



CMA Nos.2758 of 2024 & 9 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20 / 01 / 2025

JUDGMENT DELIVERED ON : 29 / 04 / 2025

CORAM:

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

**CMA NOS.2758 OF 2024 AND 9 OF 2025
AND
CMP NO.37 OF 2025 IN CMA NO.9 OF 2025**

CMA NO.2758 OF 2024

A.Sridhar

No.1/329, Indira Gandhi 1st Street,
Karapakkam, Oggiam Thuraipakkam,
Kancheepuram – 600 097.

... Appellant /
Petitioner

Vs.

1.N.Sankar

No.5/71, Perumal Koil Street,
Marambedu, Budur, Sholavaram,
Ponneri, Tiruvallur – 600 057.

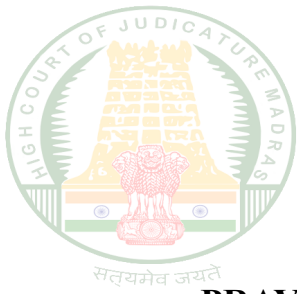
(1st Respondent remained *Ex-parte* in
Lower Court, Hence, Given Up.)

2.The Manager

Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Chennai – 600 006.

... Respondents /
Respondents

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CMA Nos.2758 of 2024 & 9 of 2025

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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of the Compensation awarded vide Award dated June 27, 2024 passed in MCOP No.1420 of 2019 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Ms.Saleem Fathima, P.T.

For Respondent – 1: Given up as he remained *ex-parte* before the Tribunal

For Respondent – 2: Mr.P.Suresh Srinivasan

CMA NO.9 OF 2025

The Manager
Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Nungambakkam, Chennai – 600 006.

... Appellant /
2nd Respondent

Vs.

1.A.Sridhar
No.1/329, Indira Gandhi 1st Street,
Karapakkam, Oggiam Thuraipakkam,
Kancheepuram – 600 097.

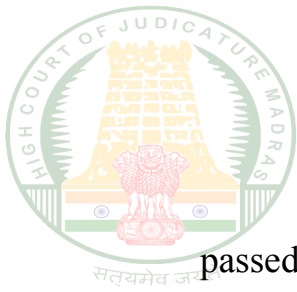
... 1st Respondent /
Petitioner

2.N.Sankar
No.5/71, Perumal Koil Street,
Marambedu, Budur, Sholavaram,
Ponneri, Tiruvallur – 600 057.

... 2nd Respondent /
1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated June 27, 2024

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CMA Nos.2758 of 2024 & 9 of 2025

passed in MCOP No.1420 of 2019 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.P.Suresh Srinivasan

For Respondent – 1: Ms.Saleem Fathima, P.T.

For Respondent – 2: He remained *ex-parte* before the Tribunal and his presence is not required here. Hence, notice to him is hereby dispensed with.

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated June 27, 2024 passed by the 'Motor Accidents Claims Tribunal / II Judge, Small Causes Court, Chennai' ['Tribunal' for short] in MCOP No.1420 of 2019, the petitioner therein has preferred CMA.No.2758 of 2024 seeking enhancement of compensation, while the second respondent therein / Insurance company has preferred CMA.No.9 of 2025 questioning the liability imposed on it as well as the quantum of compensation awarded.

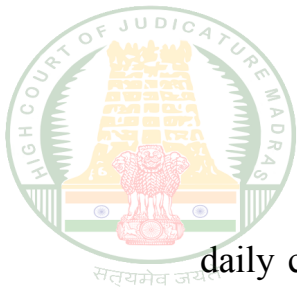
2. For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Accident Claim Original Petition.



