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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.10.2026

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI
AND
THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

C.M.A. NO.583 OF 2024
CNR:{HCMA012074572023}

CROSS OBJ. NO. 65 OF 2026
CNR:{HCMA010483442025}

AND

C.M.P. NO. 5702 OF 2024

C.M.A. NO. 583 OF 2024

M/s.National Insurance Co. Ltd.
Rep. By its Divisional Manager
No.751, Anna Salai
Chennai 600 002. .. Appellant

- Vs -

1. K.Vijayan
2. Saranya .. Respondents

CROSS OBJ. NO.65 OF 2026

K.Vijayan .. X Objector

- Vs -

1. M/s.National Insurance Co. Ltd.
   Rep. By its Divisional Manager

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No.751, Anna Salai
Chennai 600 002.

2. Saranya .. Respondents

C.M.A. No.583/2024 filed u/s 173 of the Motor Vehicles Act, 1988, praying this Court to set aside the final award dated 31st July, 2023, passed in MCOP No.165 of 2016 by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Kancheepuram District @ Chengalpattu.

Cross Objection No.65 of 2026 filed under Order 41 Rule 22 CPC, praying this Court to allow the objector herein to take the present cross objections on record, dismiss the present appeal CMA.No.583 of 2024 and subsequently enhance the compensation payable to the objector herein MCOP.No.165 of 2016 dated 31-07-2023, on the file of the MACT/Chief Judicial Magistrate, Kancheepuram District @ Chengalpet.

For Appellant : Mr. J.Michael Visuvasam

For Cross Objector : Mr. V.P.Raman, for M/s.R.B.Rishab

For Respondents : Mr. V.P.Raman, for M/s.R.B.Rishabh for R-1 in CMA 583/24
Mr. Michael Visuvasam for R-1 in X Obj. No.65/2026
No Appearance for R-2 in the appeal & X Objection

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COMMON JUDGMENT
(Delivered by M.Dhandapani, J.)

Aggrieved by the alleged exorbitant compensation awarded by the Tribunal to the claimant, while the appellant/insurance company had filed the present civil miscellaneous appeal, the injured victim has filed the cross objection seeking enhancement of compensation and also dismissal of the appeal.

2. For brevity, the appellant and the cross objector in the civil miscellaneous appeal and cross objection will be referred to as the 'insurer' and the claimant.

3. The genesis of the claim petition arose from the accident that happened on 15.10.2015 at about 13.00 hours in which the claimant, while riding the motor cycle on the Madapuram-Mayiladuthurai Main Road was hit by the car bearing Regn. No.TN-41-AJ-2201 belonging to the 2nd respondent herein, driven from the opposite side in a rash and negligent manner, which resulted in the claimant sustaining grievous injuries resulting in amputation of the right leg below the knee. The accident being due to the rash and negligent driving of the driver of the car, as alleged by the claimant, the claim petition was filed before the Tribunal seeking compensation.

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4. On the side of the claimant, the claimant examined himself as P.W.1 and marked Exs.P-1 to P-39. On the side of the insurer and owner of the vehicle, neither witnesses were examined nor any documents were marked. On the basis of the oral and documentary evidence, the Tribunal awarded compensation in a sum of Rs.3,68,72,026/= under various heads as hereunder :-

S. No.	Head of Compensation	Amount (Rs.)
1	Partial Permanent Disability	3,63,88,000/=
2	Pain & Sufferings & Mental Agony	50,000/=
3	Bystander Charges	20,000/=
4	Transport Charges	5,000/=
5	Nutrition	5,000/=
6	Medical Expenses	3,99,026/=
7	Loss of Amenities	2,000/=
8	Damages to Clothes	3,000/=
	Total	**3,68,72,026/=**

5. Aggrieved by the said award of compensation as being on the higher side, while the insurer has filed the appeal, the claimant, terming the compensation to be low, has sought for enhancement through the cross objection.

