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CMA.(MD)No.1460 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	09.10.2025
Date of Pronounced	05.11.2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)No.1460 of 2010

Rajagopal

: Appellant/Petitioner

Vs.

1.Sureshkumar

2.United India Insurance Company Ltd.,
through its Divisional Manager,
SNS Complex,
Near Telephone Exchange,
LB Road, Adayar,
Chennai-600 020.

: Respondents/Respondents

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in MCOP No. 1728 of 2007 on the file of the Motor Accident Claims Tribunal Authority (2nd Additional District Judge), Tirunelveli, dated 26.11.2009.

For Appellant : Mr.T.Selvakumaran

For 1st Respondent : No appearance

For 2nd Respondent : Mr.C.Jawahar Ravindran



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J U D G M E N T

This Civil Miscellaneous Appeal is preferred seeking enhancement of compensation made in MCOP No.1728 of 2007, dated 26.11.2009 by the Motor Accident Claims Tribunal (2nd Additional District Judge), Tirunelveli.

2. The brief case of the claimant are as follows:-

On 25.08.2007 at about 12.30 am, the claimant in MCOP No.1728 of 2007 Rajagopal along with the claimant in MCOP No.1730 of 2007 namely Murugaraja were travelling in a Car TN-72-P-9393 from Tirunelveli to Madurai. The said Car was driven by Dharmaraj, who is claimant in MCOP No.1720 of 2007. When the Car was proceeding near Chinna Odaipatti Vilakku on Kovilpatti-Sattur Main road, a Lorry bearing Registration No.TDX-8469 belonging to the first respondent, and insured with the second respondent/Insurance Company was parked on the middle of the left hand side of the road without switching on parking any light or warning signals. On seeing the Lorry parked without any indication, the driver of the Car applied brake, however, the car hit against the rear portion of the Lorry. As a result of impact, Rajagopal and Murugaraja, as well as the driver of the Car sustained injuries. They were



immediately taken to the Apollo Speciality Hospital, Madurai, where they underwent treatment for sometime.

3. In respect of the said offence, a case in Crime No.247 of 2007 was registered by the Sattur Taluk Police Station, for the offences under Sections 279, 337 and 338 IPC against the driver of the Lorry bearing Registration No.TDX-8469.

4. The claimant in MCOP No.1728 of 2007 is one of the injured persons and owner of the Car TN-72-P-9393. He is engaged in contract work and earning his livelihood to the tune of Rs.50,000/- per month. He was aged about 44 years at the time of the accident. He was seated on the left side of the Car and sustained grievous injuries all over the body, including fracture to his left hip and left femur, resulting in shortening the left leg. Due to the injuries, the movement of his left leg has been completely restricted and he is unable to walk normally. He can walk only with the help of others. He has therefore claimed as compensation of Rs.20,00,000/- for the injuries sustained by him.

5. Similarly, the driver of the Car namely, Dharmaraj and the other co-traveller namely, Murugaraja have filed separate claim petitions



in MCOP Nos.1729 and 1730 of 2007 respectively for the injuries sustained by them.

6. The second respondent/Insurance Company filed a counter denying the entire allegation contained in the claim petitions; by stating that the injuries sustained by the claimants are only simple injuries and they have exaggerated the injuries in order to claim huge amount of compensation; They further contended that the occurrence of the accident was only due to the rash and negligent act of the driver of the Car; and that as per the latest decision of the Hon'ble Apex Court, no claim can be entertained under section 163-A of the Motor Vehicles Act, in case of own negligence; The claim petitions are also bad for non-joinder of the owner of Car and the concerned Insurance Company. It is further stated that the claim for damages to the Car TN-72-P-9393 was adjudicated and the same was settled by the Insurance Company; The damages claim was fully settled with the consent of the owner of the Car claimant/Rajagopal. Hence, the second respondent/Insurance Company is not liable to pay any further compensation and therefore, prays that the claim petitions to be dismissed.



7. Before the Tribunal, on the side of the claimants, 5 witnesses were examined as PW1 to PW5 and 22 documents were marked as Exs.P1 to P22. On the side of the Insurance Company, no oral and documentary evidence was adduced.

8. Since three claim petitions are arising out of the same accident, they were heard jointly and a common order was passed. After considering the material evidence and records, the Tribunal has awarded compensation of Rs.3,34,018/- in respect of MCOP No.1729 of 2007, similarly, in respect of MCOP Nos.1729 and 1730 of 2007, the Tribunal has awarded compensation of Rs.13,812/- and Rs.12,000/- respectively considering the nature of the injuries sustained by the claimants together with interest at the rate of 7.5% per annum and directed the second respondent Insurance Company to deposit the same within a period of two months before the Court.