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PETITIONER'S CASE

3. On February 15, 2019, at around 00:15 hours, the petitioner was travelling as a pillion rider on a motorcycle bearing Registration No. TN-14-H-8960, properly wearing a helmet. The motorcycle was proceeding from west to east and turned south near Mathiya Kailash Signal on Sardar Patel Road, Chennai. At that time, a van bearing Registration No. TN-32-S-4128 which was also proceeding in the same direction, was driven rashly and negligently at high speed, without following traffic rules, in a zigzag manner. The Van suddenly turned south and collided with the petitioner's motorcycle, causing the petitioner to be thrown off. As a result, the petitioner sustained fractures to the left hand, left leg, and left shoulder, along with multiple grievous injuries all over his body. Immediately, the petitioner was taken to Government Royapettah Hospital, Chennai and then he received treatment at some private hospitals in Chennai. According to the petitioner, the accident occurred due to the rash and negligent driving of the driver of the first respondent's van bearing Registration No. TN-32-S-4128. At the time of the accident, the petitioner was 22 years old and earning a monthly income of Rs.15,000/-. Due to the accident, the petitioner became completely disabled and was unable to perform work or



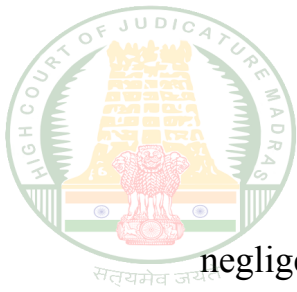
daily chores as before. Therefore, the petitioner filed the original petition seeking compensation of Rs.1,00,00,000/- (Rupees One Crore only) from the respondents.

FIRST RESPONDENT'S CASE

4. The first respondent is the owner of the van bearing Registration No.TN-32-S-4128 and he remained absent before the Tribunal and was accordingly set *ex-parte* by the Tribunal.

SECOND RESPONDENT'S CASE

5. The second respondent, who is the insurer of the first respondent's van, filed a counter-affidavit, wherein it has been stated that the petitioner is required to provide strict proof of his age, occupation, date, place, and time of the accident, as well as the name and address of the driver, owner, and insurer of the vehicle alleged to have caused the accident. According to the second respondent/insurance company, the said van was not involved in the accident. It was further denied that the driver of the van held a valid and effective driving license. It was also denied that the vehicle was plying with a valid fitness certificate and permit at the time of the accident. Further, it was claimed that the accident occurred due to



negligence on part of rider of the motorcycle bearing Registration No.TN-14-H-8960, on which the petitioner was riding as a pillion and that he was solely responsible for the accident.

5.1. The second respondent/insurance company filed an additional counter, wherein it was stated that the petitioner is required to provide strict proof that he sustained injuries in the accident alleged to have occurred on February 15, 2019. Further, it was stated that the compensation claimed is highly excessive. Accordingly, it prayed for the dismissal of the petition.

TRIBUNAL

6. In order to prove the statements made in the claim petition, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.11 were marked. On the side of the respondents, no witness was examined and no document was marked. Ex-C.1 – Disability Certificate of the petitioner given by the Medical Board was marked.

7. The Tribunal based on Ex-P.1 – First Information Report (FIR) and the evidence of P.W.1, came to the conclusion that the accident



happened due to the rash and negligent driving of driver of the first respondent's vehicle and awarded compensation under various heads, as tabulated hereunder:-

<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
1.	Compensation for pain and suffering	Rs.70,000 /-
2.	Loss of Amenities and Enjoyment of life	Rs.70,000 /-
3.	Transport to Hospital	Rs.2,000 /-
4.	Extra Nourishment	Rs.5,000 /-
5.	Attender charges	Rs.5,000 /-
6.	Medical expenses	Rs.67,470 /-
7.	Future medical expenses	Rs.5,000 /-
8.	Compensation for continuing as permanent disability (Rs.19,740/- x 12 x 18 x 70/100)	Rs.29,84,688 /-
	Total	Rs.32,09,158 /-

8. Feeling aggrieved by the quantum of compensation awarded, the petitioner has filed the appeal in CMA.No.2758 of 2024 praying for enhancement of compensation; the second respondent / insurance company has filed the appeal in CMA.No.9 of 2025, assailing the liability and the quantum awarded by the Tribunal.



