



C.M.A(MD)No.431 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.06.2025

PRONOUNCED ON: 25.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.M.A(MD)No.431 of 2023
and
C.M.P.(MD)No.5400 of 2023
and
Cros.Obj.(MD)No.17 of 2023**

C.M.A.(MD)No.431 of 2023:

United India Insurance Company Limited,
through its
Branch Manager,
No.48A9, Leela Balan Complex, 1st Floor,
Tirunelveli Main Road,
Kanyakumari.

: Appellant / 2nd Respondent

Vs.

1.Jegan : 1st Respondent/Petitioner

.Iyappan : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award dated 02.02.2022 made in M.C.O.P.No.644 of 2015, on the file of the learned MACT Special Judge, Tirunelveli.



WEB COPY



C.M.A(MD)No.431 of 2023

For Appellant : Mr.A.Ilango

For Respondents :Mr.M.Jothiramalingam
for R.1

: No Appearance for R.2

Cros.Obj.(MD)No.17 of 2023:

Jegan : Appellant /Respondent/Petitioner

Vs.

1.Iyappan : Respondent/1st Respondent/1st Respondent

2. United India Insurance Company Limited,
through its
Branch Manager,
No.48A9, Leela Balan Complex, 1st Floor,
Tirunelveli Main Road,
Kanyakumari. : Respondent/2nd Respondent

PRAYER:- Cross Objection filed under Order XLI Rule 22(1) of the Civil Procedure Code, seeking to call for the records and enhance the amount of compensation awarded by the learned Tribunal in the order in M.C.O.P.No.644 of 2015, dated 02.02.2022, on the file of the Motor Accident Claims Tribunal, Tirunelveli.

For Appellant : Mr.M.Jothiramalingam

For Respondents :Mr.A.Ilango
for R.2

: No Appearance for R.1



C.M.A(MD)No.431 of 2023

WEB COPY

COMMON JUDGMENT

This Civil Miscellaneous Appeal and the Cross-Objection are directed against the award made in M.C.O.P.NO.644 of 2015, dated 02.02.2022, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court deal with the MCOP cases, Tirunelveli.

2. The appellant/Insurer who was mulcted with the liability to pay compensation of Rs.18,25,357/- with interest at 7.5% pa., for the disability suffered by the Cross-objector / claimant consequent to an accident occurred on 31.01.2014, challenged the quantum of compensation awarded at by the Tribunal.

3. The Cross-objector / claimant has made the cross-objection challenging the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

4. The claimant alleged that at the time of the accident, he was 33 years old and sustained multiple injuries, including fractures to the skull and C6, 7 vertebra. He was immediately hospitalized at Muthu Neuro



C.M.A(MD)No.431 of 2023

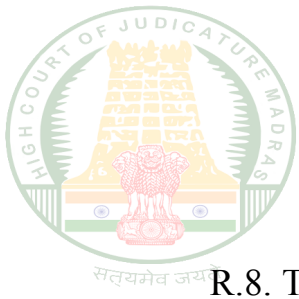
WEB COPY

Centre in Nagercoil, receiving inpatient treatment from 31.01.2014 to 10.02.2014, and again from 19.02.2014 to 25.02.2014, followed by continuous outpatient treatment. The claimant asserted that he incurred over Rs.2,00,000/- in medical expenses and suffered permanent disability due to the fractures. He claimed that he experiences frequent giddiness and headaches, has restricted body movement, and requires assistance to walk. The claimant, a mason earning Rs.15,000/- per month prior to the accident, is now unable to work as before.

5. The Insurer has filed counter statement raising objections.

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

7. During enquiry, the claimant examined himself as P.W.1 and exhibited 8 documents as Exs.P.1 to P.8. The first respondent had remained exparte. The second respondent Insurer examined an assistant attached to the RTO office, Nagercoil as R.W.1 and its own Administrative Officer as R.W.2 and exhibited 8 documents as Exs.R.1 to



C.M.A(MD)No.431 of 2023

WEB COPY

R.8. The disability certificate issued by the medical board to the petitioner came to be exhibited as Ex.C.1.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 02.02.2022 holding that the rider of the first respondent's vehicle was responsible for the accident and also holding that the first respondent has violated the policy condition as the vehicle rider was not possessing the driving licence, directed the Insurer to pay compensation of Rs.18,25,357/- with interest and costs to the claimant and then to recover the same from the first respondent/owner of the vehicle. Challenging the quantum of compensation awarded at by the Tribunal, the Insurer as well as the claimant have come before this Court.

9. The only point that arises for consideration is as to whether the compensation awarded at by the Tribunal is just and reasonable and is in accordance with law?