6. Learned counsel appearing for the insurer, while assailed the findings regarding negligence and liability, however, vehemently laid emphasis on the quantum of compensation awarded by the Tribunal and termed the same as not

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only too excessive, but given without proper appreciation of materials as the fixation of the monthly income and addition of future prospects sans merit.

7. It is the submission of the learned counsel that the avocation of the claimant is 'Chemical Engineer' and the amputation of leg of the claimant would not result in the claimant being unemployed and the future employability of the claimant has not been taken into account while fixing the monthly salary.

8. It is the further submission of the learned counsel that the claimant was employed overseas and earning in foreign currency. However, the Tribunal has fixed the loss of monthly income at Rs.1,80,000/- and there is no discussion as to how the said value has been arrived at. Even if the Tribunal had adopted the money value in Indian currency, only one-third of the earning in foreign currency alone could be taken for the purpose of reckoning the monthly loss to the claimant. However, the fixation of the amount over one-third of the monthly earning without there being any discussion on the basis of which it is arrived at renders such fixation perverse and arbitrary.

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9. It is the further submission of the learned counsel that future prospects has been quantified at 50%, which finding is not supported by any materials. There is no finding with regard to the future employability of the claimant and also no averment of the claimant that he was unemployed. It is the further submission of the learned counsel that the accident had taken place in October, 2015, whereas the claimant had been sent out of the services of the employer only in the year 2017, which clearly shows that the claimant was employed for two years. This would clearly show that the claimant was able to discharge his work even after amputation of his right leg and without appreciating the aforesaid fact, the Tribunal has fixed the future prospects, which is erroneous and requires to be interfered with.

10. It is the further submission of the learned counsel that not only the future prospects fixed at 50% is higher as it should have been fixed not more than 40%, but also the adoption of multiplier method for arriving at the loss of earning capacity is erroneous as even after amputation, the claimant had been working for more than two years. It is the further submission of the learned counsel that the extent of partial permanent disability is only to the extent of 70% as assessed by the Medical Board and in such circumstances, the Tribunal ought to have fixed

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the future prospects by converting the percentage of physical disablement to whole body for the purpose of computing loss of future earnings and, therefore, the computation of loss of future earnings is grossly flawed.

11. It is the further submission of the learned counsel that even for future loss of earning capacity, the referential date ought to have been 30.11.2017 as only during the said period, the claimant was relieved from services by the employer and, therefore, the fixation prior to the said date by adopting improper multiplier is wholly erroneous. Further, interest on the compensation ought to have been granted only from 30.11.2017 and not from the date of the claim petition, which also requires to be corrected.

12. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

i) *Oriental Insurance Co. Ltd. – Vs – Deo Patadi & Ors. (2009 ACJ 2359);*

ii) *Chanderi Devi & Anr. – Vs – Jaspal Singh & Ors. (2015 ACJ 1612);*

iii) *Ramla & Ors. – Vs – National Insurance Co. Ltd. (2019 ACJ 559);*

iv) *United India Insurance Co. Ltd. – Vs – Satinder Kaur & Ors. (2020 ACJ 2131);*

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v) *TNSTC (Madurai Division V) – Vs – N.Thinagar (Law Finder Doc. Id No.2588337);*

vi) *Ramesh – Vs – Karan Singh & Anr. (2022 ACJ 2658);*

vii) *Tharunoju Eshwaramma & Ors. – Vs – K.Ram Reddy & Anr. (2025 ACJ 2783); and*

viii) *Raj Kumar – Vs – Ajay Kumar & Anr. (2011 ACJ 1)*

13. Per contra, learned counsel appearing for the claimant submitted that the employment of the claimant and the earnings of the claimant have neither been disputed nor the materials in the form of salary bills, which have been attested by the Indian Embassy, have been disputed. Such being the position, when the monthly salary of the claimant stands established, the Tribunal ought to have taken the full salary while computing the compensation payable towards loss of earnings by converting the foreign currency to Indian rupees, but tragically, without any basis, the Tribunal had deducted one-third of the salary while computing the loss of monthly income, when the claimant had suffered grave injuries resulting in the amputation of right leg. Therefore, it is submitted that this Court should revisit the loss of monthly earnings by taking into account the entire salary, which was received by the claimant and applying the current foreign currency rate, the Tribunal ought to have given higher compensation.