WEB CO **ARGUMENTS**

9. The learned counsel appearing for the petitioner would argue that, at the time of the accident, the petitioner was 22 years old and was working as an Escort CDCSA at Thejas Facility Services, receiving a monthly salary of Rs.18,000/-. The Tribunal failed to consider the petitioner's age and occupation. Further, due to the accident, the petitioner is unable to fold or rotate his left hand and cannot carry even small items with his left hand. He is suffering from severe pain in his left hand. Further, he cannot fully bend his left leg and experiences severe pain when standing for a long time. In addition, he cannot sit, stand, or even use an Indian-style commode for the rest of his life due to the injuries he sustained. Hence, he suffers 100% functional disability. The petitioner requires an attendant throughout his life. The Tribunal failed to consider these aspects and awarded a meager sum of Rs. 32,09,158 as compensation. Accordingly, he would pray for enhancement of the award amount and dismissal of CMA No. 9 of 2025 filed by second respondent / Insurance Company.



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10. Per contra, the learned counsel appearing for the second respondent/insurance company would argue that the accident occurred solely due to the negligence of the petitioner and the rider of the motorcycle on which the petitioner was riding pillion. The driver of the first respondent's vehicle did not violate any traffic rules and was driving in a careful manner at a normal speed. Hence, the second respondent / Insurance Company is not liable to pay any compensation to the petitioner, who is also a tort-feasor. Further, the Tribunal erred in awarding a sum of Rs. 29,84,688 towards disability based on surmise and conjectures. The compensation awarded by the Tribunal is highly speculative, exaggerated and not a fair, just and reasonable one. Hence, the Award of the Tribunal is liable to be set aside. Accordingly, he would pray for the appeal in CMA No. 9 of 2025 to be allowed and the appeal in CMA No.2758 of 2024 to be dismissed.

DISCUSSION

11. This Court has considered the submissions of the counsels on both sides and perused the evidence available on record.



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12. As far as negligence is concerned, FIR has been registered against the first respondent's driver, and the police, after completing the investigation, filed a charge sheet against the first respondent's driver. P.W.1 deposed that the accident occurred due to the rash and negligent driving of the first respondent's driver. The evidence adduced on the side of the petitioner *prima facie* establish his case and remains uncontroverted by the respondents. The second respondent / Insurance Company failed to examine the first respondent's driver who is a competent person to depose about the manner of accident, in support of its contention that it is the petitioner and the rider of the motorcycle in which the petitioner was riding pillion, who are responsible for the accident. Nor has it examined any other witness or marked any document in support of its contentions. Hence, the Tribunal held that the accident occurred due to the rash and negligent driving of the first respondent's van. Further, at the time of the accident, the first respondent's vehicle was insured with the second respondent, and therefore, the Tribunal held the second respondent liable to pay compensation to the petitioner. This Court finds no reason to interfere with the Tribunal's findings in this regard.



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13. From Ex-P.4 to Ex-P.6 – discharge summaries, it is clear that the petitioner sustained the following injuries:

'Ex-P.4 – Rajiv Gandhi Government General Hospital, Chennai

Closed subtrochanteric fracture femur right, grade II compound fracture both bone forearm left raw area thigh and leg, proximal femur nailing right ORIF plating for forearm left SSG

(took treatment from February 15, 2019 to April 26, 2019 and two surgeries were conducted on March 5, 2019 and March 20, 2019).

Ex-P.5 – Chettinad Hospital, Chennai

Non-healing ulcer right thigh and left leg

(took treatment from July 1, 2019 to August 11, 2019)

Ex-P.6 – Chettinad Hospital, Chennai

Post infectious SSG left leg, multiple non healing ulcer over both lower limb, complete claw hand left, old healed both bone fracture forearm (LT) and right proximal femur fracture with implants in situ.

