

C.M.A.(MD).No.1315 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD).No.1315 of 2024

Jeyakumar ... Appellant / Petitioner

vs.

1.Lakshminarayanan

2.United India Insurance Company Ltd.,
Kumbakonam,
Through its Branch Manager. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 07.10.2015 passed in M.C.O.P.No.224 of 2014 on the file of Motor Accident Claims Tribunal / Principal Sub-Court, Kumbakonam.

For Appellant : Mr.A.George Stephen Kanikkai

For 1st Respondent : Dispensed with

For 2nd Respondent : Mr.A.S.Mathialagan

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimant herein against the Judgment and Decree dated 07.10.2015



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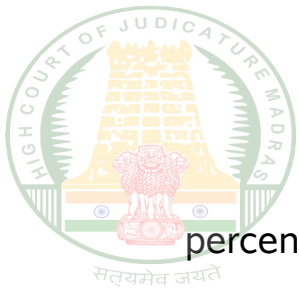
passed in M.C.O.P.No.224 of 2014 by the Motor Accident Claims Tribunal / Principal Sub-Court, Kumbakonam, for enhancement of compensation.

2. Despite the receipt of notice, the 1st respondent neither appeared nor represented through his counsel.

3. Heard the arguments of the learned counsel for the appellant and the learned counsel for the 2nd respondent/Insurance Company.

4. At trial, on the claimant side, two witnesses were examined and five documents have been marked. Ex.P2 is Wound Certificate (copy). Ex.P5 is Disability Certificate issued by PW2/Dr.Vijayakumaran. On the 2nd respondent's side rider of the two wheeler (Reg.No.TN-48-P-4948) one Sathyamoorthy is examined as RW1 and no document is marked.

5. Upon consideration, the Tribunal granted compensation for a sum of Rs.75,596/-. For Partial Permanent Disability, Rs.1200/- per



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percentage was granted (Rs.1200/- X 46.33% = Rs.55,596/-). For Pain and Sufferings, Rs.10,000/- was granted and for Transportation, Rs.3,000/- and for Extra Nourishment Rs.5,000/- and for Attender Charges, Rs.2,000/- was granted by the Tribunal.

6. The manner in which the accident is happened is not in dispute.

7. The learned counsel for the appellant would strenuously argue that the appellant / claimant suffered fracture of right hip on account of the accident and the disability was assessed by PW2 Doctor at 46.33%. The claimant who was a tailor is not in a position to work as he did before because of the above said fracture. The Tribunal has granted Rs.1200/- per percentage is very less. He would further argue that due to the above said fracture as he is not in a position to work as he had before, the Tribunal ought to have followed multiplier method for arriving at loss of dependency.

8. It has come on record through the evidence of PW1, the claimant herein that he suffered fracture of right hip due to the



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accident. To evidence the said factum, the Accident Register copy

Ex.P2 is marked.

9. Disability of the claimant was assessed by Dr.N.Vijayakumaran (PW2). PW2-Doctor would state that due to the fracture of right hip, the claimant is suffering from non-union. It is his further evidence that the claimant's right lower limb is deformed and right leg is shortened by 3 inches. He would also state that the claimant has got difficulties to walk on plain surface, to walk on slopes, to climb and to squat. PW2-Doctor has assessed his disability at 46.33%(Partial Permanent Disability). PW1 has also spoken about the above stated difficulties.

10. It is the evidence of PW1 and PW2 that the claimant suffered partial permanent disability at 46.33%, due to the said accident. The percentage of permanent disability has been assessed by PW2 Doctor is only with reference to the whole body and not with reference to a particular limb.

11. As mentioned supra, due to the fracture of right hip and



malunion, he would be unable to walk on a plain surface, to walk on a slope, to climb stairs and to squat etc.,

12. PW1 is said to be a tailor and definitely this disability would affect his earning capacity. This Court deems fit to fix the functional disability at 42%. In injury cases, under what circumstances, multiplier method to be invoked. I have been enumerated by the Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**. The relevant portion is extracted as follows:

"19.(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 the percentage of loss of earning capacity is the same as the percentage of permanent disability).



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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 to 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. By relying upon the Wound Certificate (copy)-Ex.P2, age of the claimant is safely fixed at 52 years at the relevant point of time. In order to meet the ends of justice, for computing loss of future income, multiplier method is invoked. As per the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, the relevant multiplier to be adopted is 11.

14. It is the evidence of PW1 that he was working as a tailor



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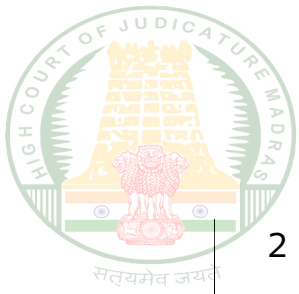
and earning a sum of Rs.15,000/- p.m. Date of Accident is 07.04.2014. In consideration of the above said details, monthly income of the claimant is fixed as Rs.13,000/-. For computing the loss of future income, following formula emerges:

$$\text{Rs.13,000/-} \times 12 \times 11 \times 42\% = \text{Rs.7,20,720/-}.$$

15. As regards the pain and sufferings underwent by the claimant, a sum of Rs.20,000/- is granted and a sum of Rs.7,000/- is granted towards attender charges in addition to the amount already granted by the Tribunal.

16. In all other aspects, the award passed by the Tribunal appears to be reasonable and it needs no interference. Therefore, the compensation awarded by the Tribunal is reworked as tabulated hereunder:

Sl.No.	Description	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Future Income	Rs.55,596/-	Rs.7,20,720/-	Enhanced



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2	For pain and sufferings	Rs.10,000/-	Rs. 30,000/-	Enhanced
3	For Transportation	Rs. 3,000/-	Rs. 3,000/-	Confirmed
4	For Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-	Confirmed
5	For Attender Charges	Rs. 2,000/-	Rs. 9,000/-	Enhanced
	Total	Rs.75,596/-	Rs.7,67,720/-	
	Rounded off to		Rs.7,68,000/-	

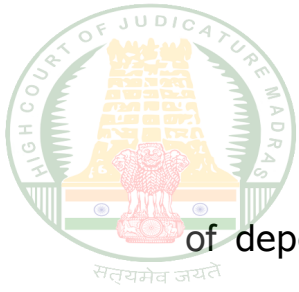
17. Thus, the compensation awarded by the Tribunal is enhanced from Rs.75,596/- to Rs.7,68,000/- which would carry interest at the rate of 7.5% per annum.

18. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The Compensation awarded by the Tribunal is enhanced from Rs.75,596/- to Rs.7,68,000/-.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.7,68,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of numbering of petition till the date



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of deposit to the credit of M.C.O.P.No.224 of 2014 on the file of Motor Accident Claims Tribunal / Principal Sub-Court, Kumbakonam, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant/claimant is at liberty to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellant/claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

31.01.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Principal Sub-Court, Kumbakonam.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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R.KALAIMATHI, J.,

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