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14. It is the further submission of the learned counsel that the two years gap during which the claimant is alleged to have been serving in the foreign country under the employer has not been proved by the insurer and in the absence of any material to show that the claimant was working, the plea advanced by the insurer cannot be sustained. Further, it is the submission of the learned counsel that the amputation had left the claimant to recoup without any employment and rightly appreciating the injuries and the period of recouping, the Tribunal has granted the compensation from the date of accident, which is perfectly reasonable. Accordingly, the claimant seeks enhancement of compensation by allowing the cross objection.

15. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

i) *Raj Kumar – Vs – Ajay Kumar (2011 (1) SCC 343);*
ii) *Sidram – Vs – United India Insurance Co. Ltd. (2023 (3) SCC 439);*
iii) *Sandeep Khanuja – Vs – Atul Dande (2017 (3) SCC 351);*
iv) *Karthik Subramanian – Vs – Sarath Babu (C.A. Nos.799-800 of 2021);*
v) *Abati Bezbaruah – Vs – Geological Survey of India (2003 (3) SCC 148);*

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vi) *Ramla & Ors. – Vs – National Insurance Co. Ltd. & Ors. (2019 (2) SCC 192); and*

vii) *Seema Bhatti – Vs – Sat Pal Gupta & Ors. (SLP (C) No.28323/2023 – Dated 8.1.2026)*

16. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the parties.

17. The core question that arises for consideration is the manner in which the monthly emoluments of a person who has suffered an accident is to be calculated for the purpose of granting/arriving at the loss of earning payable to the said person.

18. The undisputed facts in the present case are that the claimant was working as Island Operator in an Oil Rig company, viz., Delta International Petroleum Services at Abu Dhabi, United Arab Emirates. The claimant, at the time of the accident, was earning AED 15,536.85. The claimant met with an accident on 15.10.2015 and at the time of accident, the claimant was aged 31 years.

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19. The whole case of the parties now revolve around the fixation of the loss of monthly earning for the purpose of arriving at the loss of earning capacity of the claimant and also the percentage of disability suffered by the claimant, which is quantified by the Medical Board at 70%, which, according to the insurer, if applied to the whole body, would be only 20% and, therefore, based on the said disability, the compensation awarded is either claimed to be excessive or very meagre by the respective parties.

20. Before adverting to the manner in which the monthly loss of earning is to be fixed, it is necessary to look into the manner in which the disability has to be fixed, which alone would form the basis for fixing the loss of monthly earning capacity.

21. In ***Raj Kumar – Vs – Ajay Kumar & Anr. (2011 (1) SCC 343)***, the Apex Court had discussed the manner in which the disability has to be assessed by the Tribunal for deciding the loss of monthly earning capacity of an injured victim. In the said context, the Apex Court held thus :-

> *"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*

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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 ability (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,

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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. 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 percent, 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 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. It may be noted that when compensation is awarded

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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."

22. Therefore, it was imperative for the Tribunal to first assess the nature of permanent disability and the effect it would have on the injured and his future life, including his earning capacity, which were the determinative factors, which had to be borne in mind while arriving at the partial permanent disablement suffered by the claimant.

23. Before venturing to find out the percentage of partial permanent disablement suffered by the victim, which has been fixed at 70% by the Medical Board and accepted by the Tribunal, the aspects which are to be taken into account while fixing the percentage of partial permanent disablement has been discussed threadbare by the Apex Court in the decision in *Sidram case (supra)*, wherein, various decisions on the said aspect have been appreciated by the Apex

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Court, and the relevant portion of the same and the manner of assessment, which is to be made are discussed, are extracted hereunder :-

