



CMA NO.2915 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 27 / 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.2915 OF 2024ANDCMP NO.24345 OF 2024

The Manager,
Magma HDI General Insurance Company Limited,
Office at Navins's Presidium,
3rd floor, N.M.Road,
New No.17/19, Old No.103 'B' Block,
3A, Nelson Manickkam Road,
Chennai - 600 029.
Now Office at: Grace Building, first floor,
No.25/3, MC Niholoas Road,
Chennai - 600 031.

... Appellant /
2nd Respondent

Vs.

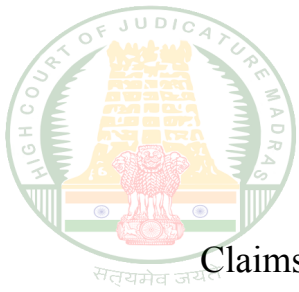
1. A.Rajkannu

... 1st Respondent /
Petitioner

2. D.Devasena

... 2nd Respondent /
1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated August 29, 2023 made in M.C.O.P.No.681 of 2020 on the file of the Motor Accidents



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Claims Tribunal / II Court of Small Causes, Chennai, and to dismiss the claim petition entirely as against the appellant herein.

For Appellant : Mr.B.Murugavel
For Respondent 1 : M/s. K.R.Santhakumari
Respondent 2 : Notice dispensed with by this Order

J U D G M E N T

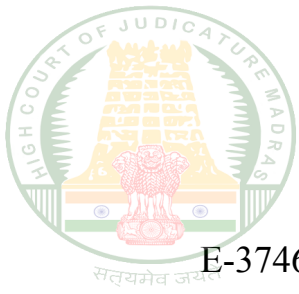
R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated August 29, 2023 passed in M.C.O.P.No.681 of 2020 on the file of the 'Motor Accidents Claims Tribunal / II Court of Small Causes, Chennai' ['Tribunal' for short], the second respondent therein / Insurance Company has preferred this Civil Miscellaneous Appeal.

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

Petitioner's case

3. The case of the petitioner is that on January 27, 2020 at about 03.00 p.m., he was riding his Motorcycle bearing Registration No.TN-14-



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E-3746 on Velachery - Tambaram Main Road, near Santhosapuram Mental Hospital Compound in East to West direction. When he attempted to stop his vehicle, the driver of the Tata Ace bearing Registration No.TN-11-AE-8116, which was being driven in the same direction, collided with the petitioner's vehicle, due to which, he sustained grievous injuries in both his legs and he was admitted in Cosh Private Hospital, East Tambaram. The accident occurred only due to the rash and negligent driving of the first respondent's driver. At the time of the accident, the first respondent's vehicle was duly insured with the second respondent. Hence, the petitioner filed the claim petition before the Tribunal seeking compensation of Rs.49,00,000/- from the respondents.

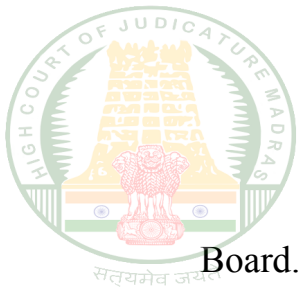
First Respondent's case

4. The 1st respondent did not chose to appear before the Tribunal. He was called absent and set *ex-parte* on March 16, 2021.

Second Respondent's case

5. The 2nd respondent – Insurance Company filed counter denying the manner of the accident. It was stated in the counter that the petitioner is put to strict medical proof of his disability certificate issued by the Medical

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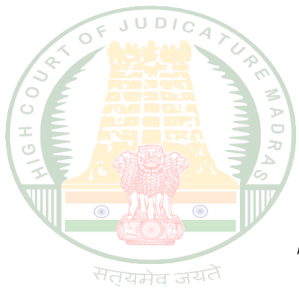


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Board. Further, it was stated that the age, occupation and income mentioned in the claim petition are false. Since the petitioner claims Rs.60,000/- as his salary, he has to produce income tax returns as proof. It was further stated that the petitioner is put to strict proof regarding the validity of the driving license of the driver of TATA Ace bearing registration No. TN-11-AE-8116 and that of the petitioner as rider of motorcycle bearing registration No. TN-14-E-3746. The insurance policy, fitness certificate, permit badge as applicable at the time of the accident ought to have been produced. The compensation claimed by the petitioner is highly speculative, exaggerated and excessive and without any legal or factual basis. Therefore the 2nd respondent contended that he has no liability to pay compensation to the petitioner. Accordingly, he prayed to dismiss the claim petition.

