

C.M.A.(MD) No.499 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.499 of 2023

P.Sabarimalai

... Appellant

vs.

1.Rajive Gandhi

2.The Divisional Manager,
United India Insurance Company Limited,
No.7-E, Kuppannapillai Street,
Thiruppuvanam Puthur,
Manamadurai,
Sivagangai District.

3.The General Manager,
State Express Transport Corporation Limited,
Madurai-Melur Main Road,
Madurai.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1973, against judgment and decree dated 10.06.2022 passed in M.C.O.P.No.926 of 2018 on the file of the Motor



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Accidents Claims Tribunal/Special Sub Court, Madurai.

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For appellant : Mr.K.Kumaravel
For Respondents
For R1 : No appearance
For R2 : Mr.A.S.Mathiyalagan
For R3 : Given up

J U D G M E N T

Not being satisfied with the Award dated 10.06.2022 passed in M.C.O.P.No.926 of 2018 by the Motor Accidents Claims Tribunal/Special Sub Court, Madurai, the claimant herein has preferred this appeal for enhancement of compensation.

2. Despite the receipt of notice, the first respondent neither appeared nor entered appearance through his counsel.

3. Heard the arguments of the learned counsel for the appellant Mr.K.Kumaravel and the learned counsel for the second respondent Mr.A.S.Mathiyalagan and perused the relevant records.



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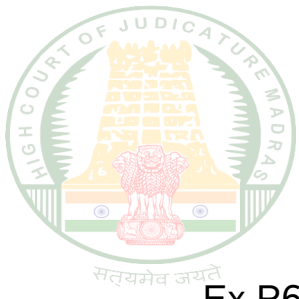
4. This appeal is focused on the issue of quantum of compensation awarded by the Tribunal. The manner, in which the accident took place, is not in dispute.

5. It has come on record through the evidence of P.W.1/claimant and as per Ex.P2-Treatment record issued by the Medical Board, Government Rajaji Hospital, Madurai that due to the said accident, he suffered crush injury over right foot, both bone fracture in right leg and fracture in right leg subtrochanteric femur.

6. As per the treatment record/Ex.P6, as regards the crush injury over right foot, it extended from the ankle joint, involving the dorsum of right foot exposing of ligament bones, tendons and toes.

7. It appears that as regards the foot injury, implants were fixed. Thereafter, because of the infection, infected little toe finger was amputated.

8. The date of accident is 18.03.2018. From a thorough perusal of

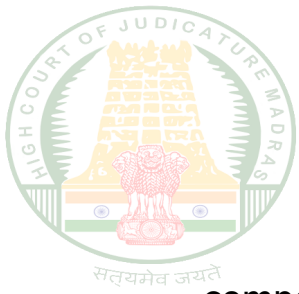


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Ex.P6/Treatment records, it appears that he was admitted at the Government Rajaji Hospital, Madurai on 18.03.2018 and discharged only on 31.05.2018. Ex.P5 is the photos of the claimant with injuries. The Medical Board, while assessing his disability, has observed that the claimant has lost sensation below his right ankle joint, post traumatic deformity with right foot and difficulties in walking.

9. At the time of accident, the claimant was aged about 23 years. The Medical Board has assessed his disability at 60%. It has been stated by the claimant that he was earning Rs.700/- per day by working as centering worker.

10. For partial permanent disability, Rs.5,500/- was given per percentage. Totally, Rs.3,30,000/- (Rs.5,500/- x 60) was granted under the said head. For loss of income during the treatment period, an amount of Rs.30,000/- was granted (Rs.7,500/- x 4 months). For pain and sufferings, Rs.1,50,000/- was granted. For extra nourishment, Rs.20,000/-, for attender charges, Rs.30,000/- and for transport charges, Rs.5,000/- was granted. The Tribunal has granted the total



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compensation of Rs.5,65,000/- to the claimant.

