

*C.M.A. (MD)No.993 of 2023*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 29.04.2026

Pronounced on : 17.07.2026

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A.(MD)No.993 of 2023

Bharath

... Appellant/  
Claimant

Vs.

Tamil Nadu State Transport Corporation Ltd.,  
through its Managing Director,  
Bye Pass Road,  
Dindigul-624004.

... Respondent/  
Respondent

**Prayer** : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.08.2023 passed by the Motor Accident Claims Tribunal, (Special Sub Court dealing with MCOP cases), Tirunelveli in M.C.O.P.No.794 of 2017 in so far fixing liability of contributory negligence on the petitioner and direct the respondent to pay 50% of the compensation awarded in the claim application.



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For Appellant : Mr.T.Lenin Kumar

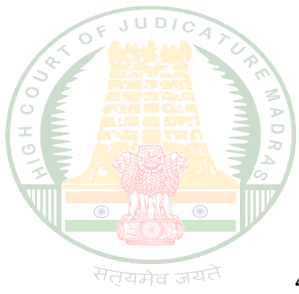
For Respondent : Mr.D.Balamuruga Pandi

### **JUDGMENT**

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.794 of 2017 dated 10.08.2023 on the file of the Motor Accident Claims Tribunal / Special Subordinate Court dealing with MCOP cases, Tirunelveli.

2. The appellant / claimant, who was awarded with compensation of Rs.13,44,600/- (Rupees Thirteen Lakhs Forty Four Thousand and Six Hundred only) with interest and costs payable by the respondent / Transport Corporation for the disability sustained by him, consequent to an accident occurred on 18.06.2017, challenged the finding of the Tribunal fixing contributory negligence at 50% on the appellant / claimant and also the quantum of compensation awarded at, by the Tribunal.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the Tribunal.

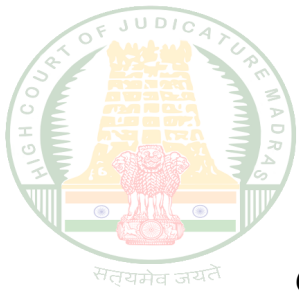


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4. The case of the claimant is that on 18.06.2017 at about 10.15 a.m., the claimant was travelling as a pillion rider in a two wheeler bearing Registration No.TN-57-Q-5223 from Ghat road to Kodaikanal road and while they were proceeding near Damdam Rock from lower to upper hills, a bus bearing Registration No.TN-57-N-1784 belonging to the respondent came in a rash and negligent manner from upper to lower hills side and dashed against the two wheeler and as a result of which, the claimant was thrown off and sustained multiple serious injuries and that the accident was occurred only due to the rash and negligent driving of the bus driver.

5. The defence of the respondent is that their bus driver was driving the vehicle slowly, cautiously by observing all the traffic rules and regulations of the road, that the rider of the motorcycle with two pillion riders came in a rash and negligent manner and let the motorcycle in the small pit of the bend road and as a result of which, the rider lost his balance and dashed against the bus and that the accident was occurred due to the contributing negligence on the part of the motorcycle rider and the bus driver was no way responsible for the accident.



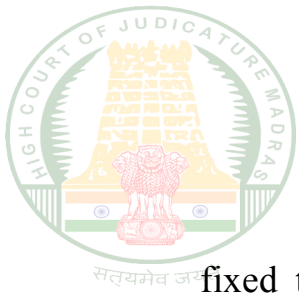
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6. During trial, the claimant examined himself as P.W.1 and summoned and examined the Medical Record Technician of the Government Rajaji Hospital, Madurai Thiru.Karunanithi as P.W.2 and exhibited 6 documents as Ex.P1 to Ex.P6. The respondent adduced neither oral nor documentary evidence. The disability certificate issued to the claimant by the Medical Board came to be exhibited as Ex.C1.

7. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned order dated 10.08.2023 holding that the two wheeler rider as well as the bus driver are equally liable for the accident and on that basis, fixed the negligence at 50% each and after arriving the total compensation at Rs.26,89,200/-, directed the respondent to pay 50% of the amount i.e., Rs.13,44,600/- with interest and costs. Aggrieved by the impugned order, the claimant has preferred the present appeal.

8. The learned counsel appearing for the claimant would mainly contend that the Tribunal, without any evidence and without any basis,



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fixed the contributory negligence on the claimant at 50%, that merely because three persons had travelled in a two wheeler cannot constitute contributory negligence on the part of the motorcycle rider and that in the absence of any evidence showing that the motorcycle rider and the pillion riders were negligent, the finding of the Tribunal mulcting 50% liability cannot legally be sustained and is liable to be set aside.