> *"44. In Arvind Kumar Mishra (supra), the appellant at the time of accident was a final year engineering (Mechanical) degree student in a reputed college. He was a brilliant student and had passed all his semester examinations with distinction. He suffered grievous injuries and remained in a coma for about two months; his studies were disrupted as he was moved to different hospitals for surgeries. For many months, his condition remained serious; his right hand was amputated and vision seriously affected. This Court accepted his claim and held that he was permanently disabled to the extent of 70%. In Mohan Soni v. Ram Avtar Tomar and Others, (2012) 2 SCC 267 (page 272), in a case of injury entailing loss of a leg, this Court held that medical evidence of the extent of disability should not be mechanically scaled down:*
>
> > *"8. On hearing the counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in pegging down the disability of the appellant to 50% with reference to Schedule I of the Workmen's Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss*

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may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

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10. This Court in K. Janardhan case [(2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733], set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In K. Janardhan [(2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] this Court also referred to and relied upon an earlier decision of the Court in Pratap Narain Singh Deo v.

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Srinivas Sabata [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

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13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

14. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of the appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs 3,56,400 and after

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addition of a sum of Rs 30,000 and Rs 15,000 the total amount would be Rs 4,01,400. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today."

45. One more decision, Sandeep Khanuja v. Atul Dande and Another, (2017) 3 SCC 351, too had dealt with the precise aspect of assessing the quantum of permanent disablement. The victim was aged about 30 years, working as a chartered accountant for various institutions for which he was paid professional fees. The injuries suffered by him resulted in severe impairment of movement; as he had problems in climbing stairs, back trouble while sleeping, etc. A rod was implanted in his leg. He suffered 70% permanent disability, and mental and physical agony. This Court enhanced the compensation, observing the proper manner to calculate the extent of disability. This Court held as under:

"13. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant

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case law on the subject in Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] in the following words: (SCC pp. 348-50, paras 8-11)

"Assessment of future loss of earnings due to permanent disability

8. xx xx xx

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

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10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

xx xx xx

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to

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arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."

24. Keeping in mind the manner of appreciation of the avocation with reference to the earning capacity vis-a-vis the disablement suffered by the victim, it could be deciphered, in the present case, the claimant is a Chemical Engineer and was working as Island Operator in an Oil Rig at Abu Dhabi. Consequent upon the accident, the right leg above the knee level was amputated disabling the claimant from performing his work. The Medical Board had assessed the partial permanent disability at 70%. The Tribunal has taken 70% as the partial permanent disability, as assessed by the Medical Board, for computing the compensation, which according to the insurer is higher, as the partial permanent disability, assessed at 70%, if applied to the whole body, would work out only to 20% and, therefore, the partial permanent disability should be fixed at 20%.

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25. The avocation of the claimant was in an Oil Rig as Island Operator in an oil refinery in a foreign country. Necessarily, for performing his duties as an Oil Rig operator, which is a specialised professional job and one which is not available in all places and all countries, specific skill set is required and moreso, it involves operation of machinery and also dealing with inflammatory chemicals and the entire work is in a specialised environment, where high level of agility is required, as any calamitous situation would have catastrophic consequences if agility is hampered and only in such view, the pay packet for such jobs is fixed on the higher side. When unforeseen situations arise, movement at a faster pace to safety is very much required for persons employed like the claimant, and amputation of the leg would definitely hamper the movement. Even, as contended by the insurer, without admitting, for the sake of argument it is considered that the claimant would be able to discharge his work, it would only be in a situation, where his life would always be at peril, as he would be disadvantaged in movement. However, there is no material placed by the insurer to establish that the amputation of the leg would not hinder the nature of work discharged by the claimant.

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26. When the movement of the claimant is wholly hampered thereby restricting his movement on account of amputation, the effect of the disablement would have to be looked at in the manner in which the claimant would be able to discharge his work presently as compared to the past. If such a comparison is made, it would clearly signal that the impairment in the body due to amputation would have severe consequences in the discharge of his duties in employment and resultantly, the fixation of disablement should be proportional to the work discharged by the claimant and not merely on the nature of disablement alone, more particularly keeping in mind the age of the claimant, which was 31 years on the date of the accident.

