



CMA No.1612 of 2024 & Cross Obj. No.48 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20 / 01 / 2025

JUDGMENT DELIVERED ON: 08 / 04 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.1612 OF 2024

AND

CMP.NO.13332 OF 2024 IN CMA NO.1612 OF 2024

AND

CROSS OBJECTION NO.48 OF 2024

CMA NO.1612 OF 2024

The Manager
Shriram General Insurance Company Ltd.,
No.2-A, Mookambika Complex,
2nd Floor, Lady Desika Road,
Mylapore, Chennai – 600 004.

... Appellant /
2nd Respondent

Vs.

1.A.Thangaraj
Represented by his Wife and
Next Friend - T.Sindhuja
(Since injured A.Thangaraj
sustained Right Hemiplegia)
No.70, Anithangal, Kappalambadi,
Villupuram – 604 201.

... 1st Respondent /
Petitioner

2.S.Mahalakshmi
W/o.Srinivasa Babu

... 2nd Respondent /
1st Respondent



CMA No.1612 of 2024 & Cross Obj. No.48 of 2024

No.67, Parvathi Nagar,
Attibele Village & Post,
Anekal Taluk, Bangalore – 562 107.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated September 25, 2023 made in M.C.O.P.No.2657 of 2019 on the file of the Motor Accidents Claims Tribunal / II Court of Small Causes, Chennai.

For Appellant : Ms.R.Sree Vidhya

For Respondent-1 : Mr.K.Balaji

For Respondent-2 : No appearance

CROSS OBJ. NO.48 OF 2024

1.A.Thangaraj ... Cross Objector
Represented by his Wife and / Petitioner
Next Friend - T.Sindhuja
(Since injured A.Thangaraj
sustained Right Hemiplegia)
No.70, Anithangal, Kappalambadi,
Villupuram – 604 201.

Vs.

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Attibele Village & Post,
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2.The Manager
Shriram General Insurance Company Ltd.,
No.2-A, Mookambika Complex,
2nd Floor, Lady Desika Road,
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... Respondents /

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Respondents

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PRAYER: Cross Objection filed under Order XXXX1 Rule 22 of the Code of Civil Procedure, 1908, praying to enhance the compensation awarded vide Award dated September 25, 2023 made in M.C.O.P.No.2657 of 2019 on the file of the Motor Accident Claims Tribunal / II Court of Small Causes, Chennai.

For Cross Objector: Mr.K.Balaji

For Respondent-1 : No appearance

For Respondent-2 : Mrs.R.Sree Vidhya

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated September 25, 2023 passed by the 'Motor Accidents Claims Tribunal / II Judge, Court of Small Causes, Chennai' ('Tribunal' for short) in M.C.O.P.No.2657 of 2019, the second respondent therein / Insurance company has preferred CMA.No.1612 of 2024 praying to set aside the same, while the petitioner / claimant therein has preferred Cross Objection No.48 of 2024 praying to enhance the compensation. This Common Judgment will now decide both, the Civil Miscellaneous Appeal and the Cross Objection.

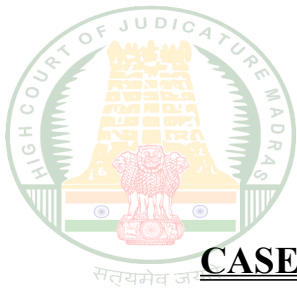


2. For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Accident Claims Original Petition.

3. To be noted, petitioner / claimant is represented by his wife and next friend -T.Sindhuja, since he suffers from right Hemiplegia.

CASE OF THE PETITIONER

4. On January 15, 2019, at about 23.00 hours, the petitioner / A.Thangaraj was riding his two-wheeler bearing Registration No.TN-16-Z-4074 on G.S.T. Road from Chennai towards Chengalpattu. While nearing Hindustan Petrol Bunk at Kattankulathur, a Car bearing Registration No. KA-51-D-1324, driven in a rash and negligent manner endangering public safety, collided with his two-wheeler, causing him grievous injuries. The accident occurred solely due to the negligence of the driver of the Car. According to the petitioner, the first respondent as owner of the said Car and the second respondent as its insurer, are jointly, severally, vicariously, and statutorily liable to compensate the petitioner with interest and costs. Accordingly, the petitioner filed a claim petition claiming compensation of Rs.42,00,000/- from the respondents.



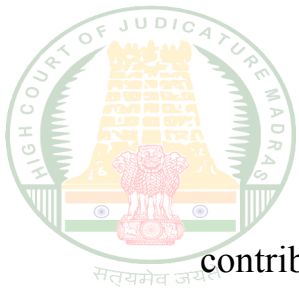
CASE OF THE FIRST RESPONDENT

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5. Despite being served with notice, the first respondent failed to appear before the Tribunal and was set *ex parte* on December 7, 2021.