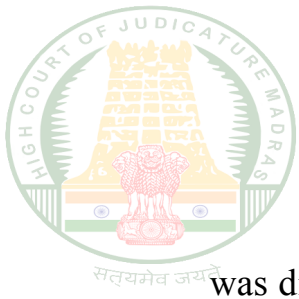


C.M.A(MD)No.431 of 2023

WEB COPY

10. The learned Counsel for the Insurer would submit that the claimant has only sustained simple injuries as mentioned in the F.I.R., but the Tribunal in the absence of evidence of any medical officer, has applied the multiplier method erroneously, that the Tribunal should have adopted percentage method and should have awarded Rs.4,000/- per percentage for disability of 68%, as given by the medical board, that the disability certificate under Ex.C.1 shows that all the injuries suffered by the petitioner had been healed except one injury and hence the permanent partial disablement suffered by the petitione due to the accident cannot have any impact on the earning capacity of the petitioner and that therefore, the quantum of compensation awarded by the Tribunal is liable to be modified.

11. The learned Counsel for the claimant would submit that the claimant had suffered linear undisplaced fracture of left transverse process of C7 certebra and left side lateral mas of C6 vertebra, that the claimant was admitted as inpatient at Muthu Neuro Centre, Nagercoil, on 31.01.2014 and was discharged on 10.02.2014 and again he was admitted on 19.02.2014 and discharged on 25.02.2014, that the petitioner had also taken treatment from Thiraviam Orthopaedic Hospital, Nagercoil as he



C.M.A(MD)No.431 of 2023

WEB COPY

was disproved to have contusion on right hand, that though the disability suffered by the petitioner was fixed at 68% by the medical board, the same should be considered as 100%, as the earning capacity of the claimant was totally lost, that though the claimant has claimed that he was earning Rs.15,000/- per month by doing mason work, the Tribunal has fixed the monthly income at Rs.8,000/- by erroneously applying the Minimum Wages Act, that though the claimant has produced medical bills and receipts to the tune of Rs.1,92,025/-, the Tribunal has only awarded Rs.1,88,085 and that since the amounts awarded under the other heads were also on lower side, the compensation awarded at by the Tribunal is liable to be enhanced.

12. It is pertinent to mention that the claimant as well as the Insurer side would rely on 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



WEB COPY



C.M.A(MD)No.431 of 2023

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*



C.M.A(MD)No.431 of 2023

WEB COPY

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. 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

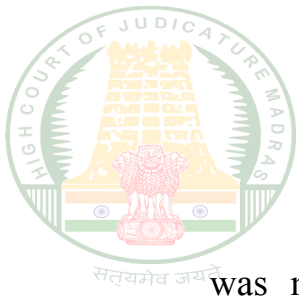


C.M.A(MD)No.431 of 2023

WEB COPY

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.

14. The petitioner has produced the discharge summaries issued twice by Muthu Neuro Centre at Nagercoil and Thiraviam Orthopaedic Hospital, Nagercoil and the treatment report given by Gowtham Nursing Home, Nagercoil and the medical bills. It is evident from the records that the petitioner was admitted in Muthu Neuro Centre at about 06.25 p.m., on 31.01.2014 after the accident and was discharged on 10.02.2014 and again he was admitted in the same hospital on 19.02.2014 and was discharged on 25.02.2014. When he was admitted for the first time, he was diagnosed to have moderate head injury and sequelae with left sided weakness with 3rd cranial nerve involvement with all tear right knee joint and as per the CT scan of the brain, the claimant was diagnosed to have subarachnoid haemorrhage in right side bascal cisterns and in posterior interhemispheric region – diffuse mild cerebral edema and as per the CT scan he was diagnosed to have linear undisplaced fracture of left transverse process of C7 vertebra and left side lateral mass of C6 vertebra. It is evident from the first discharge summary that head injury



C.M.A(MD)No.431 of 2023

WEB COPY

was managed conservatively and at the time of discharge, he was conscious, afebrile, oriented and ambulant, without any neurological defects. It is evident from the second discharge summary that the claimant was admitted with the complaint of right knee pain and he was diagnosed to have ACL, tear + left meniscus tear and surgery was done on 20.02.2014 and post operative period was uneventful and that the claimant was discharged as he was comfortable with no complaint of head ache /neurological deficits. It is evident from Ex.P.6 – treatment report given by Gowtham Nursing Home that the petitioner has taken outpatient treatment from August 2014.

15. As already pointed out, the claimant has already produced discharge summary and the treatment report given by Thiraviam Orthopaedic Hospital, wherein it was shown that he was admitted for having pain in right hand for 15 days due to weight fall over his right hand and was diagnosed to have fracture on 5th metacarpal of right hand. It is evident to note that he was admitted on 14.05.2016 and was discharged on 15.05.2016, after the lapse of more than nearly 2 ½ years since the accident.



C.M.A(MD)No.431 of 2023

WEB COPY

16. As rightly pointed out by the learned Counsel for the Insurer, the claimant has not produced any iota of evidence to connect right hand fracture with the accident occurred on 31.01.2014 and even as per the discharge summary, he suffered fracture due to weight fall over his right hand. The medical board attached to the Medical College Hospital, Tirunelveli upon examining the claimant has issued the disability certificate under Ex.C.1 fixing the disability at 68% by mentioning that it is a case of post head injury sequence with left sided weakness with 3rd cranial nerve involvement with ACL tear right knee joint. Except the above, they have not elaborated anything further. It is pertinent to note that the medical board has not even mentioned whether it is permanent disability or partial permanent disability. Though the petitioner has alleged some complications, he has not chosen to produce any iota of evidence. As rightly pointed out by the learned Counsel for the Insurer, the claimant has not chosen to examine the medical officers attended him to show the present condition. There is absolutely no evidence to show that the petitioner has suffered permanent disability and the consequent functional disability.



