



C.M.A(MD)No.402 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A(MD)No.402 of 2023

Esakkimuthu

... Appellant/Petitioner

-Vs-

1.Jeyakumar

2.United India Insurance Company Limited,
Through Branch Manager,
Catholic Centre, Number 924-A,
Main Road, Kovilpatti.

3.United India Insurance Company Limited,
Through its Divisional Manager,
Number 1, Post Office Road,
Palayamkottai.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1998, as against the award dated 13.10.2022 passed in MCOP No.941 of 2021 by the learned Motor Accident Claims Tribunal Authority / Special Subordinate Judge, Tirunelveli.

For Appellant : Mr.V.Sakthivel
For R2 & R3 : Mr.J.S.Murali



WEB COPY



C.M.A(MD)No.402 of 2023

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the claimant against the award dated 13.10.2022 passed in MCOP No.941 of 2021 by the MACT/Special Sub-Court, Tirunelveli.

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

3.The facts of the case as set out in the claim petition are stated in brief:

On 04.02.2021 at about 11.10 a.m., while the claimant was travelling in TATA ACE van bearing Registration No.TN-72-A-0487 from Sattur to Alangulam along Devarkulam Kalugumalai Main Road, near Keela Sivagamipuram proceeding from North to South, a Mahindra Van bearing Registration No.TN67-D-6366, belonging to the first respondent came in a high speed driven in a rash and negligent manner hit from behind on the TATA ACE van. Due to the said impact, he sustained fractures over both legs and he was taken to Tirunelveli Medical College,



C.M.A(MD)No.402 of 2023

(TVMC) and he was treated as inpatient for a month and he underwent surgery and implants were fixed in both legs. The accident took place due to rash and negligent driving of the driver of the aforesaid van. The first respondent, who is the owner of the said van and the second respondent, insurer of the said van are liable to pay compensation to the petitioner.

4.It was contended by the second and third respondents by way of filing counter to the effect that the driver of the first respondent's vehicle did not have valid driving license with badge endorsement at the time of the accident. The petitioner is put to strict to prove his age, income, avocation and nature of injuries etc.

5.At trial, on the petitioner's side two witnesses have been examined and 7 documents were marked. On the side of the second and third respondents, no evidence was let in. Ex.C.1 is the disability certificate issued by the Medical Board.

6.This appeal is focussed on enhancement of compensation.



C.M.A(MD)No.402 of 2023

7.Upon consideration, the Tribunal has taken the disability at 70% as fixed by the Medical Board and granted Rs.5,000/ per percentage of the disability(Rs3,50,000/-). For loss of amenities and for pain and sufferings, an amount of Rs.30,000/ under each head were granted. For transport expenses, attendant charges and for extra nourishment, an amount of Rs.5,000/ under each head was granted. In total, a sum of Rs.4,55,000/- was awarded by the Tribunal as compensation.

8.It is the evidence of P.W.1 that he was doing tailoring work and thereby he was earning a sum of Rs.15,000/- per month. Relying upon the Aadhar Card and copy of the treatment records(Ex.P.2, Ex.P.3, Ex.P.7 and Ex.P.8), his age is fixed at 63 years. It is the evidence of P.W.1 that he sustained fractures over both the right and left legs and immediately after the accident, he was taken to Tirunelveli Medical College and he was taken treatment till 22.03.2021. He suffered fracture of Tibia with fibula neck. In the left leg, for fracture open reduction with internal fixation by fixing plate with 9 cc Screws fixed. 10 cm long incision was made over posteromedial border of proximal tibia and it was fixed. As regards the right leg, 8 cm L



C.M.A(MD)No.402 of 2023

shape incision was made from 1 cm distal to knee joint direction.

9.For about 48 days, he was under treatment at Tirunelveli Medical College Hospital, as inpatient and he underwent surgery for both legs on 10.02.2021 and 03.03.2021. From a careful perusal of the treatment records, plates to a length of 10 cm and 8 cm along with screws have been implantated and fixed. The Medical Board has fixed his disability at 70%. He will be able to work with internal fixation, but definitely he will have more difficulties to do any work. Of course, sitting and doing tailoring work are not possible. It is relevant to note that he has stated in his testimony that he is not in a position to do his tailoring work as he did before. In the injury cases, in what circumstances multiplier method can be invoked, have been elaborately discussed by the Apex Court in **Raj Kumar vs Ajay Kumar** reported in **[(2011) 1 SCC 343]**. The principles which are summarized by the Apex Court in the said case is given hereunder:

“(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



C.M.A(MD)No.402 of 2023

WEB COPY

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."