9. The learned counsel appearing for the respondent would submit that the claimant travelled as a pillion rider along with two other persons, that FIR itself discloses that three persons were travelling in the motorcycle at the time of accident, that the motorcycle rider rode the vehicle in a rash and negligent manner and also let the vehicle in the small pit of the bend portion of the road and as a result of which, he lost his balance and dashed against the bus and that the Tribunal, considering the evidence available on record, has rightly come to the decision that the motorcycle rider had also contributed to the accident and fixing contributory negligence at 50% cannot be found fault with.

10. The claimant, in order to prove the manner in which the accident



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occurred, examined himself as P.W.1. In his evidence, he reiterated the averments made in the claim petition and deposed that, while the motorcycle was proceeding from the Ghat Road towards the Kodaikanal Road, near Damdam Rock, on the left side of the road, the Government bus, driven in a rash and negligent manner, dashed against the motorcycle. As a result, he fell down and sustained grievous injuries. According to P.W.1, the accident occurred solely due to the rash and negligent driving of the bus driver and that he was not at fault. No doubt, during cross-examination, P.W.1 admitted that three persons, including himself, were travelling on the motorcycle at the time of the accident. Though P.W.1 was subjected to cross examination, nothing useful could be elicited by the respondent in support of its defence.

11. It is pertinent to mention that FIR came to be registered in Crime No.324 of 2017 on the file of the Devadanapatti Police Station under Sections 279 and 337 IPC against the bus driver.

12. As rightly contended by the learned counsel appearing for the claimant, though the respondent has taken a specific stand that the rider of

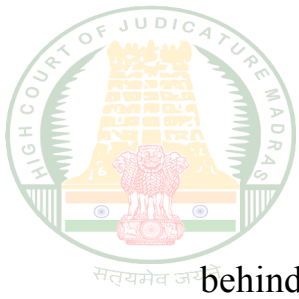


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the motorcycle rode the vehicle in a rash and negligent manner, lost control after the motorcycle entered a small pit on the curved portion of the road and consequently dashed against the bus, the respondent has not chosen to adduce any evidence in support of the said plea. More importantly, the respondent has not examined the driver or the conductor of the bus or any other person who had allegedly witnessed the occurrence. Thus, no contra evidence has been adduced by the respondent with regard to the manner of the accident or the aspect of negligence. The Tribunal, merely on the ground that three persons were travelling on the motorcycle and by drawing assumptions and presumptions, held that the rider of the motorcycle had also contributed to the accident.

13. The learned counsel appearing for the claimant would rely on the decision of the Hon'ble Supreme Court in ***Mohammed Siddique and another Vs. National Insurance Co. Ltd., and others*** reported in **2020 (1) TN MAC 161 (SC)**, wherein, the Hon'ble Apex Court has set aside the order of the High Court holding that the victim was guilty of contributory negligence. In that case, the accident was occurred at 02.00 a.m. and the motorcycle, in which the deceased was travelling, was hit by a car from



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behind and the Hon'ble Apex Court has held that the fact that a person was a pillion rider on a motorcycle along with driver and one more person on pillion, may be a violation of the law, but such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. It is necessary to refer the following passage,

*“14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of Contributory Negligence. Hence, the reduction of 10% towards Contributory Negligence, is clearly unjustified and the same has to be set aside.”*

14. The learned counsel appearing for the claimant would also rely on the decision of this Court in ***United India Insurance Co. Ltd., through its Branch Manager Vs. Saravanan and another*** reported in **2022 (2) TN MAC 822** and the relevant passages are extracted hereunder:

*“18. In the said decision, it has been specifically observed that taking more than two persons in a two*



*wheeler, by itself is an offence, but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case and that if a rider takes two persons as pillion riders, that itself would not amount to negligence.*

*19. Now coming to the case on hand, as already pointed out, the driver of the mini lorry has not been examined to prove the manner of the accident. It is not the specific case of the appellant/Insurer that the accident occurred as a result of three persons riding on a motorcycle and it is also not their case that the accident would have been averted if three persons were not riding on the motorcycle.*

*20. Regarding the contention of not wearing the helmet, as rightly pointed out by the learned counsel appearing for the claimant, the complainant in FIR has specifically stated that the rider Saravanan was wearing helmet at the time of accident. Moreover, the appellant/Insurer has not produced any evidence or materials to show that the claimant was not wearing helmet at the time of accident.*

