

C.M.A.(MD)No.1131 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 12.06.2025

Pronounced on : 04.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1131 of 2023

Balamurugan

... Appellant/
Claimant

Vs.

1.Prabhakaran

2.United India Insurance Company Limited,
through its Branch Manager,
D.No.5/1, Alagubagavathy Complex,
Kailasapuram Middle Street,
Tirunelveli-627001.

... Respondents/
Respondents

*(Notice to the first respondent is dispensed with
vide Court order dated 17.12.2024)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 08.09.2023 passed by the Motor Accident Claims Tribunal / Special Sub Court dealing with MCOP cases, Tirunelveli in M.C.O.P.No.694 of 2021 and enhance the award amount.



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For Appellant : Mr.T.Lenin Kumar

For Respondents : Mr.J.S.Murali for R2

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.694 of 2021 dated 08.09.2023 on the file of the Motor Accident Claims Tribunal / Special Sub Court dealing with MCOP Cases, Tirunelveli.

2. The appellant/claimant, who was awarded with compensation of Rs.3,51,560/- (Rupees Three Lakhs Fifty One Thousand Five Hundred and Sixty only) with interest at 7.5% per annum and costs for the disability suffered by him, consequent to an accident occurred on 16.10.2019, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The appellant/claimant and one Siva injured in the same accident have filed claim petitions in M.C.O.P.Nos.694 of 2021 and 697 of 2021. During trial, both the claimants have examined themselves as P.W.1 and P.W.2 respectively and examined 2 medical officers as P.W.3 and P.W.4

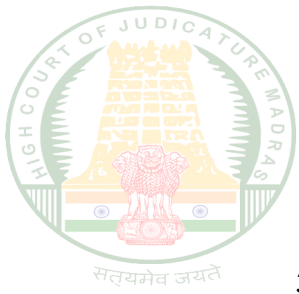


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respectively and exhibited 12 documents as Ex.P.1 to Ex.P.12. The first respondent/first respondent remained *ex-parte*. The second respondent/insurer has examined 2 witnesses as R.W.1 and R.W.2 and exhibited 1 document as Ex.R1. 7 documents produced by the claimants' side witnesses came to be exhibited as Ex.X.1 to Ex.X.7 and 2 documents produced by the second respondent/insurer's side witnesses came to be exhibited as Ex.X.1 and Ex.X.2 (Ex.X.8 and Ex.X.9) and the disability certificate issued by the Medical Board to the appellant/claimant came to be exhibited as Ex.C.1.

4. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned common award dated 08.09.2023 holding that the first respondent/first respondent's driver was responsible for the accident and directed the second respondent/insurer to pay compensation of Rs.3,51,560/- (Rupees Three Lakhs Fifty One Thousand Five Hundred and Sixty only) to the appellant/claimant with interest and costs. Aggrieved by the impugned common award, the claimant in M.C.O.P.No.694 of 2021 has preferred the present appeal seeking enhancement.



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5. It is not in dispute that the Medical Board, on examining the appellant/claimant, has issued a disability certificate under Ex.C.1 fixing the disability at 6%. When the present appeal was taken up for hearing, a learned Judge of this Court, considering the submissions made by the learned counsels on record, by observing that the disability assessed by the Medical Board is incorrect, directed the Medical Board to reassess the disability of the appellant/claimant and to submit a report. In pursuance of the said direction, the appellant/claimant appeared before the Medical Board and on examining him, the Medical Board has issued a disability certificate fixing the disability at 48%. The disability certificate issued by the Regional Medical Board attached to Tirunelveli Government Medical College Hospital is exhibited as Ex.C.2.

6. It is evident from Ex.P.6-discharge summary and the treatment particulars produced by Sushrushah Medical Centre that the appellant/claimant was admitted in the said hospital on 17.10.2019 for the following injuries suffered by him,

1. *Lacerated wound 5 x 5 x 2 cm over right leg proximal 1/3rd exposed bone with fracture tibia*
2. *Abrasions extending from injury towards middle*

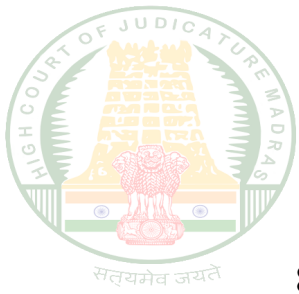


aspect right leg 13 x 1 cm anteriorly

3. *Lacerated wound 4 x 2 x 1 cm over right leg posterior aspect*
4. *Lacerated wound 15 x 15 x 15 cm over right, dorsal aspect of fore foot-all toes with extensor tendon injury with segmental loss*
5. *Friction injury of metatarsal joint with bone loss with devitalised, degloving skin*
6. *Lacerated wound 2 x 1 x 1 cm over right hind foot*
7. *Swelling, tenderness over right wrist with evidence of fracture right 5th metacarpal*
8. *Avulsion fracture base proximal phalanx lateral aspect right ring finger*

7. It is further evident that the appellant/claimant was diagnosed to have (1) compound comminuted fracture proximal tibia Right, (2) 5th Metacarpal fracture Right hand and (3) Crush injury Right foot and they have done the following procedures,

1. *Wound debridement, 2 lag screw and Ex-fix Right*
2. *Close Reduction Percutaneous K-wire fixation Right*
3. *Lacerated wound debridement with Extensor tendon repair Right*

