



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-07-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CMA No. 1040 of 2025

Poovarasam,
S/o. Madaiyan, Res at D.No.1/552,
Annasagarathan Kottai Village, Kuppur Post,
Dharmapuri Taluk and District-636704.

..Appellant(s)

Vs

1. M.Prasanth
S/o.Mahalingam, Res at D. No.27, Kuppa
Gounder Street, Alrapatti Village, Kambainallur
Post, Harur Taluk, Dharmapuri District-635202.
2. The Manager,
The Oriental Insurance Co. Ltd. D.No.94, 3rd
Floor, Jawaharlal Nehru Road, 100 feet Road,
Opposite to Ambika Empire, Vadapalani,
Chennai-600026.

..Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the 50 per cent contributory negligence fixed on the part of the appellant/victim, to fix the entire liability of the Respondents as jointly and severally and to enhance the compensation award dated 13.12.2024 made in MCOP No.837/2022, on the file of the Exclusive Motor Accident Claims Tribunal at Dharmapuri with interest and cost by allowing this Appeal.

For Appellant(s): Mr.M.Lokesh

For Respondent(s): Mr.K.Vinodh For R2
R1 – Served – No appearance



JUDGMENT

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This appeal has been filed against the award passed by the Presiding Officer, Exclusive Motor Accident Claims Tribunal in M.C.O.P.No.837 of 2022, dated 13.12.2024, wherein the claimant is seeking for enhancement of compensation and the claimant is also questioning the exoneration of the Insurance Company from the liability by the Tribunal.

2. The case of the claimant is that on 01.07.2022, he was riding a two-wheeler on the Dharmapuri – Harur Road, at about 11.00 p.m., near a Petrol Bunk, the offending vehicle, which was also a two-wheeler, came from the opposite direction, and it was ridden in a rash and negligent manner and dashed against the two-wheeler in which the claimant was travelling, and as a result of which, the claimant sustained the following injuries:

- ”1. Fracture of the right foot.*
- 2. Fracture of the right foot below the knee.*
- 3. Fracture of the left neck.*
- 4. Injury to the right ankle.*
- 5. Fracture of the right ring finger.*
- 6. Injury to the left knee.*
- 7. Cut injury on the left shoulder.*
- 8. Cut injury on the right foot and knee.*
- 9. Multiple injuries all over the body.”*

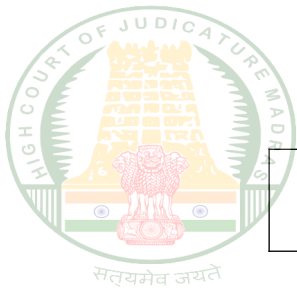


The claimant took treatment as an in-patient for a total period of 23 days in four spells. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that both the claimant as well as the rider of the offending vehicle have contributed to the accident and hence fixed 50% negligence on each side.

4. The Tribunal thereafter fixed the total compensation at Rs.53,89,648/- under the following heads:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of earning capacity	Rs.40,82,400/-
2.	Compensation for disability	Nil
3.	Pain and Suffering	Rs.2,00,000/-
4.	Extra nourishment	Rs.1,00,000/-
5.	Attender charges	Rs.30,000/-
6.	Loss of income	Rs.1,50,000/-
7.	Damages to clothes	Rs.2,000/-
8.	Physiotherapy bills	Nil
9.	Medical expenditure	Rs.6,05,848/-
10.	Loss of Amenities	Rs.2,00,000/-
11.	Transportation Charges	Rs.19,400/-
	Total	Rs.26,94,824/-



	Less 50% Contributory Negligence	Rs.26,94,824/-
	Total	Rs.26,94,824/-

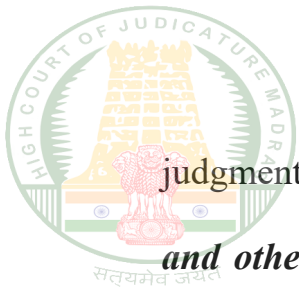
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The Tribunal deducted 50% towards contributory negligence and the balance of Rs.26,94,824/- was directed to be paid by the owner of the vehicle, namely, the first respondent, on the ground that the owner of the offending vehicle did not possess a valid driving licence. Aggrieved by the same, the present appeal has been filed by the claimant.

5. This Court heard Mr.M.Lokesh, learned counsel appearing on behalf of the claimants and Mr.K.Vinodh, learned counsel appearing on behalf of the second respondent – Insurance Company.

