IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

CMA.NO.1366 OF 2023

New India Assurance Co. Ltd.,
The New India Bombay Mutual Building,
6th Floor, 232, NSC Bose Road, Chennai – 600 001.

... Appellant /
3rd Respondent

Vs.

1. K.Dinesh,
S/o. Kumar No.67, S2, Sai Baba Enclove,
Muhammed Usain Colony 5th Cross Street,
Kolathur, Chennai – 600 099.

... 1st Respondent /
Petitioner

2. R. Settu, S/o. Ramasamy,
No.22/17, Chengam Road,
1st street, Thiruvannamalai,
PIN – 606 601.

... 2nd Respondent /
1st Respondent

3. Rajadurai, S/o. Muniyandi,
No.41/89, Shanmugam Street,
Puthur, Vellore – 632 401.

... 3rd Respondent /
2nd Respondent

(2nd & 3rd Respondents herein were set exparte before the lower Court)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated 28.11.2022 made in M.C.O.P.No.1195 of 2019 on the file of the Motor Accidents Claims Tribunal, (II Judge, Court of Small Causes), Chennai.

For Appellant	:	Mr.C.Ramesh Babu
For R1	:	Mr.N.Gokula Rao
For R2 & R3	:	Exparte

JUDGMENT

(Judgment of the Court was delivered by Dr.A.D.MARIA CLETE, J.)

Heard.

2. This Civil Miscellaneous Appeal (CMA No. 1366 of 2023) has been filed by the appellant, New India Assurance Co. Ltd., challenging the award passed by the Motor Accidents Claims Tribunal, Chennai, in MCOP No. 1195 of 2019 dated 28.11.2022, granting a compensation of Rs. 1,85,48,200/- to the first respondent/claimant, K. Dinesh, for injuries sustained in a motor vehicle accident on 02.02.2019.

3. On 02.02.2019, at around 10:05 a.m., the first respondent, K. Dinesh, was riding his Honda Activa scooter towards a temple when he

was hit by a tanker lorry bearing Registration No. TN-25-AA-2812. The accident occurred on Madhavaram High Road, and as a result, the claimant suffered severe injuries, multiple fractures, and permanent disability. The Tanker Lorry, owned by the second respondent, was insured with the New India Assurance Co. Ltd. The Motor Accidents Claims Tribunal (MCOP No. 1195 of 2019), after considering the evidence, awarded Rs. 1,85,48,200/- as compensation, holding the insurer liable to pay the amount.

4. The appellant/insurer contended that the Tribunal erred in fixing the liability on the insurance company, despite the alleged contributory negligence of the claimant. The Tribunal wrongly adopted the multiplier method for assessing compensation for permanent disability. The Tribunal incorrectly calculated loss of earning capacity at 69% without proper evidence. The claimant continued his employment post-accident, and the Tribunal failed to deduct allowances and income tax from his salary while computing compensation. The Tribunal awarded an excessive amount of Rs. 1,75,12,200/- under the disability head, which was not in accordance with the principles laid down in *Raj Kumar v. Ajay Kumar (2011 ACJ 1)*.

5. The Tribunal, based on the FIR (Ex.P5) and and the testimony of PW1 (the claimant, found that the accident occurred due to the rash and

negligent driving of the tanker lorry driver, who failed to signal before making a turn, resulting in grievous injuries to the claimant. The Insurance Company (3rd respondent) attempted to shift liability onto the claimant, arguing that he was also negligent in driving his two-wheeler. However, no oral or documentary evidence was produced by the Insurance Company to substantiate its defense of contributory negligence and so the Tribunal conclusively held that the accident occurred due to the rash and negligent driving of the tanker lorry driver.

6. The claimant contended that he was employed as a Senior Manager (IT) at HCL Technologies and was earning Rs. 84,541/- per month at the time of the accident. To substantiate this, he produced the following documents: Ex. P6 – Salary slip for November 2019 (Rs. 83,546/- net salary) Ex. P7 – Salary slip for December 2019 (Rs. 1,38,069/- net salary) Ex. P8 – Salary slip for January 2020 (Rs. 90,169/- net salary) Ex. P9 – Employee ID card Ex. P10 – Aadhaar card. The Tribunal relied on the available salary slips and fixed the average monthly salary at Rs. 94,000/-

7. The claimant suffered severe injuries in the accident, including multiple fractures, wrist dislocation, and permanent disability in his left

upper limb. The Tribunal primarily relied on Ex. C1 (Disability Certificate), which was issued by the Medical Board after assessing the claimant. The certificate confirmed a permanent disability of 69% due to post-traumatic sequelae in the left upper limb. The Insurance Company argued that the 69% disability was assessed only for the left upper limb and not for the whole body. It contended that the Tribunal should not apply the multiplier method for calculating loss of earning capacity, as the claimant was still employed. The insurer relied on the Supreme Court's ruling in Raj Kumar v. Ajay Kumar (2010 (2) TNMAC 581 (SC)), which mandates that only functional disability affecting earning capacity should be considered. However, the Tribunal rejected these arguments, stating that the claimant was working in IT and relied heavily on his hand for typing and computer-related tasks. The injury directly impacted his ability to perform his job efficiently, thereby reducing his earning capacity. Since the Medical Board's report was unchallenged, the 69% disability assessment was accepted as a reflection of functional disability. The insurer's contentions lack merit, as the Tribunal correctly applied legal principles and assessed the compensation based on evidence. The Tribunal's award is legally sound and does not warrant interference.

8. The Civil Miscellaneous Appeal is dismissed, confirming the award of Rs.1,85,48,200/- dated 28.11.2022 passed by the Motor Accidents Claims Tribunal, Chennai, in MCOP No. 1195 of 2019. The appellant / Insurance Company is directed to deposit the entire award anount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, if already not deposited to the credit of M.C.O.P.No.1195 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 copy of this Judgment. On such deposit being made, the claimant is entitled to withdraw the same by filing proper application. No costs.

[R.S.K., J.] [A.D.M.C., J.]
20.02.2025

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

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

R.SURESH KUMAR

AND

DR. A.D.MARIA CLETE

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