CASE OF THE SECOND RESPONDENT

6. In the counter, the second respondent denied all allegations in the petition except those specifically admitted. The 2nd respondent stated that the petitioner must prove the existence of a valid insurance policy, registration certificate (R.C.), driving license, badge and other relevant documents for the first respondent's vehicle. The policy issued by the second respondent is subject to specific terms, conditions, and exclusions. Any violation of these terms or the Motor Vehicles Act absolves the second respondent's liability, making the first respondent solely responsible. The petitioner must also prove beyond reasonable doubt that the injuries were sustained due to the alleged road traffic accident. The second respondent contended that the accident was not due to the negligence of the Car driver but rather due to the petitioner's failure to observe traffic rules. Furthermore, the petitioner sustained head injuries as he was not wearing a helmet, which should be considered under

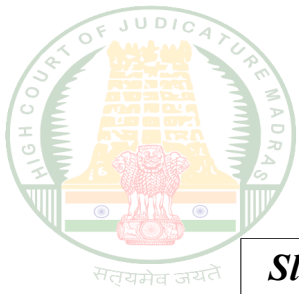


contributory negligence. The claim made by the petitioner is deemed to be exaggerated and arbitrary. The 2nd respondent disputed the petitioner's claims regarding pain, suffering, permanent disability and loss of earning capacity. The petitioner must provide strict proof of age, occupation and income. Stating so, the second respondent sought to dismiss the petition.

TRIBUNAL

7. During enquiry, the wife of the petitioner / Sindhuja was examined as P.W.1 and an ocular witness, Mr.G.Ravichandran, and one Shanmugaraj were examined as P.W.2 and P.W.3 respectively and Ex-P.1 to Ex-P.19 were marked. On the side of the second respondent, one Anbin Vinnarasi was examined as R.W.1 and Ex-R.1 to Ex-R.3 were marked. Ex-C.1 - Disability Certificate of the petitioner was marked as a Court document.

8. The Tribunal, after hearing both sides and considering the evidence available on record, concluded that the accident occurred due to the rash and negligent driving of the first respondent's driver to an extent of 90% and the petitioner to an extent of 10% and accordingly, awarded compensation as hereunder:

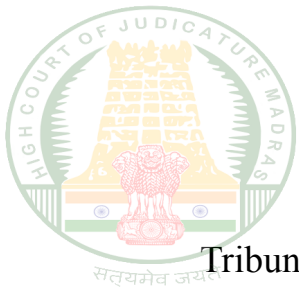


<i>Sl. No.</i>	<i>Heads</i>	<i>Amount</i>
1	Disability	Rs.19,99,200.00
2	Pain and Sufferings	Rs.1,00,000.00
3	Loss of earning during treatment	Rs.30,000.00
4	Medical expenses	Rs.66,276.00
5	Loss of Amenities	Rs.1,00,000.00
6	Attender Charges	Rs.10,000.00
7	Transportation Charges	Rs.10,000.00
8	Extra Nourishment	Rs.10,000.00
	Sub - Total	Rs.23,25,476.00
	Less 10% contributory negligence committed by the petitioner	Rs.2,32,547.00
	Total	Rs.20,92,929.00

9. Questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has filed CMA No.1612 of 2024. Seeking enhancement of compensation awarded by the Tribunal, the petitioner represented by his Wife and Next Friend - T.Sindhuja has filed Cross Objection No.48 of 2024.

ARGUMENTS

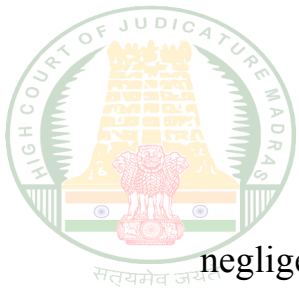
10. Mrs.R.Sree Vidhya, learned counsel for the appellant in CMA No.1612 of 2024/Insurance Company, argued that the award passed by the Tribunal is contrary to law, not supported by the weight of evidence, and against the probabilities of the case. She contended that the



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Tribunal erred in holding the Insurance Company liable for compensation despite the fact that the accident was caused solely due to the rash and negligent riding of the two-wheeler by the petitioner. The petitioner negligently hit the rear side of the insured car, leading to the petitioner's fall and injuries. The Tribunal failed to consider the contributory negligence of the petitioner, who was not wearing a helmet, thereby suffering severe injuries. It was further argued that the Tribunal wrongly opted for the multiplier method for loss of earning capacity without any evidence of permanent disability or impact on the petitioner's income, as he continues his occupation. The compensation awarded under various heads, including pain and suffering and loss of amenities, are excessive, arbitrary, and not justified by the facts and circumstances. The Tribunal has awarded inordinately high compensation without considering the degree of negligence involved, making the award unsustainable. Therefore, Mrs.R.Sree Vidhya prayed to allow the Civil Miscellaneous Appeal, dismiss the Cross Objection, and set aside the Award.