(took treatment from August 14, 2019 to December 13, 2019)”



13.1. For better appreciation, the period of treatment undergone by the petitioner is tabulated hereunder:

<i>S.No.</i>	<i>Name of Hospital</i>	<i>Date of Admission</i>	<i>Date of Surgery</i>	<i>Date of Discharge</i>
1	Rajiv Gandhi Government General Hospital, Chennai (As per Ex-P.4 – Discharge Summary)	15.02.2019	05.03.2019 26.03.2019	26.04.2019
2	Rajiv Gandhi Government General Hospital, Chennai (As per Ex-P.4 – Discharge Summary)	26.04.2019	08.05.2019	17.05.2019
3	Chettinad Hospital (As per Ex-P.5 – Discharge Summary)	01.07.2019	Nil	11.08.2019
4	Chettinad Hospital (As per Ex-P.6 – Discharge Summary)	14.08.2019	Nil	13.12.2019

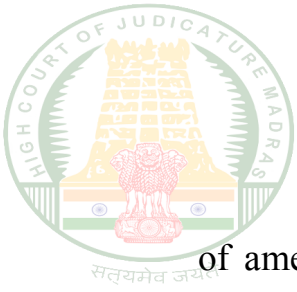
14. Ex-C.1 reveals that the petitioner's disability is 75% permanent physical disability. Considering the period of treatment undergone by the petitioner, the nature of the injuries sustained, and the impact of these injuries on his earning capacity, this Court is of the view that the petitioner has suffered 100% functional disability. Though the Tribunal rightly applied multiplier method to calculate compensation, it is not justifiable in its conclusion that the petitioner suffered only 70% functional disability. The Tribunal failed to note that as evidenced by Ex-P.5 – Discharge Summary, the petitioner was not able to hold a card or a



pen, nor was he able to show okay sign with his hands or oppose his thumb against something, *etc.*, even after surgery. The Tribunal also failed to appreciate Ex-P.8 – Photographs which show the injuries sustained by the petitioner. As it could be seen from Ex-P.8, his left side leg and hand are disfigured. Bare perusal of Ex-P.5 and Ex-P.8 is sufficient to conclude that the petitioner would not be able to handle even his day-to-day chores with ease as before and that it would be practically impossible for him to continue his occupation. In view of the above evidence, this Court has no hesitation in holding that the petitioner suffered 100% functional disability.

15. As far as pain and suffering is concerned, in view of the grievous nature of the injuries sustained by the petitioner and his current health condition, this Court is of the view that the compensation awarded by the Tribunal, amounting to Rs.70,000/- under the head 'pain and suffering,' is on the lower side. Therefore, this Court is inclined to enhance the same to Rs. 3,00,000/-.

16. Likewise, considering the discomforts and hardships faced by the petitioner due to the grievous injuries sustained, as well as the disfigurement of his legs, the amount awarded by the Tribunal towards loss

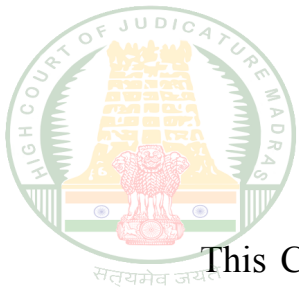


of amenities, enjoyment of life and disfigurement at Rs.70,000/- is very meagre. This Court is of the view that the petitioner is entitled to Rs.2,00,000/- under the said head.

17. The Tribunal awarded a sum of Rs.2,000/- under the head 'transport to hospital,' which is on the lower side and the same is enhanced to Rs.20,000/- considering the medical evidence, nature of injuries and their impact on his mobility. The Tribunal awarded a sum of Rs.5,000/- under the head 'extra nourishment,' which is also on the lower side and the same is enhanced to Rs.50,000/- considering the medical evidence and the grievous nature of injuries.

18. Since the petitioner was hospitalized for a considerable period of around 260 days, i.e., nearly 8 months, this Court is inclined to enhance the compensation awarded under the head 'attender charges' to Rs.1,12,000/- (Rs. 14,000/- x 8 months).

19. In view of the grievous injuries sustained by the petitioner and the continuing nature of the medical attention required, the Tribunal ought to have awarded more compensation for future medical expenses.

