



C.M.A(MD)No.897 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.08.2023

PRONOUNCED ON:04.09.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.897 of 2025

and

C.M.P.(MD)No.13820 of 2025

Reliance General Insurance Company Ltd.,
represented through its Branch Manager,
No.93, Bye-pass Road,
Opposite to PRC, Madurai.

: Appellant/Respondent No.2

Vs.

1. Karthick Ganesan : Respondent No.1/Petitioner

2. Meenakshi Sundaram : Respondent No.2/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment dated 20th July, 2023 passed in MCOP No.314 of 2020, on the file of the IV Additional Subordinate Judge / Motor Accident Claims Tribunal of Madurai.



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For Appellant : Mr.V.Sakthivel

For Respondents :Mr.V.Balasundara Kumar
for R.1

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.314 of 2020, dated 20.07.2023, on the file of the Motor Accident Claims Tribunal / IV Additional Subordinate Judge, Madurai.

2. The appellant/Insurer who was mulcted with the liability to pay compensation of Rs.14,80,000/- with interest at 7.5% per annum to the first respondent/claimant for the disability sustained by him, consequent to an accident occurred on 06.09.2019, challenged the invoking of multiplier method for ascertainment of disability compensation and also the quantum of compensation awarded at by the Tribunal. The appellant/Insurer has not challenged the negligence aspect and the consequent liability fastened on them.



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3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

4. The claimant alleges that the accident resulted in a compound Grade III fracture of both bones in his right leg and multiple abrasions. He was hospitalized at Government Rajaji Hospital, Madurai, from 06.09.2019 to 02.11.2019 and again from 11.11.2020 to 13.11.2020. At the time of the accident, the claimant was 22 years old, working as a building supervisor, and earning Rs.15,000 per month. Due to the accident, he suffered permanent disability, rendering him unable to continue his regular employment.

5. During enquiry, the claimant examined himself as P.W.1 and summoned and examined the staff attached to the Government Rajaji Hospital, Madurai as P.W.2 and exhibited 7 documents as Exs.P.1 to P.7 and one witness document through P.W.2 as Ex.X.1. The first respondent-owner of the vehicle had remained exparte. The second respondent Insurer adduced neither oral nor documentary evidences. The disability certificate issued by the Medical Board to the claimant came to be exhibited as Ex.C.1. The learned trial Judge, upon considering the



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evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 20.07.2023 by holding that the first respondent's driver was responsible for the accident and that the claimant suffered functional disability, has applied multiplier method and directed the Insurer to pay compensation of Rs.14,80,000/- with interest and costs. Aggrieved by the impugned order, the present Civil Miscellaneous Appeal came to be filed.

6. The learned Counsel for the appellant/Insurer would submit that the claimant has only suffered Grade III fracture over both bone of right leg proximal 3rd and suffered no other injuries, that the Medical Board in Ex.C.1 – disability certificate has stated that the claimant suffered partial permanent disability and fixed the disability at 68%, that the Tribunal, in the absence of any acceptable evidence, concluding that the claimant has suffered permanent disability and consequential functional disability, has adopted the multiplier method, that the Tribunal ought to have adopted the percentage method by granting Rs.5,000/- per percentage of disability, that the impugned award at Rs.75,000/- towards pain and sufferings is on higher side and that the amounts awarded under other



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heads are also on higher side and that therefore, the compensation awarded at by the Tribunal is liable to be modified.

7. The learned counsel for claimant would submit that the Tribunal correctly noted the non-union of fracture bones in the claimant's right leg. Although the Medical Board assessed 68% disability, the Tribunal arbitrarily reduced it to 50%. The Tribunal should have fixed functional disability at 68%. The compensation awarded under other heads is also inadequate. Therefore, the appeal warrants enhancement of compensation.

8. Before proceeding further, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajaykumar and another***, reported in ***(2011) 1 Supreme Court Cases 343*** :

“Para 12:

“12. 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.

Para 19:

19. We may now summarise the principles discussed above :

(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



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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.”