11. *Per contra*, Mr.K.Balaji, learned counsel for the first respondent in CMA No.1612 of 2024/Cross Objector/petitioner, argued that while the Tribunal has correctly held that the accident was due to the



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negligence of the first respondent's driver, it erred in awarding an inadequate quantum of compensation to the cross objector / petitioner. The Tribunal failed to properly consider the oral and documentary evidence placed before it while determining the compensation amount. The Tribunal incorrectly fixed the monthly notional income of the petitioner at Rs.10,000/- despite clear evidence that at the time of the accident, i.e., on January 15, 2019, the petitioner was employed as a Supervisor in a private company, thereby earning a sum of Rs.15,000/- per month. Further, the Tribunal erred in assessing the loss of earning capacity at 70%, even though the petitioner suffers from Right Hemiplegia, which has rendered him incapable of performing any work. Given the severity of the disability and Ex-C.1 – Disability Certificate issued by the Medical Board, the loss of earning capacity should have been fixed at 100% instead of 70%. The compensation awarded under the heads of pain and suffering, loss of amenities, attendant charges, and extra nourishment are grossly inadequate and needs to be enhanced. Furthermore, the Tribunal erred in attributing 10% contributory negligence to the petitioner despite holding that the accident occurred solely due to the rash and negligent driving of the car driver. The Tribunal has failed to award compensation in an adequate



manner, disregarding well-established precedents set by this Court. In light of the above circumstances, Mr. K. Balaji prayed to dismiss the Civil Miscellaneous Appeal, allow the cross objection, and enhance the compensation.

DISCUSSION

12. This Court has considered the pleadings, arguments and evidence presented by both parties.

13. In this case, the First Information Report (FIR) was registered after a delay of two days. But, the delay has been explained in the FIR itself, as being due to the petitioner's / injured's unconscious state following the accident. Given the severity of the injuries, the delay is deemed to be reasonable and does not cast any doubt on the genuineness of the claim. The insurance company has failed to examine the first respondent (owner of the offending vehicle) to disprove the allegations of negligence. Ex-P.1 – FIR coupled with the evidence of P.W.2 (ocular witness) would show that the accident occurred due to the rash and negligence of the driver of the first respondent's car. In the absence of any rebuttal evidence, this Court relies on the available records and



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submissions to conclude that the accident occurred due to the negligence on the part of the driver of the first respondent's car.

14. The petitioner suffered a fissure fracture in the parietal region [Left Temporal Lobe burst with SAH], multiple fractures, lacerations, and abrasions all over the body. The medical records, including Ex-C.1, Ex-P.3, Ex-P.4, Ex-P.6, and Ex-P.7, confirm these injuries and the treatments undergone, such as Parietal Titanium Mesh Cranioplasty. The Medical Board assessed the petitioner's disability at 70% due to post-traumatic sequelae of head injury, which significantly affects his ability to work and perform daily activities independently. The injuries have a direct impact on his earning capacity. In these circumstances, the Tribunal was right in adopting the multiplier method.

15. The petitioner was born on March 10, 1991 (as per Ex-P.12 – Driving Licence). At the time of accident, petitioner was 27 years old. The petitioner has not produced any documentary evidence to substantiate his claim that he was earning Rs.15,000/- per month as a Supervisor in a private company. In the absence of proof, the Tribunal



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considered a notional income of Rs.10,000/- per month. However, considering the year of accident viz 2014 and the cost of living prevailing in the year 2014, the notional income of Rs.10,000/- appears to be on the lower side, and hence, this Court is inclined to enhance it to Rs.14,000/- per month. As per the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi***, reported in ***(2017) 16 SCC 680***, future prospect increase of 40% is applicable. Thus, the total monthly income for calculating the loss of earning capacity is Rs.14,000/- + (40% of Rs.14,000/-) = Rs.19,600/-, making the annual income Rs.19,600/- $\times$ 12 = Rs.2,35,200/-. Considering the age of the petitioner, a multiplier of 17 is applied. Therefore, the total loss of earning capacity is Rs.2,35,200 $\times$ 17 = Rs.39,98,400/-. As the functional disability is assessed at 100% due to the severity of injuries, this entire amount is awarded.

