



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-07-2026

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THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Civil Miscellaneous Appeal No.1195 of 2022

Murugesan
S/o.Sengodan

..Appellant

Vs

1. R.Thangarasu
S/o.Rajamanickam

2. National Insurance Company Ltd,
Rep by its Manager Anthiyur Business Centre,
222/3, Rasi Agencies, Opp. Axis Bank,
Anna Salai, Thavittupalayam,
Anthiyur, Erode District.

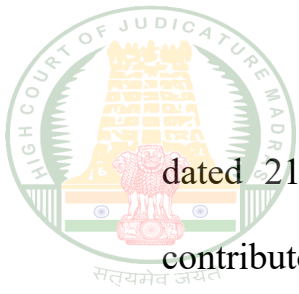
..Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.88 of 2016 on the file of the Motor Accident Claims Tribunal cum IV Additional District and Sessions Judge, Bhavani, dated 21-09-2021.

For Appellant	:	Mr.C.Kulanthaivel
For Respondents	:	No appearance [R1] Mrs.R.Sreevidhya [R2]

JUDGMENT

This appeal has been filed against the award passed by the Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Bhavani,



dated 21.09.2021, wherein the claimant is questioning attribution of 50% contributory negligence on the claimant and also questioning the compensation fixed by the Tribunal under various heads on the ground that it is on the lower side.

2. The case of the claimant is that on 18.12.2015, the claimant was riding a two wheeler at Sanisanthai to Chennampatti Main Road and at about 03.05 p.m., when the vehicle was nearing the Chennampatti EB office, the offending vehicle, a two wheeler belonging to the first respondent, came in the opposite direction in a rash and negligent manner and dashed against the two wheeler as a result of which the claimant sustained left comminuted zygomatic complex and arch fracture, unilateral fracture of left maxilla, left mandibular ramus and coronoid process. The claimant underwent treatment as an inpatient for 11 days. A First Information Report came to be registered against the rider of the offending vehicle in Crime No.380 of 2015. 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 evidence came to a conclusion that only 50% can be attributed on the rider of the offending vehicle and that the claimant had attributed 50% for the accident. Having rendered the above finding, the Tribunal fixed the total compensation at Rs.2,47,795/- under the following



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Pain and suffering	70,000/-
2.	Partial permanent disability	30,000/-
3.	Medical expenses and future medical expenses	95,295/-
4.	Loss of earning	35,000/-
5.	Transport to hospital	7,500/-
6.	Extra nourishment and damage to clothing	10,000/-
	Total	2,47,795/-

From the above compensation, a sum of Rs.1,23,897/- was directed to be paid with interest at 7.5% p.a. Aggrieved by the same, the present appeal has been filed.

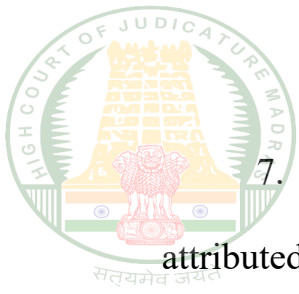
4. The first ground raised is that the Tribunal went wrong in attributing 50% contributory negligence against the claimant. The Tribunal had taken into consideration the evidence of the claimant, who was examined as PW-1. The Tribunal had also taken into consideration the First Information Report and the final report [Ex.P1]. Even though, the evidence of PW-1 and the final report [Ex.P1] filed by the police was pointing to the negligence entirely upon the rider of the offending vehicle, the Tribunal took up the rough sketch independently and came to a conclusion that there was negligence on the part of the claimant.



The Tribunal also took into consideration the fact that the claimant was not wearing a headgear and he did not have a valid driving license. Hence, the Tribunal fixed 50% contributory negligence on the claimant.

5. In the considered view of this Court, the rough sketch is prepared by the investigation officer in the course of investigation. That by itself cannot be a material to fix the negligence and while fixing the negligence, the Court has to look into all the materials and come to a conclusion. The evidence of PW-1, the First Information Report registered against the rider of the offending vehicle and the final report filed after completion of investigation, shows that the entire negligence is only upon the offending vehicle. However, the Tribunal proceeded to independently consider the rough sketch even without there being any contra evidence and without the investigation officer being examined, who alone can explain the rough sketch, which is said to have been prepared the next day after the accident. Hence, the Tribunal was not right in fixing the negligence against the claimant only based on the rough sketch.

6. It is now too well settled that non-possession of driving license or non-wearing of helmet by itself cannot be a ground to attribute contributory negligence against the claimant.

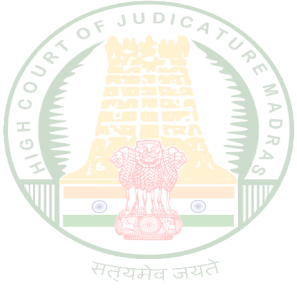


7. In the light of the above discussion, 50% contributory negligence attributed against the claimant by the Tribunal is hereby set aside. This Court holds that the entire negligence is attributable only against the rider of the offending vehicle.

8. Insofar as the compensation is concerned, this Court finds that the Tribunal has fixed a fair and reasonable compensation under various heads and it does not require the interference of this Court.

9. The Tribunal found that the rider of the offending vehicle did not have a valid driving license and applied the principle of pay and recover and the said finding is confirmed.

10. In the light of the above discussion, the total compensation fixed by the Tribunal to the tune of Rs.2,47,795/- shall be deposited by the second respondent insurance company, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment and thereafter, it can be recovered from the owner of the offending vehicle. On such deposit, the appellant/claimant is entitled to withdraw the same on due application. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



N.ANAND VENKATESH, J.

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This civil miscellaneous appeal is allowed in the above terms. No costs.

28-07-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

The Motor Accident Claims Tribunal,
IV Additional District and Sessions Judge,
Bhavani.

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