9. Not being satisfied with the award of compensation granted by the Tribunal, the claimant in MCOP No.1728 of 2007 is before this Court.



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10. The learned counsel for the appellant would state that the appellant has sustained injuries over the brain and due to the injuries the movement of his left leg was restricted and the Doctors who gave treatment to the appellant assessed the partial permanent disability at 77% and the trial Court failed to adopt the multiplier to arrive the compensation. He would further state that the amounts awarded under the other heads are very meager, hence, the appellant is entitled for enhancement of compensation.

11. This Court considered the rival submission of the learned counsel appearing on either side and perused the materials available on record.

12. It is admitted fact that the appellant herein had suffered injuries in the accident which had occurred on 25.08.2007. The involvement of the offending vehicle and the liability of the Insurance Company has not been disputed and hence, there is no necessity to deal with those aspects.

13. PW1, who is the injured victim/claimant deposed that he sustained injury on his head. As a result, he has been suffering from



frequent headache and giddiness. He further states that he sustained fracture occurred in the region between femur and hip bone, he was unable to attend to his personal needs and other routine works as he was doing prior to the accident.

14. As per the judgment referred in ***Rajkumar vs. Ajaykumar*** reported in ***(2011) 1 SCC 343***, our Hon'ble Apex Court issued certain guidelines to assess the disability of the injured which are extracted as follows:

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If



the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.”

15. It is seen from Ex.P4 (Accident Register), Ex.P8 (Discharge Summary), that the appellant/claimant was hospitalized for a considerable period, due to the injuries sustained by him and has spent Rs.1,62,018/- towards his medical bills (Exs.P12 and P15). On Perusal of the disability certificate - 45% was assessed as partial permanent disability, but there was no permanent disability or functional disability. The Tribunal has awarded compensation at the rate of Rs.1,000/- per percent for disability by calculating 77% partial permanent disability, and thus granted a sum of Rs.70,000/-.



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16. Considering the evidence of P.W.4, Doctor and the medical records, this Court is of the view that the compensation awarded towards disability should be enhanced. As the doctor has stated that the claimant suffered fracture and has restriction in sitting. Hence this Court fixes the disability compensation at Rs.2,000/- per percentage in place of Rs.1,000/- and adopting 77% of partial permanent disability enhances the award to Rs.1,54,000/-. This Court further notices that the Tribunal has further awarded a sum of Rs.70,000/- towards two fractures and Rs.5,000/- for the simple injuries sustained by the appellant which is not proper, as the Tribunal has already awarded compensation for partial permanent disability. Hence, the compensation awarded under the above two heads is hereby set-aside as granting the same would amount to double compensation for the same injury.

17. In respect of other heads viz., transport to hospital, extra nourishment, attendant charges, this Court is of the view that the said amounts warrants enhancement. Accordingly, the amount of Rs.5,000/- awarded towards Transport to Hospital is enhanced to Rs.10,000/-, Rs.10,000/- awarded towards extra nourishment is enhanced to Rs.20,000/- and Rs.5,000/- awarded towards attending charges is enhanced to Rs.25,000/-.



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18. Accordingly, the compensation awarded by the Tribunal is to the claimant is recalculated as follows:-

Heads	Amount awarded by the Tribunal (Rs.)	Re-quantified amount by this Court	Status
Two Fractures	70,000/-	-	Set aside
Simple Injuries	5,000/-	-	Set aside
Partial Permanent disability	77,000/-	1,54,000/-	Enhanced
Medical Bills	1,60,727/-	1,60,727/-	Confirmed
Medical Bills	1,291/-	1,291/-	Confirmed
Transport to Hospital	5,000/-	10,000/-	Enhanced
Extra Nourishment	10,000/-	20,000/-	Enhanced
Attendant charges	5,000/-	25,000/-	Enhanced
Total	3,34,018/-	3,71,018/-	Enhanced

19. In such view of the matter, This Civil Miscellaneous Appeal is **partly allowed**. The award of Rs.3,34,018/- is enhanced to **Rs. 3,71,018/-**. The second respondent/Insurance Company is directed to deposit the modified award amount of Rs. 3,71,018/- with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.



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On such deposit, the appellant/claimant is permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount if already withdrawn. No costs.

05.11.2025

Index: Yes/No
Internet: Yes/No

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To,

1. The Motor Accident Claims Tribunal/
III Additional District Judge,
Tirunelveli
2. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J

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