

C.M.A.No.2584 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	18.02.2026
Pronounced on	29.04.2006

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No. 2584 of 2024

Murali

...Appellant

Vs.

1. M/s. Sree Balaji Blocks

Prop. R. Manjunatha

No.45/2, Kittaganahalli Village,

Attibele Post, Anekal Taluk,

Bangalore District, Karnataka 562 106

2. The Branch Manager,

Reliance General Insurance Company Limited, Unnati Arcade

No.5/111 and 6/112, 1st Main Road,

1st Block, Dr. Rajkumar Road,

Bangalore 560 010.

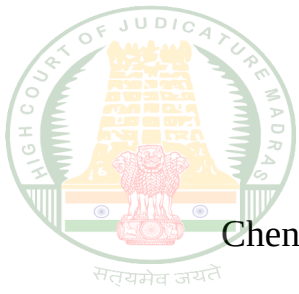
C/o. The Branch Manager,

Reliance General Insurance Company Limited,

6th Floor, Reliance House,

No.6, Haddows, Nungambakkam

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...Respondents

Chennai 600 006.

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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated 23.01.2021 made in M.C.O.P. No.262 of 2019 on the file of the Additional District Court, Motor Accident Claims Tribunal, Hosur.

For Appellant : Mr. P.A.Sudesh Kumar
For Respondents : Mr. P. Suresh Srinivasan for R2
R1 – Notice dispensed with

JUDGMENT

This appeal, under Section 173 of Motor Vehicles Act, has been filed by the appellant / claimant for enhancement of the sum awarded in M.C.O.P. No.262 of 2019 on the file of the Additional District Court, Motor Accident Claims Tribunal, Hosur.

2. Shortly stated, on 20.08.2018 at about 8 a.m., the appellant / petitioner was travelling as pillion rider in a TVS Star City Motorcycle bearing Registration No. TN-70-V-9817, which was ridden by his friend Ajith Kumar. While they were proceeding towards Hosur, on Attibele Andhivadi Check post road, on Nangapuram Railway Flyover Bridge, a Bharat Benz Tipper Lorry



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bearing Registration No.KA-51-B-9844, belongs to the 1st respondent, driven

by its driver in a rash and negligent manner, came in the opposite direction, dashed against the motorcycle in which the appellant/petitioner was travelling, as a result of which, the appellant and his friend fell down and sustained grievous injuries. They were taken to Government Hospital, Hosur. The appellant / petitioner was treated as inpatient and was discharged on 28.08.2018. A case has been registered against the driver of the lorry in Cr.No.244/2018 under Section 279, 337, 338 IPC. The 1st respondent is the owner of the lorry and the 2nd respondent is the insurer of the said lorry.

3. The claimant filed the above MCOP claiming compensation of Rs.70,00,000/- for the injuries sustained by him in the said accident. The Claims Tribunal framed necessary issues and came to the conclusion that the accident took place due to the negligence on the part of the driver of the 1st respondent lorry and awarded compensation of Rs.7,15,506/- after deducting 10% towards negligence on the part of the deceased rider of the two wheeler, since he did not possess driving license at the time of accident and directed the 2nd respondent Insurance Company to pay the said amount to the appellant / petitioner, at the first instance and then recover the same from the 1st

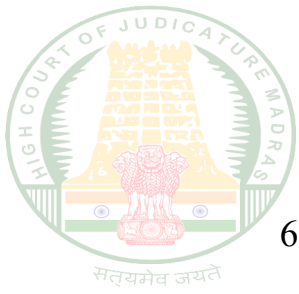


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respondent / owner of the lorry, since the driver of the 1st respondent lorry had no valid driving license at the time of accident.

4. Seeking enhancement of compensation, the present Civil Miscellaneous Appeal is filed by the appellant/petitioner.

5. The learned counsel for the appellant/petitioner would contend that the appellant/ petitioner had sustained Right leg tibia bone fracture near knee joint, right ankle fracture with bone loss, deep lacerated wound on the right leg exposing tendons, Pain, swelling, tenderness of right leg and right foot and ROM of right leg painful and restricted and was assessed permanent disability at 60% by the Medical Board. He would further submit that, without taking into consideration the serious nature of injuries, the Tribunal erred in awarding a meagre amount of Rs.2,40,000/- towards partial permanent disability by applying per percentage method instead of multiplier method. Further, the appellant has spent more than Rs.6,00,000/- towards hospitalization and other expenses. Hence prayed for enhancement of compensation.



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6. On the other hand, the learned counsel for the 2nd respondent /

Insurance Company submitted that, the Tribunal has considered the materials on record and had awarded 'just compensation' which requires any interference by this Court.