27. The claimant, being a Island operator, the disablement would definitely have an adverse effect on his employment. In the aforesaid view of things, the assessment of partial permanent disablement made at 70% by the Medical Board has been rightly appreciated by the Tribunal by confirming the said disablement. Though it is the contention of the insurer that the whole body disability should be considered rather than partial permanent disability due to amputation of leg alone for fixing the percentage of disability, the same cannot be accepted as the nature of employment of the claimant has to be considered

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while fixing the percentage of disability, as detailed above, as the disability would have a lasting impact on the employability of the claimant. Therefore, the confirmation of partial permanent disability by the Tribunal, as fixed by the Medical Board cannot be said to be unreasonable, arbitrary or excessive and the contention to the contra deserves to be rejected.

28. The next of the contention relates to the award of compensation for the period of two years from the time of the accident to the termination of the claimant by the employer. It is to be noted that the claimant could definitely hot have continued the discharge of his duties as he was doing prior to the accident which is the reason that his employer had discontinued his services from 23.10.2017 by putting the claimant on notice which was to end on 22.11.2017. It is the stand of the insurer that though the accident had happened during October, 2015 and the claimant was discharged from hospital by 25th October, 2015, the claimant was terminated only on 22.11.2017 which would only show the continued employment of the claimant and, therefore, there would be no loss of monthly earning during the said time.

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29. Though such a contention has been advanced by the insurer, however, the fact remains that no material has been placed before the Tribunal or even before this Court to establish that the claimant was continued in the services of the foreign employer till the date of his termination. The claimant, though had been discharged by 25.10.2015, it is not to be forgotten that his right leg below the knee was amputated and the said amputation would definitely have had a lasting physical and psychological effect on the claimant, moreso, considering the age of the claimant being 31 years on the date of the accident. The age of the claimant was ripe not only for earning, but also for leading a wholesome marital life, that too with a good earning potential in the form of a foreign employment, but the accident had thwarted all the dreams that the claimant would have had for the future and had put him in a shell from which the claimant had to come out, which would definitely have taken a lot of time and psychological recuperation, not only on himself but also on the entire family. Definitely, the claimant would not have been in a position to join his job as the psychological trauma would have taken some toll on the mental faculties of the claimant. Therefore, the contention that the two years between the date of the accident and the termination of the claimant by the foreign employer ought to be taken as period of employment cannot be countenanced unless the insurer is able to

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produce any material to establish that the physical derailment did not cause monetary derailment in the life of the claimant, which the insurer has miserably failed to place. Therefore, the approach of the Tribunal in fixing the compensation without making any deduction for the said period between the date of accident and the termination of the claimant from service by the foreign employer cannot be said to be perverse or unreasonable and the said contention deserves to be rejected.

30. The last of the contention relates to the quantum of compensation awarded, which the insurer claims is excessive but of which the claimant seeks enhancement as the entire monthly emoluments have not been taken into consideration.

31. Decisions as to the manner in which the Courts have fixed the compensation on foreign employment have been placed before this Court, but in none of the said decisions, there is any ratio laid down to show as to the manner in which the fixation is to be made. Therefore, keeping in mind the manner in which the Apex Court as also the other courts have approached the fixing of

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monthly emoluments in foreign countries, this court would proceed to analyse whether the fixation of monthly emoluments requires reconsideration.

32. The claimant was earning a monthly emolument of AED15,536 and to prove the same Exs.P-25 and P-35, the salary certificates issued by Delta International Petroleum Service have been marked. A perusal of the above certificates that there is no breakup of the salary, but it is mentioned that the claimant was a permanent employee and was earning a consolidated salary of AED 15,536 per month. On the date when the claimant met with the accident, the claimant was earning the above sum and the conversion rate of One Abu Dhabi Dirham in Indian rupees was Rs.17.64259. The claimant, in the cross objection has filed the conversion rate of One Abu Dhabi Dirham in Indian rupees during the various months of the year 2023 and pleads that the value of One Dhiram in Indian rupees on the date of the award should be taken as the monthly earning so as to compute compensation under the head loss of earning.