6. This Court carefully considered the submissions made on either side and the materials available on record. This Court also carefully went through the award passed by the Tribunal.

7. Insofar as the exoneration of the Insurance Company from liability is concerned, based on the fact that the owner of the offending vehicle did not possess a valid driving licence, it is seen that the policy was issued before the Amendment Act came into force, whereas the accident had taken place after the Amendment Act came into force. The said ground is squarely covered by the

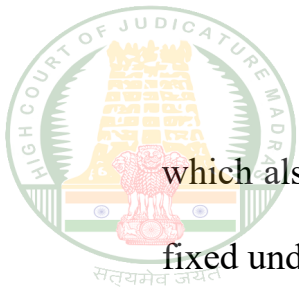


judgment of the Apex Court in *National Insurance Co. Ltd V. Swaran Singh and others* reported in (2004) 3 SCC 297. In view of the same, the Tribunal

ought to have applied the principle of “pay and recover” and should not have exonerated the Insurance Company. The said finding rendered by the Tribunal warrants interference and is hereby set aside.

8. Insofar as contributory negligence is concerned, the Tribunal, on appreciation of the evidence, found that the accident had taken place almost in the middle of the road and therefore, fixed 50% negligence on each side. However, considering the evidence of P.W.1 and R.W.2, and also taking note of the Motor Vehicle Inspector Reports marked as Ex.R2 and Ex.R3, and the Rough Sketch which was marked as Ex.P18, this Court is inclined to fix 70% negligence on the rider of the offending vehicle and 30% negligence on the side of the claimant. To that extent, the finding rendered by the Tribunal on the issue of negligence is modified.

9. The last issue is regarding the compensation granted by the Tribunal. In the considered view of this Court, the compensation granted by the Tribunal is slightly on the higher side. The Tribunal after fixing compensation under the head of ‘Loss of Earning Capacity’, also fixed the compensation under the head of ‘Loss of Income’ which warrants interference by this Court. Apart from that, the Tribunal has granted a sum of Rs.2,00,000/- towards ‘Loss of Amenities’



which also requires interference by this Court. The Compensation that has been fixed under the other heads are sustained as it is.

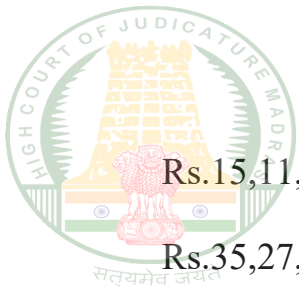
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10. In the light of the above discussion, the award passed by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of earning capacity	Rs.40,82,400/-	Rs.40,82,400/-
2.	Compensation for disability	Nil	Nil
3.	Pain and Suffering	Rs.2,00,000/-	Rs.2,00,000/-
4.	Extra nourishment	Rs.1,00,000/-	Rs.1,00,000/-
5.	Attender charges	Rs.30,000/-	Rs.30,000/-
6.	Loss of income	Rs.1,50,000/-	Nil
7.	Damages to clothes	Rs.2,000/-	Rs.2,000/-
8.	Physiotherapy bills	Nil	Nil
9.	Medical expenditure	Rs.6,05,848/-	Rs.6,05,848/-
10.	Loss of Amenities	Rs.2,00,000/-	Nil
11.	Transportation Charges	Rs.19,400/-	Rs.19,400/-
12.	Grand Total	Rs.53,89,648/-	Rs.50,39,648/-
	50% Contributory Negligence	Rs.26,94,824/-	-----
	30% Contributory Negligence	-----	Rs.15,11,894/-
	Total	Rs.26,94,824/-	Rs.35,27,754/-

11. In the result, this Civil Miscellaneous Appeal stands partly allowed.

Deducting 30% of the award amount towards contributory negligence comes to



Rs.15,11,894/-, and remaining 70% contributory negligence works out to Rs.35,27,754/-. The second respondent / Insurance Company is directed to deposit the 70% of the award amount of Rs.35,27,754/-, 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 before the Tribunal within a period of six (6) weeks from the date of receipt of a copy of this judgment and the same can be recovered from the first respondent by applying the principle of “pay and recover”. On such deposit, the claimant is entitled to withdraw the same on due application. No costs.

16-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SSI

To:

1.The Presiding Officer,
Exclusive Motor Accident Claims Tribunal,
Dharmapuri.

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



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N.ANAND VENKATESH, J.

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