7. Heard on both sides. Records perused.

8. On a perusal of records it is seen that, as per Ex.P6 and Ex.P11 discharge summaries, the petitioner has sustained Type II hawkins talus fracture with bone loss over lateral aspect of right talus (Type III B gustilo Anderson), right proximal tibia lateral condyle Talus neck fracture fixation with screws, lateral condyle fracture proximal tibia with plate and CC Srew and plastic surgery procedure was conducted on 20.08.2018 and the medical board has assessed 60% partial permanent disability. It is not in dispute that the injured was a B.E student at the time of accident. While the Doctor may assess physical disability at 60%, the courts determined different percentage of functional disability (loss of earning capacity) based on how the injury affects the engineering profession. In injury case, description of nature of injury and permanent disablement are relevant factors and it has to be seen as to what



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would be the impact of such injury/disablement on earning capacity of the injured. Multiplier system is based on doctrine of equity and equality and necessity. It is now settled principle that in awarding compensation, multiplier method is logically sound and legally well established.

8.1. The Apex court in the case of ***Raj Kumar v. Ajay Kumar & Another*** has explained process of considering the factors while assessing the amount of compensation in case of permanent disability caused to the victim of motor accident. It has also discussed the process of ascertainment of the effect of the permanent disability on the actual earning capacity of the victim. The relevant paragraphs are enumerated below for perusal:

“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



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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.

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 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. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Yadava Kumar v. National Insurance Co. Ltd.)



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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 consider and decide with reference to the evidence: (1) 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



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disability and what he could not do as a result of the permanent disability (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 (1) 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, 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.”

8.2. Therefore, in my considered view, the nature of injuries sustained by the petitioner, which is duly proved by medical records and disability certificate, would restrict the movements of the claimant to larger extent, that too, in his young age. It is for these reasons, I feel that the Tribunal had awarded less compensation under the head of permanent partial disability and loss of earning capacity. The Tribunal ought to have adopted multiplier method while calculating compensation for the claimant.



8.3. The injured claimant was a Final year Engineering student at the time of the accident. The accident had occurred on 20.08.2018. The fact that the injured was pursuing his Bachelor of Engineering is admitted and he had bright future prospects which have been severely affected by the accident. Hence, this Court is of the view that the income can be safely fixed at Rs.15,000/- per month and adding 40% towards future prospects, the notional income for the purposes of determining the loss of earning power would be Rs.21,000/- per month. The injured was about 21 years at the time of accident, hence the multiplier would be 18. Thus, worked the total compensation for loss of earning power would be $\text{Rs.}21,000 \times 12 \times 18 \times 60/100 = \text{Rs.}27,21,600/-$.

8.4. The following tabular column would show the compensation awarded by the Tribunal and by this Court.

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed / enhanced/granted
1.	Compensation for partial permanent disability	2,40,000/- (60x4000)	-	-



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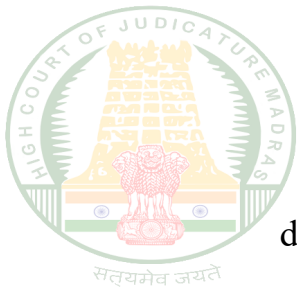
2.	Loss of earning power	-	27,21,600/-	granted
3.	Pain and sufferings	10,000/-	10,000/-	Confirmed
4.	Medical expenses	5,20,006/-	5,20,006/-	Confirmed
5.	Future medical expenses	10,000/-	10,000/-	confirmed
6.	Extra nourishment	5,000/-	5,000/-	confirmed
7.	Attender charges	5,000/-	5,000/-	confirmed
8.	Transportation charges	5,000/-	5,000/-	
	Total	7,95,006/-	32,76,606/-	
	After deducting 10% contributory negligence	7,15,506/-	29,48,945/-	Enhanced by Rs.22,33,439/-

9. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced to 29,48,945/- from Rs.7,15,506/-.

iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the



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decree only after receipt of Court fee.

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- iv. The second respondent / Insurance Company is directed to deposit the enhanced compensation amount as stated above (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, at the first instance, to the credit of M.C.O.P. No.262 of 2019 on the file of the Additional District Court, Motor Accident Claims Tribunal, Hosur, within a period of eight weeks from the date of receipt of a copy of this order/uploading of this order, and then recover the same from the 1st respondent.
- v. The appellant/claimant is not entitled to claim any interest for the default period in filing this appeal.
- vi. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

29.04.2026

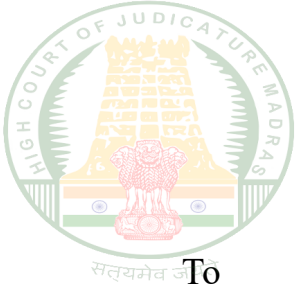
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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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To

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1. The Additional District Judge, Motor Accident Claims Tribunal, Hosur.

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Prop. R. Manjunatha

No.45/2, Kittaganahalli Village,

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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery judgment in

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29.04.2026