9. Considering the above legal position, it is well settled that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic and that the tribunal is duty bound to take into consideration the various factors such as nature and extent of disablement, avocation of the injured and the



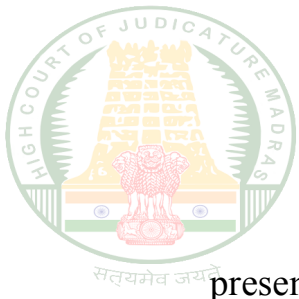
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impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

10. In the case on hand, even according to the claimant, he suffered Grade III fracture over both bone of right leg proximal 3rd and multiple abrasion injuries all over the body. No doubt, the Tribunal has observed that the fractured bone remained to be non-united. It is evident from the records that the petitioner has produced the copy of the accident register under Ex.P.3 and during cross-examination of P.W.2 – staff attached to the Government Rajaji Hospital, Madurai, Ex.X1 – accident register came to be marked. Admittedly, the claimant has neither produced discharge summary nor any other medical records nor taken any steps to summon the same from the Government hospital. As already pointed out, the claimant has summoned and examined the staff attached to the Government Rajaji Hospital as P.W.2, but he has not chosen to send for the medical records.

11. As rightly contended by the learned Counsel for the Insurer, the claimant has also not chosen to examine any medical officer to show the



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present disability. Moreover, as rightly pointed out by the learned Counsel for the Insurer, the Medical Board has not opined that the disability suffered by the petitioner is of permanent in nature, but only stated as partial permanent disability at 68%.

12. According to the petitioner, he was working as a building supervisor. But admittedly, he has not produced any iota of evidence to substantiate the same. In the absence of any evidence to show that the petitioner suffered permanent disability and consequent functional disability, the invocation of multiplier method by the Tribunal cannot be sustained. Considering the medical evidence available on record, this Court is inclined to adopt percentage method and since the accident was occurred in 2019, this Court awards Rs.8,000/- per percentage of disability and as such, the claimant is entitled to get Rs.5,44,000/- towards disability compensation.

13. The learned Counsel for the Insurer would submit that the amount awarded at Rs.75,000/- towards pain and sufferings is on higher side.



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14. It is pertinent to note that the claimant had taken inpatient treatment for the period between 06.09.2019 and 02.11.2019 and again from 11.11.2020 to 13.11.2020. Considering the nature of injuries suffered and the consequent disability sustained, the period of inpatient treatment and other attending circumstances, the amount awarded at Rs.75,000/-for pain and sufferings and Rs.15,000/- for extra nourishment, Rs.5,000/- for transport expenses and Rs.23,200/- for attendant charges are definitely on the lesser side and this Court awards Rs.2,00,000/- for pain and sufferings, Rs.75,000/- for extra nourishment, Rs.50,000/- for transport expenses and Rs.50,000/- for attendant charges. Considering the above, the claimant is entitled to get total compensation of Rs.9,20,000/- as follows:



Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For disability compensation	13,60,800/-	5,44,000/-	reduced
2	For pain and sufferings	75,000/-	2,00,000	enhanced
3	For extra nourishment	15,000/-	75,000/-	enhanced
5	For transport expenses	5,000/-	50,000/-	enhanced
6	For attendant charges	23,200/-	50,000/-	enhanced
7	For damages to clothes	1,000/-	1,000/-	confirmed
	Total	Rs. 14,80,000	Rs. 9,20,000/-	reduced

15. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal to the claimant is reduced from Rs.14,80,000/- to Rs.9,20,000/- along with interest at 7.5%pa., from the date of petition till the date of realization and costs, excluding the default period if any. The appellant Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.314 of 2020, on the file of the Motor Accident Claims Tribunal / IV Additional Subordinate Judge, Madurai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit,



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the first respondent / claimant is entitled to withdraw the same. The parties are directed to bear their own costs. Consequently, the connected Civil Miscellaneous Petition is closed.

04.09.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

- 1.The Motor Accident Claims Tribunal/
IV Additional Subordinate Court, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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