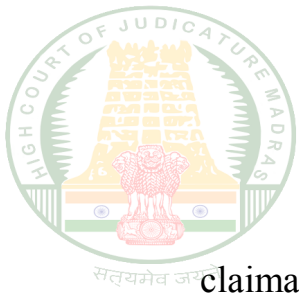


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8. The appellant/claimant has summoned and examined the medical officer attached to Sushrushah Hospital as P.W.3 and he would submit that the appellant/claimant was admitted on 17.10.2019 and was discharged on 26.10.2019, that he was again admitted on 06.12.2019 and after removal of K-wire fixed on his right hand, was discharged on 07.12.2019, that he was again admitted on 19.05.2020 and after removal of rod fixed on his right leg, was discharged on 20.05.2020 and that he was treated as out-patient subsequently. The appellant/claimant has also summoned and examined the Doctor, who attended him at Puliyangudi Government Hospital and she would say that the appellant/claimant was given first aid treatment and was referred to Tirunelveli Government Medical College Hospital for further treatment and that the injuries suffered by him are grievous in nature.

9. The appellant/claimant, in the claim petition, has stated that he is not able to walk as before and he is unable to sit and is also unable to work as before. According to the appellant/claimant, he was studying 2nd year in Puliyanakudi Lakshmi Catering College and is doing part-time painting work and is getting Rs.10,000/- per month. Admittedly, the appellant/



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claimant has not produced any iota of evidence to show that he is studying in the college or is doing painting work in part-time and is getting Rs.10,000/- per month. P.W.1 in his cross-examination would admit that he has not produced any such records.

10. The learned counsel appearing for the appellant/claimant would submit that the appellant/claimant has sustained permanent disability and functional disability and that since the Medical Board has fixed the disability at 48%, multiplier method is to be adopted for computing compensation.

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

“9. 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. 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).*



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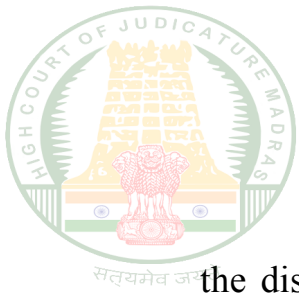
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(iii) *The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that 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.”*

12. 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, that the Tribunal is duty bound to take into consideration the various factors such as nature of 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.

13. No doubt, P.W.3-Doctor, in his evidence, has not stated that the appellant/claimant has suffered permanent disability. In the disability certificate issued under Ex.C.2, it has been shown that there is scope for



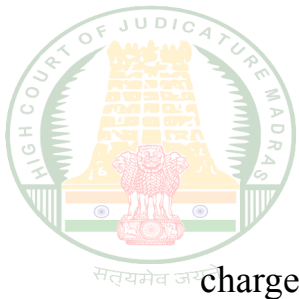
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the disability being reduced. Considering the facts and circumstances of the case and taking note of the medical evidence available on records, adopting the multiplier method is not warranted. No doubt, the Tribunal has granted Rs.5,000/- per percentage, but as rightly contended by the learned counsel appearing for the appellant/claimant, the same is very low. Considering the date of accident and the attending circumstances, this Court is inclined to grant Rs.7,000/- per percentage of the disability and as such, the appellant/claimant is entitled to get disability compensation at Rs.3,36,000/- (48 x Rs.7,000/-).

14. The Tribunal, considering the medical bills available, has rightly awarded Rs.2,66,559/-. Though the appellant/claimant has alleged that he spent more than Rs.5 lakhs, he has not produced any other medical bills except Ex.P.7.

15. Considering the nature of the injuries and the consequent disability, period of inpatient treatment and other attending circumstances, awarding Rs.20,000/- for pain and suffering, Rs.20,000/- for loss of convenience, Rs.5,000/- for transport expenses, Rs.5,000/- for attendant



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charges and Rs.5,000/- for extra nourishment are certainly on lower side and this Court awards Rs.50,000/- for pain and suffering, Rs.25,000/- for loss of convenience, Rs.15,000/- for transport expenses, Rs.15,000/- for attendant charges and Rs.20,000/- for extra nourishment.

16. Considering the above, the appellant/claimant is entitled to get total compensation of Rs.7,27,559/- (Rupees Seven Lakhs Twenty Seven Thousand Five Hundred and Fifty Nine only) and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability	30,000	3,36,000	Enhanced
2.	Medical expenses	2,66,559	2,66,559	Confirmed
3.	Pain and suffering	20,000	50,000	Enhanced
4.	Loss of convenience	20,000	25,000	Enhanced
5.	Transport expenses	5,000	15,000	Enhanced
6.	Attendant Charges	5,000	15,000	Enhanced
7.	Extra nourishment	5,000	20,000	Enhanced
	Total	3,51,559 Rounded off 3,51,560	7,27,559	Enhanced by Rs.3,75,999/-



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17. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

18. In the result, this Civil Miscellaneous Appeal stands allowed and the compensation awarded by the Tribunal at Rs.3,51,560/- (Rupees Three Lakhs Fifty One Thousand Five Hundred and Sixty only) is hereby enhanced to Rs.7,27,559/- (Rupees Seven Lakh Twenty Seven Thousand Five Hundred and Fifty Nine only). The second respondent/ Insurer is directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.694 of 2021 on the file of the Motor Accident Claims Tribunal / Special Sub Court dealing with MCOP cases, Tirunelveli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. The appellant/claimant is directed to pay the court fee for the



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enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

04.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Special Sub Judge,
Motor Accident Claims Tribunal/
Special Sub Court dealing with MCOP cases,
Tirunelveli.
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 Order made in
C.M.A.(MD)No.1131 of 2023**

Dated : 04.08.2025