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11. In order to substantiate the avocation and income of the claimant, though no document was filed, with the available details, his income is safely fixed at Rs.14,000/- p.m. The claimant had suffered three fractures in the right leg, namely, 1)in right femur 2) fracture of proximal IIIrd both bone 3)crush injury over right foot. The surgical notes and the drawings coupled with photos of the claimant would go to show that his right leg is retained, however, the claimant is not in a position to work freely and he is also not in a position to even keep his foot casually on the floor.

12. The claimant would state that due to the said injuries, he is not in a position to even freely walk, sit, stand and do his works as he did before. The claimant would suffer with these partial permanent disability till his last breath. Under what circumstances, in injury cases, adoption of multiplier method can be invoked, has been elaborately discussed by the Hon'ble Supreme Court in ***Raj Kumar vs Ajay Kumar*** reported in ***[(2011) 1 SCC 343]***, as follows:



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“(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

13. This Court is conscious of the fact that the same permanent disability would result in different percentages of loss of earning capacity in different persons. It also depends upon the nature of job, age, gender, education and such other factors. The claimant was aged at 23 years at



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the time of accident. He was to be doing centering work and he sustained injuries over his right leg, his functional disability is fixed at 50%. This Court deems it fit to invoke multiplier method for computing loss of future income.

14. As per Ex.P4/Aadhar card and Ex.P6/Treatment records, his age is fixed as 23 years at the relevant point of time. As per the law laid down by the Hon'ble Supreme Court in ***Sarala Varma vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TNMAC 1 (SC)***, relevant multiplier to be adopted is '18'. For computing loss of future income, the following formula emerges:

$$\text{Rs.7,000/- (50\% of Rs.14,000/-) } \times 12 \times 18 = \text{Rs.15,12,000/-}$$

15. When multiplier method is adopted for computing loss of future income, he is not entitled to loss of income during treatment period. Due to the accident, he sustained above said injuries and he is not able to even properly walk.

16. In consideration of the disability suffered by the claimant, for



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loss of marriage prospects, an amount of Rs.2,00,000/- is granted. For loss of amenities, an amount of Rs.50,000/- is granted. For transport expenses, an amount of Rs.20,000/- is granted in addition to the amount already granted by the Tribunal. The amounts awarded by this Tribunal under the other heads appears to be reasonable and acceptable and it needs no interference. The compensation awarded by the Tribunal is re-worked and tabulated as hereunder:

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For partial permanent disability/For loss of future income	Rs.3,30,000/-	Rs.15,12,000/-	Enhanced
2	For loss of income during treatment period	Rs. 30,000/-	---	Rejected
3	For pain and sufferings	Rs.1,50,000/-	Rs.1,50,000/-	Confirmed
4	For extra nourishment	Rs. 20,000/-	Rs. 20,000/-	Confirmed
5	For attendant charges	Rs. 30,000/-	Rs. 30,000/-	Confirmed
6	For loss of amenities	---	Rs.50,000/-	Granted
7	For transport charges	Rs. 5,000/-	Rs. 25,000/-	Enhanced
8	For loss of marriage prospects	---	Rs.2,00,000/-	Granted
	Total	Rs. 5,65,000/-	Rs.19,87,000/-	Enhanced by Rs.14,22,000/-



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17. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.5,65,000/- to Rs.19,87,000/-.

(iii) The second respondent/Insurance Company is directed to deposit the enhanced compensation amount of Rs.19,87,000/- (less the amount already deposited if any) with interest at 7.5% p.a from the date of filing of the claim petition till the date of realisation, to the credit of M.C.O.P.No.926 of 2018 on the file of Motor Accidents Claims Tribunal/Special Sub Court, Madurai, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimant/appellant is permitted to withdraw the amount with interest, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.



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(v) The claimant/appellant is directed to pay the Court fee for the enhanced compensation amount, if required.

(vi) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

31.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Special Subordinate Judge,
The Motor Accidents Claims Tribunal/Special Sub Court,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
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