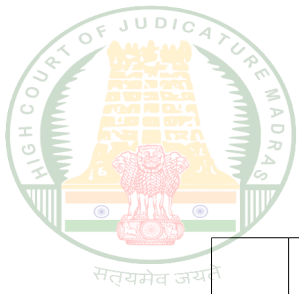


This Court deems it fit to enhance the same to Rs.25,000/-. The amount awarded under the head 'medical expenses,' which is Rs.67,470/-, requires no interference.

20. The Tribunal fixed the petitioner's income at Rs.14,100/-.

Considering the future prospects based on the Judgement of Hon'ble Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi* reported in *(2017) 16 SCC 680* and the age of the petitioner at the time of accident as 22 years, the Tribunal rightly fixed 40% future prospects and applied multiplier of 18. No interference is warranted in those aspects. As stated *supra*, the Tribunal was not right in considering functional disability at 70% and it is to be taken as 100%. Considering the functional disability at 100%, the compensation for continuing permanent disability should be enhanced from Rs.29,84,688/- to Rs.42,63,840/-.

21. Accordingly, the petitioner is entitled to receive an enhanced compensation of **Rs.50,38,310/-** (Rupees Fifty Lakh Thirty-Eight Thousand Three Hundred and Ten only) from the second respondent/ insurance company, as detailed below:-



S.No.	Head	Quantum of compensation awarded by the Tribunal Rs.	Quantum of compensation now arrived by this Court Rs.	Status
1.	Compensation for pain and suffering	70,000.00	3,00,000.00	Enhanced
2.	Loss of Amenities and Enjoyment of life	70,000.00	2,00,000.00	Enhanced
3.	Transport to Hospital	2,000.00	20,000.00	Enhanced
4.	Extra Nourishment	5,000.00	50,000.00	Enhanced
5.	Attender charges	5,000.00	1,12,000.00	Enhanced
6.	Medical expenses	67,470.00	67,470.00	Confirmed
7.	Future medical expenses	5,000.00	25,000.00	Enhanced
8.	Compensation for continuing permanent disability (Rs.19,740/- x 12 x 18 x 70/100)	29,84,688.00	42,63,840.00	Enhanced
	Total	32,09,158.00	50,38,310.00	Enhanced

22. The second respondent / Insurance Company is directed to deposit the enhanced compensation of **Rs.50,38,310/-** (Rupees Fifty Lakh Thirty-Eight Thousand Three Hundred and Ten only), along with costs incurred before the Tribunal and interest at the rate of 7.5% per annum on Rs.50,13,310/- from the date of petition till the date of deposit, less the amount if any already deposited, to the credit of M.C.O.P.No.1420 of 2019 on the file of Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. It is made clear that Rs.25,000/-



CMA Nos.2758 of 2024 & 9 of 2025

awarded for future medical expenses will not carry any interest. The deficit court fee, if any, shall be paid by the petitioner within a period of four weeks from the date of receipt of a copy of this Judgment.

RESULT

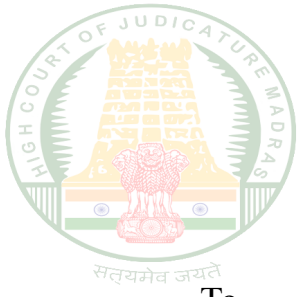
23. Resultantly, CMA.No.9 of 2025 filed by the second respondent/insurance company praying to set aside the Award is dismissed. CMA.No.2758 of 2024 filed by the petitioner seeking enhancement of compensation is partly allowed and the compensation awarded by the Tribunal viz., **Rs.32,09,158/-** is hereby enhanced to **Rs.50,38,310/-** (Rupees Fifty Lakh Thirty-Eight Thousand Three Hundred and Ten only) and a modified award is passed as detailed above. In view of the facts and circumstances of this case, there shall be no order as to costs in these Civil Miscellaneous Appeals. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.]

[R.S.V., J.]

29 / 04 / 2025

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



CMA Nos.2758 of 2024 & 9 of 2025

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

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



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CMA Nos.2758 of 2024 & 9 of 2025

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

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.2758 OF 2024
AND
9 OF 2025

29 / 04 / 2025

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