C.M.A(MD)No.431 of 2023

WEB COPY

17. As rightly pointed out by the learned Counsel for the Insurer, the Tribunal, without considering the medical evidence in proper perspective has come to a finding that the claimant has suffered partial permanent disability with regard to whole body at 68%. In the absence of any permanent disability and consequent disability, the question of applying multiplier method does not arise at all. Considering the medical evidence available on record and also taking note of the disability fixed at 68%, this Court is inclined to apply percentage method and awarded a sum of Rs.5,000/- per percentage and as such, the claimant is entitled to Rs.3,40,000/- as disability compensation.

18. Though the petitioner has claimed that he was doing mason work and was getting Rs.15,000/- as monthly income, he has failed to substantiate the same. The Tribunal has fixed the notional income of the claimant at Rs.8,000/- per month. The learned Counsel for the claimant would submit that the Tribunal has adopted Minimum Wages Act and the Tribunal ought to have followed the decision of this Court in ***Andal and others Vs. Avinav Kannan*** reported in ***2019(1) TNMAC 54***.



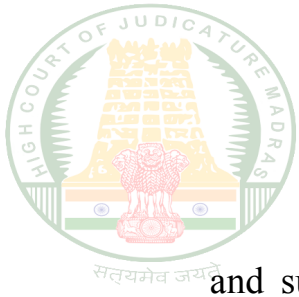
C.M.A(MD)No.431 of 2023

WEB COPY

19. As rightly pointed out by the learned Counsel for the claimant, the Hon'ble Division Bench of this Court in *Andal and others case*, taking the monthly income fixed at Rs.6,500/- for a vegetable vendor by the Hon'ble Supreme Court in *Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd.*, reported in **2014(1) TNMAC 459 (SC)** has applied the cost inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the above said index, the cost of inflation index for the year 2013-2014 is 220. Applying the above, notional income of the claimant would come to Rs.11,085/- and as such, the notional income is fixed at Rs.11,000/-.

20. Considering the period of inpatient as well as outpatient treatment, the petitioner is entitled to get the loss of income at Rs. 1,22,000/-. The Tribunal, considering the medical bills produced by the claimant has rightly awarded Rs.1,88,085/- towards medical expenses. Since the petitioner has not suffered any permanent disability, the

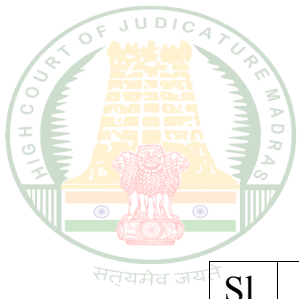
question of awarding loss of convenience does not arise. The Tribunal has awarded Rs.10,000/- towards attendant charges, Rs.50,000/- for pain



C.M.A(MD)No.431 of 2023

WEB COPY

and sufferings, Rs.10,000/- for transport expenses and Rs.50,000/- for extra nourishment. Considering the nature of injuries and the disability suffered, the period of inpatient treatment and other attending circumstances, this Court is inclined to award Rs.50,000/- towards attendant charges, Rs.1,00,000/- for pain and sufferings, Rs.50,000/- for transport expenses and Rs.75,000/- towards extra nourishment. Hence, this Court concludes that the claimant is entitled to get the total compensation of Rs.9,25,085/- as follows:



C.M.A(MD)No.431 of 2023

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	14,62,272/-	3,40,000	reduced
2	For Medical bills	1,88,085/-	1,88,085/-	confirmed
3	For Attendant charges	10,000/-	50,000/-	enhanced
4	For pain and sufferings	50,000/-	1,00,000/-	enhanced
5	For Transport expenses	10,000/-	50,000/-	enhanced
6	For loss of convenience	55,000/-	--	--
7	For extra nourishment	50,000/-	75,000/-	
8	For loss of income during the treatment period		1,22,000	granted
	Total	Rs. 18,25,357/-	Rs. 9,25,085/-	reduced

21. In the result, the Civil Miscellaneous Appeal is partly allowed.

The compensation awarded by the Tribunal to the claimant is reduced from Rs.18,25,357/- to Rs.9,25,085/- 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.644 of 2015, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court, Tirunelveli, less



C.M.A(MD)No.431 of 2023

WEB COPY

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. The Cross-Objection filed by the claimant is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed.

25.08.2025

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

SSL

To

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



WEB COPY



C.M.A(MD)No.431 of 2023

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

**C.M.A(MD)No.431 of 2023
and
Cros.Obj.(MD)No.17 of 2023**

25.08.2025