33. The Tribunal has fixed the loss of monthly earning at Rs.1,80,000/-, but the basis on which the said amount has been fixed as monthly loss of earning has not been detailed by the Tribunal. Ex.P-25, the salary certificate issued by the

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employer in September, 2017 certifies that the claimant was paid consolidated salary and Ex.P-35, another salary certificate issued by the very same employer in March, 2021 also states that AED 15,536 has been paid as consolidated salary between 2015 and 2017. However, curiously, vide a letter dated 22.10.2017, the employer had terminated the employment of the claimant from 22.11.2017. Therefore, Ex.P-35, the salary certificate issued by the employer certifying the receipt of salary by the claimant for the period from 2015 to 2017 cannot be accepted.

34. Has really the claimant been in the employment of the employer between the date of discharge on 23.10.2015 and his subsequent termination from 22.11.2017 is a question to which there is no answer either by the claimant or the insurer. Though this Court, in the earlier portion of the order has held that the insurer has not placed any material to show that the claimant was under employment with the foreign employer till 22.11.2017, equally there is no material to show that the claimant was not employed between September, 2015 and 22.11.2017 with any firm, much less his foreign employer. Though this Court has shown its disinclination to accept Ex.P-35, the salary certificate issued by the

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claimant's foreign employer dated 14.3.2021, however, if reliance is to be placed on the same, then the stand of the insurer would get strengthened.

35. In the aforesaid backdrop, Ex.P-25 the salary certificate issued by the employer to the claimant does not provide for the breakup of the salary earned by the claimant; rather it reveals the consolidated salary that has been paid to the claimant. The employer is a foreign employer and the salary certificate merely says that the salary is a consolidated salary without giving any breakup of the salary. When the salary is shown to be a consolidated salary, then necessarily this Court has to venture to arrive at a neutral ground to fix the monthly emoluments of the claimant, as the living conditions in the foreign country will have to be taken into consideration which will form the basis to ascertain the expenses which would be incurred by the claimant had he continued in his employment, which would then result in the claimant not saving all the amount. Therefore, a via-media approach has to be adopted in which the expenses incurred by the claimant for his living over at the foreign country would have to be excluded for the purpose of fixing the monthly earnings, as his termination from his employment would result in the claimant staying in India in which

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situation, the amount spent in the foreign country would not be relatable to the expenses incurred in the Indian context.

36. Therefore, in the absence of any material either for or against the claimant, which has been placed before the Tribunal to establish the employment of the claimant between the date of the accident and his consequential termination on 22.11.2017, this Court has to resort to some neutral ground to fix the monthly earnings of the claimant for the purpose of computing the compensation, which alone would render substantial justice to either parties.

37. The claimant has placed the conversion rate of Abu Dhabi Dhiram to Indian rupees for the year 2023. However, the Tribunal has fixed the amount of Rs.1,80,000/- as the loss of monthly earning to the claimant. The above fixation is not on any conversion rate between Abu Dhabi Dhiram and Indian rupees; rather the said fixation is based on an empirical understanding of the expenses that the claimant would have had to make had he been living in Abu Dhabi compared to his living in India and the Tribunal, while considering the above, has deducted the boarding, lodging, conveyance, travel and other expenses which would be incurred by the claimant if he had been staying in Abu Dhabi. Towards

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the living expenses of the claimant in the foreign country, which expenses would not be incurable by the claimant on his living in India, the Tribunal has deducted about one-third of the amount as the living expenses of the claimant had he stayed in Abu Dhabi. Applying the conversion rate of One Abu Dhabi Dhiram to Indian Rupees on the date of the accident, the Tribunal has rounded off the amount to Rs.1,80,000/- as the loss of monthly earning to the claimant on the following basis AED 15536/3 = 5179 :: AED 10358 * Rs.17.64 = Rs.182715). Rounding off Rs.1,82,715/= to the nearest thousand, the Tribunal has fixed the monthly loss of earning to the claimant at Rs.1,80,000/=. Though the methodology adopted by the Tribunal cannot be said to be foolproof, however, equally it cannot be said that it is not without any substance.

