BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	10.10.2025
Date of Pronounced	17.11.2025

CORAM

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

CMA(MD)No.1023 of 2014
and
MP(MD)No.1 of 2014

Branch Manager,
M/s.Oriental Insurance Company Ltd.,
3607/21, Sathyamoorthy Road,
II Floor, Pudhukottai. : Appellant/2nd Respondent

Vs.

1.Kumar : 1st Respondent/Petitioner
2.Laksmanan : 2nd Respondent/R1
(R2 is given up)

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accidental Claims Tribunal / Chief Judicial Magistrate, Pudhukottai, made in MCOP No.262 of 2012, dated 28.11.2013.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.P.Ganapathy Subramanian

For 2nd Respondent : Given up

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award of the Tribunal of the Motor Accidents Claim Tribunal/Chief Judicial Magistrate, Pudhukottai, made in MCOP No.262 of 2012, dated 28.11.2013.

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

On 06.06.2012 at about 09.00 pm, the claimant after purchasing articles, proceeding in his Hero Honda motor cycle No.TN-55-N-5846 on the left side of the road. When he was proceeding between Keerai Corporation and Kavin Fancy Store, a Bajaj Bike TN-55-X-6706 belonging to the first respondent, insured with the second respondent came in a rash and negligent manner and dashed against the Hero Honda motor cycle driven by the claimant. In that process, the claimant sustained fracture injuries and immediately he was taken to the Government Hospital, Keeranur, where he was taking treatment as inpatient between 06.06.2012 and 21.06.2012 and subsequently from 16.07.2012 to 22.07.2012.

3. Over the occurrence, a case in Crime No.136 of 2012 was registered by the Keeranur Police Station, for the offences under Sections 279 and 337 IPC against the driver of the offending vehicle.

4. At the time of accident, he was aged about 37 years, was working as Salesman in a TASMAC shop and earning Rs.4,000/-, besides by doing agricultural operation, he was earning a sum of Rs.3,000/-. Claiming compensation of Rs.15,00,000/- for the injuries sustained in the accident, he filed a claim petition before the Tribunal.

5. The second respondent Insurance Company filed a counter denying the entire allegation contained in the claim petitions; The insurance company contended that the injuries sustained by the claimant are only simple in nature and they exaggerated the injuries in order to claim huge amount of compensation;

6. Before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 to P.W.2 and 12 documents were marked as Exs.P1 to P12. On the side of the Insurance Company, one witness was examined and one document was marked.

7. After considering the material evidence and records, the Tribunal has awarded compensation of **Rs.3,03,872/-** to the claimant 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.

8. Challenging the award of the Tribunal, this Civil Miscellaneous Appeal has been preferred by the Appellant Insurance Company on the ground that the claimant has not sustained functional disability because of the accident, but the Tribunal has wrongly awarded Rs.1,68,000/- under the head of loss of earning power, apart from the disability compensation. The Tribunal failed to consider the fact that the claimant was working as Salesman in TASMAC shop before the accident and even after the accident, he is continuing the work and earning income as before and the total compensation awarded by the Tribunal is on the higher side and it has to be reduced.

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

10. This appeal is filed only challenging the quantum of compensation alone. So, this Court need not go into the other aspects.

11. It is not in dispute that the claimant was 37 years at the time of the accident. In the accident, he suffered 35% disability. To prove the same, the claimant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the claimant and certified that he suffered 35% disability and issued Ex.P12/disability certificate to that effect.

12. The disability certificate indicates the claimant suffered a partial permanent disability at 35% and was not stated that he was suffered total permanent disability. In order to calculate the disability as a result of injuries, this Court refer the guidelines stipulated in the case in ***Rajkumar v. Ajaykumar*** reported in ***(2011) 1 SCC 343*** by the Hon'ble Supreme Court :

> ***8.*** *Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the*

maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

*****

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.

***13.** Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities* *the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

***14.** For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that* *event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.*

15. *It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.*

13. The respondents have not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P12 disability certificate. Hence, the claimant is entitled to compensation for 35% disability. In this case the claimant is still continue his employment as salesman in TASMC, he was not disqualified for a loss of limb, it is nowhere proved that he was shifted to lesser post with lesser emolument. Therefore the question of awarding loss of future earning would not arise, but he is entitled Rs.2,000/- per percentage for partial permanent disability.

14. From the materials on record, it is seen that the claimant has taken treatment as inpatient from 06.06.2012 to 21.06.2012 and plates were fixed by doing operation in the right leg fingers and subsequently, he was admitted as inpatient from 18.07.2012 and 22.07.2012 and plate surgery was done on the right leg foot path. To prove the same, on the side of the claimant, Ex.P2 and P3 were produced. Considering the above medical records, the Tribunal has awarded Rs.84,872/- towards medical expenses.

15. Further, the Tribunal has awarded Rs.10,000/- under the head of pain and suffering, Rs.3,000/- under the head of transport expenses

and nutrition and Rs.3,000/- towards attendant charges, in the considered view of this Court, they are reasonable. The Tribunal awarded apart from disability in the head of loss of earning power which is not proper and the same is liable to be set aside. Therefore, this Court awarded a sum of Rs.20,000/- towards loss of income.

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

For partial permanent disability 35%		
		= 35x2000 = 70,000/-
Medical Bills	64,872 + 20,000	= 84,872/-
Pain and sufferings		= 10,000/-
Transport charges		= 3,000/-
Nutrition & attendant charges		= 3,000/-
Loss of Income		= 20,000/-
	Total	=1,90,872/-

In total, this Court has awarded Rs.1,90,872/- as compensation. This court is the considered view, the award of the Tribunal is modified as above.

17. In such view of the matter, this Civil Miscellaneous Appeal is **partly allowed.** The award of Rs.3,03,872/- is reduced to **Rs.1,90,872/-**. The appellant/Insurance Company is directed to deposit the reduced/modified award amount of Rs.1,90,872/- 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. On such deposit, the 1st respondent /claimant is permitted to withdraw the reduced award amount along with proportionate interest and costs, less the amount if already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2025

Index:Yes/No
Internet:Yes/No
er/rm

To

1.The Motor Accident Claims Tribunal/
The Chief Judicial Magistrate,
Pudukkottai.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

R.POORNIMA, J

er/rm

<u>CMA(MD)No.1023 of 2014</u>

17.11.2025