



C.M.A.No.2663 of 2022

**THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 04.03.2026**

**CORAM**

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN**

**AND**

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**C.M.A.No.2663 of 2022**

**and**

**C.M.P.No.20787 of 2022**

National Insurance Co. Ltd.,  
Divisional Office No.1,  
L.R.N.Colony,  
Saradha College Main Road,  
Salem – 636 007.

... Appellant

VS

1.Kumaresan  
S/o.Perumal

2.Mani  
S/o.Sithan

3.Rajeshkumar  
S/o.Damodar Pillai

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2021 passed in M.C.O.P.No.1947 of 2016 on the file of Motor Accident Claims Tribunal No.2, Salem (Special Sub-ordinate Court No.2, Salem for Accident Claims).



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For Appellant : Mr.S.Vadivel

For Respondents : Mr.S.P.Yuaraj [R1]

No appearance [R2 & R3]

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### **JUDGMENT**

[Judgment of the Court was delivered by **C.V. KARTHIKEYAN, J**]

Challenging the award passed by the Tribunal in and by its judgment dated 23.12.2021 passed in M.C.O.P.No.1947 of 2016 on the file of Motor Accident Claims Tribunal No.2, Salem, appellant insurance company has filed the present appeal.

2. The brief facts of the case is as follows:

First respondent is the claimant. On 11.07.2016 at about 07.00 a.m., the claimant was riding pillion in the motor cycle bearing Registration No.TN-54-D-3790 on the Athur Main Road, which was ridden by its rider in a rash and negligent manner and at that time, another motor cycle bearing registration No.TN-03-D-3047, belonging to third respondent, ridden in a rash and negligent manner dashed against the motor cycle ridden by the claimant's friend, owing to which the claimant fell down and sustained



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grievous injuries. The petitioner took treatment as an inpatient. Owing to the injuries sustained in the accident, the first respondent/claimant could not continue his avocation as a mason and hence, first respondent/claimant filed a claim petition seeking compensation in a sum of Rs.20,00,000/-. The claimant, at the first instance, laid his claim only against the owner and insurer of the motor cycle bearing Registration No.TN-54-D-3790. During the pendency of the claim petition, the owner of the motor cycle bearing registration No.TN-03-D-3047 was impleaded and the said motor cycle has no insurance.

3. The claim was resisted by appellant insurance company by filing a detailed counter.

4. To prove the case, on the side of first respondent/claimant, he himself was examined as PW-1 and 11 documents were marked. On the side of appellant insurance company, 2 witnesses were examined and one document was marked. One document was marked on the side of third party. One Court document was marked.



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5. On appreciation of materials on record, the Tribunal found that the accident had occurred owing to the rash and negligent riding of both the vehicles and held that the appellant insurance company, as insurer of the motor cycle bearing Registration No.TN-54-D-3790, was liable to pay compensation. Accordingly, a sum of Rs.23,87,128/- is awarded as compensation. The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of realization. Challenging the same, appellant insurance company has filed the present appeal.

6. Learned counsel for appellant insurance company submitted that the Tribunal having found that the accident occurred owing to the negligence of both the vehicles, had fixed the entire liability only on the appellant insurance company. Learned counsel further submitted that considering the nature of injuries sustained by the first respondent/claimant, the compensation awarded by the Tribunal is very much on the higher side.

7. Learned counsel for first respondent relied upon the judgment of the Apex Court in ***Khen Yei v. New India Assurance Company Limited and***



*others [(2015) 9 SCC 273]* wherein it has been held as follows:

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“22. What emerges from the aforesaid discussion is as follows:

22.1. In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

As held by the Apex Court in the judgment cited supra, when joint tortfeasors are already on record, the Tribunal/Court is entitled to fix the



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negligence so as to enable one tortfeasor to pay compensation and to recover the same from the other tortfeasor to the extent of compensation paid for the negligence. In this case, the Tribunal has not fixed negligence on the part of the driver of the two wheeler belongs to third respondent. We are of the view that the rider of the two wheeler belongs to third respondent is equally responsible for the accident and hence, 50% liability is fixed on him. Further, considering the nature of injuries sustained by the first respondent/claimant, the Tribunal had awarded a reasonable amount as compensation and hence, the award passed by the Tribunal does not require any interference of this Court.

8. In view of the aforesaid judgment of the Apex Court, the appellant is entitled to recover the amount from the third respondent in appropriate proceedings.

9. Accordingly, the Civil Miscellaneous Appeal is disposed of in the above terms. The compensation of **Rs.23,87,128/-** awarded by the Tribunal is confirmed.



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Learned counsel for appellant insurance company submitted that the entire compensation has been deposited. The first respondent/claimant is permitted to withdraw the same, along with accrued interest and costs, less the amount, if any already withdrawn by him, by filing necessary application before the Tribunal. The appellant insurance company is entitled to recover 50% of compensation deposited/paid amount from the third respondent by filing petitions in appropriate proceedings. No costs. Connected miscellaneous petition is closed.

[C.V.K., J]

[K.R.S., J]

**04.03.2026**

Speaking / Non-speaking order

Index: Yes/No

NCC:Yes/No

gm

To

The Motor Accident Claims Tribunal,

Special Sub-ordinate Court No.2,

Salem.



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**C.V. KARTHIKEYAN, J**  
and  
**K.RAJASEKAR, J**

gm

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