38. While the order of the Tribunal does not reflect the manner in which the monthly loss of earning to the claimant has been fixed, but the calculation aforesaid would reflect the manner in which the Tribunal would have approached the issue, which would show that the fixation of loss of monthly earning at Rs.1,80,000/- could be arrived at only in this fashion and this manner of fixation would render substantial justice to both the parties. Definitely, the Tribunal ought to have discussed the manner in which the fixation has been made, but the

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failure of the Tribunal to expressly spell out the above alone cannot form the basis to reject the fixation made by the Tribunal. Therefore, this Court finds that the fixation of loss of monthly earnings arrived at by the Tribunal at Rs.1,80,000/- is just and reasonable and the same does not warrant any interference.

39. Added to this, the Tribunal has given future prospects at 50% of the monthly earnings, which is in line with the decision of the Constitution Bench in ***National Insurance Co. Ltd. – Vs - Pranay Sethi & Ors. (2017 (16) SCC 680)***, wherein the ratio relating to the percentage in which the future prospects have to be fixed has been laid down. Though it is contended by the learned counsel for the insurer that future prospects should be fixed only at 40%, however, the same will go against the ratio laid down by the Constitution Bench in *Pranay Sethi case (supra)* and this Court cannot dilute the said decision merely because the compensation which is to be paid to the claimant is quite high. When the claimant has lost his lucrative employment as also his yet to blossom life, no amount of compensation can fulfil the above needs and cravings of the claimant and any sum which is just and reasonable, no matter how high it is to the insurer, has to be paid as monetary compensation, though such amount cannot offset the loss suffered by the claimant. Therefore, award of future prospects at 50%

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cannot be said to be erroneous or arbitrary and the said contention deserves to be rejected.

40. As stated above, though the appeal has been filed seeking reduction of compensation awarded while the cross objection has been filed seeking enhancement of the compensation awarded, however, in view of the discussion made above, there being a flaw on both sides with materials not substantive enough to lean in favour of any one of the parties to the *lis*, the amount of compensation awarded towards loss of earnings by the Tribunal under the head Partial Permanent Disability does not require any interference at the hands of this court. Accordingly, the compensation awarded under the said head at Rs.3,63,88,000/= (Rupees Three Crores Sixty Three Lakhs Eighty Eight Thousand only) stands confirmed.

41. The amount awarded by the Tribunal under the other heads are just a miniscule amount and by no stretch they could be held to be excessive and no interference is warranted with the said compensation awarded. Similarly, the interest awarded at 7.5% per annum on the aforesaid compensation awarded

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from the date of claim petition till the date of deposit/realisation stands confirmed.

42. For the reasons aforesaid, no interference is warranted with the order and the consequential award passed by the Tribunal in MCOP No.165/2016. Accordingly, the civil miscellaneous appeal and the cross objection fails and they are, therefore, dismissed. The insurer is directed to deposit the compensation awarded by the Tribunal along with interests and costs to the credit of the claim petition, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this appeal & cross objection.

43. After dictating the order dismissing the appeal as well as the cross objection, learned counsel appearing for the insurer in the appeal sought the leave of this Court to file appeal against the aforesaid before the Supreme Court. Normally only when substantial questions of law arises for consideration, which

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have been answered in the judgment, would the court consider granting leave to the Supreme Court to prefer appeal. However, in the present case, no substantial questions of law have been raised, but the issue relates only to the quantum of compensation which has been determined for partial permanent disability, which is based on facts and materials available on record and in the absence of any substantial questions of law, the leave sought for by the appellant/insurer does not deserve to be entertained. Accordingly, the said request is rejected.

(M.D.I.J.) (A.D.M.C.J.)

28.10.2026

Index : Yes / No

GLN

To

The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Kancheepuram District @ Chengalpet

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M.DHANDAPANI, J.
AND
DR. A.D.MARIA CLETE, J.

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