10. In consideration of the fractures suffered by the claimant in both legs below knee and having got fixed plates and screws in both knee, as he was found it very difficult to do his work, his functional disability is fixed at 60%. The claimant has stated that he is doing tailoring work. The Disability Certificate-Ex.C.1 reads that the claimant suffers partial permanent disability and the condition is non-progressive.



C.M.A(MD)No.402 of 2023

WEB COPY

11.Taking into account of his age, nature of work, fractures suffered by him, surgeries underwent by the claimant and the effects of the said fractures, his income is fixed at Rs.8,000/- per month. The Apex Court has standardised the details of selection of multiplier for the age group of persons between 60 to 65, the proper multiplier is '7'. Based on the judgment of the Apex Court in **National Insurance Company-Vs-Pranay Sethi and others**, reported in **2017(2)TNMAC 609(SC)**, in order to grant just and fair compensation for computing loss of income, multiplier method is invoked. Based on the aforesaid details, loss of income is computed as follows:

Age of the petitioner	-	63 years
Proper Multiplier to be adopted	-	7 m
Notional income of the claimant	-	Rs.8,000/- per month.

The loss of income is computed as $(8,000/- \times 12 \times 7 \times 65/100 = 6,55,200/-)$.

12.As the loss of income was arrived at by applying multiplier method, the claimant is not entitled for loss of income for the treatment period (Rs.30,000/-). Considering the nature of fractures suffered, an



C.M.A(MD)No.402 of 2023

amount of Rs.25,000/- is granted for loss of amenities and for pain and sufferings, under each head, in addition to the amount granted by the Tribunal. Furthermore, for transport expenses, for attendant charges and for extra nourishment, an amount of Rs.10,000/- is granted under each head, in addition to the award amount granted by the Tribunal. The compensation awarded by the Tribunal is reworked and tabulated hereunder.

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Disability	Rs.3,50,000/-	Rs.3,50,000/-	Confirmed
2	Loss of convenience	Rs.30,000/-	Rs.40,000/-	Confirmed
3	For Transport Expenses	Rs.5,000/-	Rs.15,000/-	Enhanced
4	For Attendant Charges	Rs.5,000/-	Rs.15,000/-	Enhanced
5	For Pain and Sufferings	Rs.30,000/-	Rs.55,000/-	Enhanced
6	For Extra Nourishment	Rs.5,000/-	Rs.15,000/-	Enhanced
7.	For loss of income(5000x6)	Rs.30,000/-	Nil	Nil
8.	For loss of amenities	Nil	Rs.25,000/-	Granted
9.	For Loss of income	Nil	Rs.6,55,200/-	
	Total	Rs.4,55,000/-	Rs.11,70,200/-	Enhanced by Rs.7,15,000/-



WEB COPY



C.M.A(MD)No.402 of 2023

13. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.4,55,000/- to Rs.11,70,200/-.

(iii) The Insurance Company/second respondent is directed to deposit the enhanced compensation amount i.e., Rs.11,70,200/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.941 of 2021 on the file of Motor Accidents Claims Tribunal /Special Subordinate Court, Tirunelveli, 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 appellant/claimant is permitted to withdraw the award amount along with interest and costs as apportioned by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

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



C.M.A(MD)No.402 of 2023

WEB COPY

(vi) The Tribunal shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimant. Out of the enhanced compensation, a sum of Rs.71,500/- shall be deducted towards income tax.

(vii) No costs.

29.01.2025

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

1.The Motor Accident Claims Tribunal Authority /
Special Subordinate Judge,
Tirunelveli.



WEB COPY



C.M.A(MD)No.402 of 2023

R. KALAIMATHI,J.

Ns

C.M.A(MD)No.402 of 2023

29.01.2025