-20, the gross total income of the appellant/claimant was Rs.3,53,011 and after deductions, the net taxable income was fixed at Rs.2,32,230/-. Insofar as the Assessment Year 2020-21 is concerned, the gross total income was fixed at Rs.6,13,147/- and after deductions, the taxable net income was fixed at Rs.4,97,789/-.

9. If this is the Income Tax Assessment for the two immediate preceding years of the date of the accident, which occurred on 10.01.2021, the Tribunal ought to have taken these Income Tax Returns into consideration. Thereby, the immediate preceding year's net income since was fixed at Rs.4,97,798/- which is around Rs.40,000/- per month, and hence at least a sum of Rs.40,000/- should have been taken as the income of the appellant / claimant.

10. However, the Tribunal has fixed only Rs.16,000/- as monthly income, which we do not understand as to on what basis the Tribunal has fixed. Therefore, arriving at such a calculation of Rs.16,000/- per month is erroneous approach on the part of the Tribunal.

11. In that view of the matter, we are inclined to modify the award by enhancing the compensation given under the head "Permanent Disability and Loss of Earning Power" to the following effect. The monthly income since is fixed at Rs.40,000/-, the multiplier already been adopted can be employed.

12. Therefore, the amount of compensation awarded under the head "Permanent Disability and Loss of Earning Power" would be a sum of Rs.34,32,000/- (Rs.40,000 X 12 = Rs.2,64,000 X 55% X 13). Therefore, the award passed by the Tribunal, which is impugned herein is modified. Resultantly,

the compensation awarded by the Tribunal is modified as follows:

Headings	**Amount in Rs.**
1) Loss of Earnings	*NIL*
2) Transport to Hospital	*10,000*
3) Extra Nourishment	*15,000*
4) Attender Charges	*15,000*
5) Future Medical Expenses	*1,50,000*
6) Damages for Clothes and Articles	*5,000*
7) Medical Expenses	*2,43,000*
8) Pain and Sufferings	*1,00,000*
9) Permanent Disability and Loss of earning power	*34,32,000*
Total	***39,70,000***

13. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced to **Rs.39,70,000/- (Rupees Thirty Nine Lakhs Seventy Thousand Only).** The terms of interest shall be as per the award passed by the Tribunal. The enhanced amount shall also carry interest at the rate and terms as per the award passed by the Tribunal. The delay occurred in filing the appeal ie., 142 days can be deducted while calculating the interest.

14. It is submitted by the learned counsel for the third respondent Insurance Company that already full award amount as per the impugned award has been deposited before the Tribunal's Account. If it it so, the remaining

amount ie., the enhanced amount of Rs. 20,59,000/- (Rs.39,70,000 – Rs.19,11,000), has to be deposited by the third respondent Insurance Company to the credit of MCOP No.153 of 2021 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Erode, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the same can be withdrawn by the appellant / claimant without any further proceedings.

15. With the above modification in the impugned award dated 29.11.2023 made in MCOP No.153 of 2021, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) **(A.D.M.C.,J.)**
03.02.2025

NCS : Yes/No
Index : Yes/No
KST

To

1. The Motor Accidents Claims Tribunal
   (Special Sub Judge), Erode.

2.IFFCO Tokyo General Insurance Company Ltd
No.148, Vijayagar Palace, Perundurai Road
Palayapalayam, Erode-11.

R.SURESH KUMAR, J.

AND
A.D.MARIA CLETE, J.

KST

C.M.A.No.2672 of 2024

03.02.2025