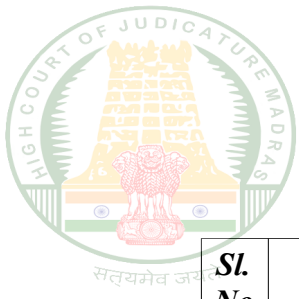
16. As stated *supra*, the petitioner suffered a fissure fracture in the parietal region, multiple fractures, lacerations, and abrasions all over the body, and the same is supported by medical evidence. Ex-C.1 assesses his disability at 70% due to post-traumatic sequelae of head



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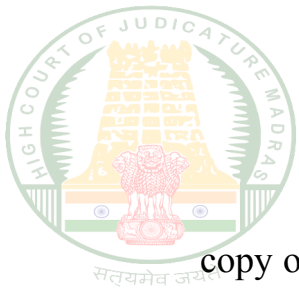
injury, which significantly affects his ability to work and perform daily activities independently. Given the impact on his mobility, functional capabilities, and overall health, it is evident that he requires continuous assistance, frequent medical transportation, and specialized nutrition for recovery. Therefore, considering the long-term dependency on external support and the increased medical needs, enhancement of compensation under the heads of Attender Charges to Rs.60,000/-, Transportation Charges to Rs.20,000/-, and Extra Nourishment to Rs.20,000/- are warranted to ensure just compensation for the sufferings and additional expenses incurred due to the accident.

17. That apart, the Tribunal was right in deducting 10% towards contributory negligence for not wearing a helmet and other factors. However, the Tribunal is not justified in awarding compensation under the head 'Loss of earning during treatment' simultaneously while awarding compensation under the head of disability. The same is liable to be rejected. Accordingly, this Court modifies the compensation awarded by the Tribunal. The compensation, as modified by this Court, is tabulated hereunder:



<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount now quantified by this Court</i>	<i>Status</i>
1	Disability	Rs.19,99,200.00	Rs.39,98,400.00	Enhanced
2	Pain and Sufferings	Rs.1,00,000.00	Rs.1,00,000.00	Confirmed
3	Loss of earning during treatment	Rs.30,000.00	--	Rejected
4	Medical expenses	Rs.66,276.00	Rs.66,276.00	Confirmed
5	Loss of Amenities	Rs.1,00,000.00	Rs.1,00,000.00	Confirmed
6	Attender Charges	Rs.10,000.00	Rs.60,000.00	Enhanced
7	Transportation Charges	Rs.10,000.00	Rs.20,000.00	Enhanced
8	Extra Nourishment	Rs.10,000.00	Rs.20,000.00	Enhanced
	Total	Rs.23,25,476.00	Rs.43,64,676.00	Enhanced
	Less 10% contributory negligence committed by the petitioner	Rs.2,32,547.00	Rs.4,36,467.60	Enhanced
	Total	Rs.20,92,929.00	Rs.39,28,208.40	Enhanced
	Rounded Off	Rs.20,92,929.00	Rs.39,28,200.00	Enhanced

18. The appellant in CMA.No.1612 of 2024 / insurance company is directed to deposit the enhanced compensation of **Rs.39,28,200/- (Rupees Thirty Nine Lakhs Twenty Eight Thousand Two Hundred only)** along with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit, less the amount, if any, already deposited, to the credit of M.C.O.P.No.2657 of 2019 on the file of Motor Accidents Claims Tribunal / II Court of Small Causes, Chennai, within a period of eight (8) weeks from the date of receipt of a



CMA No.1612 of 2024 & Cross Obj. No.48 of 2024

copy of this Judgment. On such deposit being made, the Cross Objector is entitled to withdraw the same along with the interest, less the amount, if any, already withdrawn, by filing proper application. Further, the Cross Objector is entitled to proportionate costs and Advocate fees as per Rules. The Cross Objector is directed to pay necessary Court fee, if any, for the enhanced compensation.

CONCLUSION

19. In fine, the appeal filed by the insurance company in CMA No.1612 of 2024 is dismissed with no costs, and the cross-objection in Cross Objection No.48 of 2024 is partly allowed with proportionate costs, by awarding an enhanced compensation of **Rs.39,28,200/-** as detailed above. Consequently, connected civil miscellaneous petition is closed.

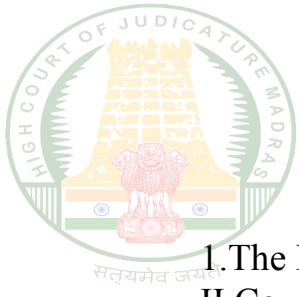
[J.N.B., J.]

[R.S.V., J.]

08 / 04 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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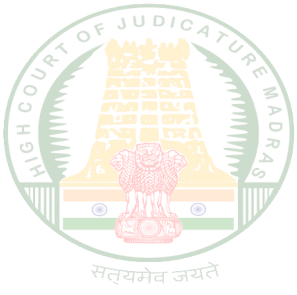


CMA No.1612 of 2024 & Cross Obj. No.48 of 2024

1.The Motor Accidents Claims Tribunal
II Court of Small Causes, Chennai.

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2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.



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CMA No.1612 of 2024 & Cross Obj. No.48 of 2024

J.NISHA BANU, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN

CMA NO.1612 OF 2024
AND
CROSS OBJECTION NO.48 OF 2024

08 /04/ 2025

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