BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.06.2025

PRONOUNCED ON: 25.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1108 of 2023
and
C.M.P.(MD)No.15136 of 2023

IFFCO-TOKIO General Insurance
Company Ltd.,
through its Branch Manager,
3rd Floor, Lalbagi Tower,
Ballalbagh, M.G.Road,
Mangalore, Karnataka – 575 003.
: Appellant / Respondent No.2

1.Sankarapandian : Respondent No.1/Petitioner

2.Mohammed Haneed : Respondent No.2/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree dated 30th September, 2022, passed in M.C.O.P.No.85 of 2019, on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge of Tenkasi, insofar as quantum of compensation award is concerned.

For Appellant : Mr.V.Sakthivel

For Respondents :Mr.M.Jothi Basu
for R.1

: R.2 – memo filed

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No. 85 of 2019, dated 30.09.2022, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Tenkasi.

2. The appellant/Insurer who was mulcted with liability to pay compensation of Rs.22,59,667/- with interest at 7.5% pa., to the claimant for the disability suffered by him consequent to an accident occurred on 28.04.2018, challenged the quantum of compensation awarded at by the Tribunal.

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

4. During enquiry, the claimant examined himself as P.W.1 and exhibited 21 documents as Exs.P.1 to P.21. The first respondent had remained exparte. The second respondent Insurer adduced neither oral nor documentary evidence. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned award dated 30.09.2022, by holding that the driver of the first respondent was responsible for the accident, directed the second respondent Insurer to pay compensation of Rs.22,59,667/- with interest and costs.

5. The learned Counsel for the Insurer would submit that though the claimant has alleged that he was a driver by profession, he has not produced his driving licence or any other evidence to prove his avocation, that the disability certificate issued by the medical board does not reveal any functional disability, that the claimant has not produced any medical records nor examined any medical officer to prove that he suffered functional disability, that the Tribunal erred in fixing the functional disability of the claimant as 50% as against the partial permanent disability assessed by the medical board, that the Tribunal ought to have adopted percentage method by awarding Rs.4,000/-per

percentage, that since the claimant has not proved any permanent disability and the consequent functional disability, the decision of the Tribunal in adopting multiplier method is very much against the legal position settled by the Hon'ble Supreme Court, that the Tribunal erred in awarding Rs.1,00,000/- under the head of loss of amenities, that the amount awarded under other heads are also on the higher side and that therefore, the compensation awarded by the Tribunal is liable to be modified.

6. The learned Counsel for the claimant would submit that the Tribunal considering the medical records available and the disability certificate issued by the medical board, has adopted multiplier method, that the amounts awarded under the other heads are very much reasonable and that therefore, there is nothing to interfere with the just and reasonable compensation awarded at by the Tribunal.

7. It is necessary to refer the decision of Honourable 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 n 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 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."

8. Considering the above, it is very much clear 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 impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

9. It is evident from the wound certificate under Ex.P.2 that the claimant has sustained the following injuries:

> "1) Laceration, 5x2 cm x bone deep over head, 10cm above the glabella.
>
> 2) Laceration, 7x1 cm x muscledeep over the right side of head, 6 cm above and 2 cm right to glabella.
>
> 3) Laceration, 5x0.3 cm x tissue deep over back of the left shoulder, 5 cm medial to shoulder joint.
>
> 4) Abrasion, reddish, 3x3 cm over the right side of chest, 4cm away and 3 cm above right nipple.
>
> 5) Linear abrasions, reddish, 12x0.3 cm over the right side of abdomen, 4 cm away from the umbilicus, extending upwards.
>
> 6) Crush injury, 40x15cm x bone deep over the right leg starting, 1 cm below knee joint.
>
> 7) Contusion, reddish, 3x3 cm over the front of left knee."

10. It is further evident from Ex.B.2 wound certificate and Ex.B.10 discharge summary issued by Kasturba Hospital, Manipal that the claimant was diagnised to have the following injuries:

> "Left distal radius fracture;
>
> Right ulna fracture;
>
> Right lateral tibia plateau fracture with PCL avulsion fracture and MCL tear with ipsilateral distal 1/3rd tibia fibula shaft fracture;
>
> Multiple lacerations over right arm and axilla;
>
> Hemodynamic instability at the time of admission;"

11. Considering the above, it is evident that the claimant sustained mainly three bone injuries in both hands and right leg. It is further evident that the petitioner was admitted on 29.04.2018 in Kasturba Hospital and was discharged on 25.08.2018 and underwent multiple surgeries for upper and lower limb. The medical board attached to the Government Headquarters Hospital, Tenkasi issued disability certificate under Ex.P.21 fixing the partial permanent disability at 45%. In the said disability certificate, they have mentioned about the present deformities –

post traumatic knee stiffness (R) ; post traumatic ankle stiffness (R); post traumatic B/R wrist stiffness; malunited DER #(L), foot deformity (R).

12. The claimant asserted that he was working as a driver, specifically driving the vehicle at the time of the accident. This assertion was stated in the claim petition and evidence, and the insurer failed to challenge it in their counter statements or during cross-examination. Based on the evidence, the Tribunal correctly determined that the claimant was a driver. Considering the 45% partial permanent disability assessed by the medical board, the Tribunal fixed the functional disability at 50%, reasoning that although the claimant could not continue driving, he could run a shop. However, given the nature of the bone injuries and resulting disability, and considering the medical evidence, this Court finds the 50% functional disability assessment excessive. Therefore, the functional disability is reassessed and reduced to 40%, reflecting a more appropriate evaluation of the claimant's compromised ability to work.

13. The Tribunal, taking note of the avocation of the claimant, has rightly fixed the monthly income at Rs.12,000/- and taking note of the judgment of the Hon'ble Supreme Court in ***National Insurance***

Company Vs. Pranay Sethi and others reported in ***2017(2) TNMAC 609 (SC),*** rightly added 40% of the income as future prospects. Considering the evidence available on record, the Tribunal has rightly fixed the age of the claimant at 30 years and rightly applied the multiplier "17". Considering the above, the disability compensation would come to Rs.13,70,880/- (Rs.16,800x12x17 x40%).

14. Considering the nature of injuries, consequent disability sustained, the period of inpatient treatment and other attending circumstances, the Tribunal has rightly awarded a sum of Rs.50,000/- towards pain and sufferings, Rs.25,000/- towards extra nourishment, Rs. 1,00,000/- for loss of convenience, Rs.15,155/- for transport expenses and the same cannot said to be excessive. Hence, this Court concludes that the claimant is entitled for the total compensation of Rs.19,00,000/- 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	17,30,600/-	13,70,880/-	reduced
2	For pain and sufferings	50,000/-	50,000/-	confirmed
3	For extra nourishment	25,000/-	25,000/-	confirmed
4	For loss of convenience	1,00,000/-	1,00,000/-	confirmed
5	For transport expenses	15,155/-	15,155/-	confirmed
6	For medical expenses	3,30,912/-	3,30,912/-	confirmed
7	For ambulance expenses	8,000/-	8,000/-	confirmed
	Total	**Rs. 22,59,667/-**	**Rs. 18,99,947/- rounded off to Rs. 19,00,000/-**	**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.22,59,667/- to Rs.19,00,000/- 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.85 of 2019, on the file of the Motor

Accident Claims Tribunal / Principal Subordinate Court, Tenkasi, 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, the first claimant is entitled to withdraw the same. The parties are directed to bear their own costs. Consequently, the connected Civil Miscellaneous Petition is closed.

25.08.2025

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

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To

1. The Motor Accident Claims Tribunal /
Principal Subordinate Court, Tenkasi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.1108 of 2023

25.08.2025