Tribunal:

6. In order to prove his case, the petitioner examined himself as P.W.1 and marked Ex-P.1 to Ex-P.14 marked. No document or oral evidence was adduced on the side of the second respondent. Disability certificate issued by the Medical Board was marked as Ex-C.1.



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7. The Tribunal after hearing both sides and considering the evidence available on record, by relying on Ex.P2 – First Information Report (FIR), Ex-P.3 - Rough Sketch, Ex-P.4 – Motor Vehicle Inspection Report [M.V.I. Report] and Ex-P.5 - Final Report, came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent's driver. As regards the disability, based on Ex-C.1, the Tribunal concluded that the petitioner suffered 45% permanent disability. Further concluded that the petitioner suffers from locomotor disability due to bilateral fracture of both leg bones and hence he would not be able to carry out his work easily, and accordingly, the Tribunal adopted multiplier method. Though the petitioner stated that he was running an ice cream and cool bar business, he failed to prove his case by adducing relevant documents and hence the Tribunal notionally took a sum of Rs.15,000/- as his monthly income, added 25% future prospects and applied multiplier '14' to arrive at a sum of Rs.14,17,500/- as compensation towards disability and further awarded compensation under various other heads, as tabulated below:-

Sl.No.	Head	Amount
1.	Disability	Rs.14,17,500/-
2.	Pain and sufferings	Rs.50,000/-



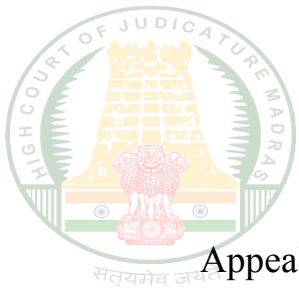
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Sl.No.	Head	Amount
3.	Loss of earning during Treatment	Rs.45,000/-
4.	Medical Expenses	Rs.5,45,235/-
5.	Loss of amenities	Rs.50,000/-
6.	Attender Charges	Rs.10,000/-
7.	Transportation Charges	Rs.10,000/-
8.	Extra Nourishment	Rs.10,000/-
Total		Rs.21,37,735/-
Rounded off to		Rs.21,37,800/-

8. Challenging the quantum of compensation, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments:

9. Mr.B.Murugavel, learned counsel for the appellant / Insurance Company would argue that, after treatment, the petitioner came back to his business and is able to continue his normal life. He contended that the accident did not cause any significant inconvenience and the petitioner is actively pursuing his occupation and hence, there was no need to adopt multiplier method to determine the compensation amount. In this case, the Tribunal erroneously adopted multiplier method and computed the compensation. Accordingly, he prayed to allow the Civil Miscellaneous



Appeal and set aside the Award.

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10. *Per contra*, Ms.K.R.Santhakumari, learned Counsel appearing for the first respondent / petitioner contended that the petitioner suffered 71% permanent disability and underwent surgery on both legs. The injuries suffered by the petitioner are grievous in nature. Even after treatment, the petitioner could not pursue his daily occupation and he could not walk without assistance. In such circumstances, the Tribunal was right in adopting multiplier method and there is no need to interfere with the Award passed by the Tribunal. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

11. The second respondent herein / first respondent remained absent and hence set *ex-parte* before the Tribunal. His presence here is not necessary and therefore, notice to him shall be hereby dispensed with.

Discussion:

12. This Court has considered the submissions made on either side and perused the materials available on record.

13. The manner of the accident and the liability to pay compensation



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have not been denied. The questions to be decided in this Civil Miscellaneous Appeal are (i) whether the petitioner suffered 45% permanent disability or not and (ii) whether he is able to carry out his day-to-day activities like before without any assistance, or not.

14. The petitioner was admitted in hospital on 27.01.2020 and got discharged on 05.02.2020. Ex-P.7 contains the Medical Bills which show that the petitioner had spent a sum of Rs.5,45,235/- towards medical expenses. The petitioner was re-admitted on 12.06.2020 and discharged on 16.06.2020, as could be seen from Ex-P.6 - Discharge Summary issued by Cosh Hospital. It could be inferred from Ex-P.6 and Ex-P.7 that the petitioner suffered grievous injuries in his both legs. Ex-C.1 is the Disability Certificate of the petitioner issued by Medical Board and it assess his disability as 45% permanent disability. It is stated that the petitioner has been running an Ice Cream and Cool Parlour as a sole proprietor. Considering the nature of injury and percentage of disability, this Court is of the considered view that the petitioner would not be able to manage and run his business as he did before the accident. Hence, 45% permanent disability sustained by the petitioner impacts his earning capacity as well as his ability to perform normal day to day functions.

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15. It is true that the accident did not result in complete functional disability of the petitioner. When it comes to functional disability, there is no straight jacket formula. Whether a person has suffered functional disability or not depends upon the unique facts of each case. Taking into consideration the nature of injuries, disability suffered by the petitioner, nature of occupation, as well as the other facts and circumstances of the case, the Tribunal has held that the permanent disability suffered by the petitioner affects his whole body and ability to perform his normal work. The Tribunal after considering the entire evidence rightly concluded that the 45% disability suffered by the petitioner can be regarded as functional disability and accordingly, adopted multiplier method while calculating compensation. This Court concurs with the Tribunal's view that the petitioner suffered 45% functional disability and that multiplier method has to be applied.

16. Though the petitioner did not prove his income, considering age of the petitioner and year of accident, the Tribunal fixed a sum of Rs.15,000/- as his notional income, then added 25% towards future prospects, applied multiplier 14 and arrived at a sum of Rs.14,17,500/- as



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his loss of income. Further the Tribunal has awarded compensation under other heads such as pain and sufferings, Medical expenses, loss of amenities, attender charges, Transportation Charges and Extra Nourishment. Since the Tribunal adopted multiplier method to calculate compensation, this Court is of the view that the Tribunal ought not to have awarded the sum of Rs.45,000/- towards loss of earning during the period of treatment. At the same time, considering the nature of the injuries, this Court is of the view that the petitioner would require funds for his future medical expenses which the Tribunal has failed to award. Hence, Rs.45,000/- awarded towards loss of earning by the Tribunal shall be treated as if it is awarded for future medical expenses. In these circumstances, the Insurance Company may not have any grievance over the compensation awarded by the Tribunal and this Court finds the same to be fair, reasonable, and justifiable. Hence, there is no need to interfere with it. There is no merit in this Civil Miscellaneous Appeal.

17. The appellant-Insurance Company is directed to deposit the compensation of Rs.21,37,800/- [Rs.21,37,735/- rounded off to Rs.21,37,800] awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of

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deposit (excluding the default period, if any) and costs, less the amount already deposited, if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent-claimant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing suitable applications before the Tribunal.

RESULT:

18. Accordingly, the Award dated August 29, 2023 made in M.C.O.P.No.681 of 2020 on the file of the Motor Accidents Claims Tribunal / II Court of Small Causes, Chennai is confirmed. The Civil Miscellaneous Appeal is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

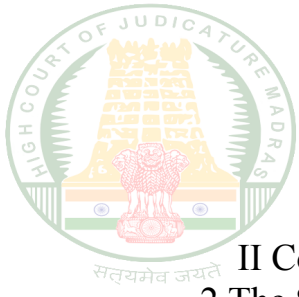
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Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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To

1. The Motor Accidents Claims Tribunal,

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II Court of Small Causes, Chennai.

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

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

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PRE-DELIVERY JUDGMENT MADE IN
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