*21. Now turning to the defence of non-possession of driving license, the claimant has taken a specific stand*



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*that he was having driving license and the same was lost in that accident. The claimant as P.W.1 in his evidence would reiterate the solid contention. During cross-examination, nothing was elicited by the appellant/Insurer in their favour. Moreover, as rightly pointed out by the learned counsel appearing for the claimant, the appellant/Insurer has neither produced any evidence nor taken any steps to prove that the claimant was not possessing valid driving license at the time of accident.*

*22. Considering the above and on applying the legal position above referred, this Court decides that in the absence of any evidence to show that the wrongful act on the part of the claimant contributed either to the accident or to the nature of the injury sustained, the claimant cannot be held guilty of contributory negligence.”*

15. The above decisions are squarely applicable to the case on hand. In the present case also, since the respondent has not adduced any evidence to show that the wrongful act on the part of the claimant contributed either to the accident or to the nature of the injuries sustained, the claimant cannot be held guilty of contributory negligence. But the Tribunal, without considering the above aspects and in the absence of any



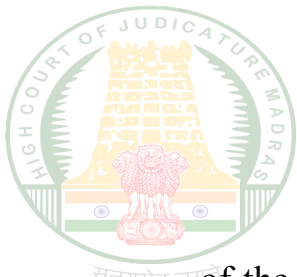
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evidence, has mechanically attributed 50% contributory negligence to the claimant and as such, the said finding is legally unsustainable.

16. Turning to the quantum of compensation, it is pertinent to note that the claimant suffered amputation of his right upper limb and also sustained a fracture of the distal radius, fractures of the bones of the right forearm, besides multiple other injuries. The Medical Board, upon examining the claimant, assessed his permanent disability at 85%. The learned Tribunal, taking into consideration the medical evidence available on record, the nature of the injuries and the avocation of the claimant, has rightly assessed the functional disability at 100% and applied the multiplier method for determining the loss of earning capacity.

17. No doubt, though the claimant has pleaded that he was earning Rs.15,000/- per month, he has not produced any iota of evidence to substantiate the same. The Tribunal, in the absence of any evidence, has fixed the notional monthly income at Rs.8,000/- and the same cannot be faulted. Moreover, the Tribunal has rightly added 40% of the income towards future prospects and arrived at Rs.11,200/-. Considering the age



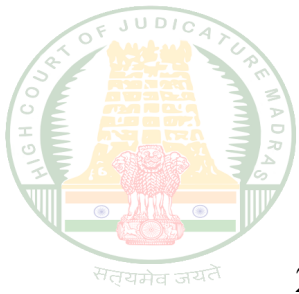
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of the claimant at 19 years, the Tribunal has rightly applied the multiplier 18 and assessed the loss of earning capacity at Rs.24,19,200/-.

18. The Tribunal has further awarded Rs.1,00,000/- for loss of convenience, Rs.1,00,000/- for pain and suffering, Rs.10,000/- for transport expenses, Rs.50,000/- for attendant charges and Rs.10,000/- for extra nourishment.

19. The learned counsel appearing for the claimant would submit that the amounts awarded towards transport expenses, extra nourishment and loss of amenities are on the lower side. As already pointed out, the Tribunal has rightly awarded Rs.1,00,000/- each towards loss of amenities and pain and suffering. The amounts awarded under the other heads are also just and reasonable and cannot be said to be inadequate. Hence, the total compensation of Rs.26,89,200/- assessed by the Tribunal does not warrant any interference. Since this Court has already set aside the finding of the Tribunal attributing 50% contributory negligence to the claimant, the claimant is entitled to the entire compensation of Rs.26,89,200/-, together with the interest and costs as awarded by the Tribunal.

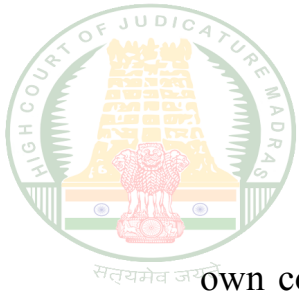


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20. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

21. In the result, this Civil Miscellaneous Appeal is allowed. The finding of the Tribunal fixing contributory negligence at 50% on the appellant / claimant is hereby set aside. The appellant / claimant is entitled to get the total compensation of **Rs.26,89,200/- (Rupees Twenty Six Lakhs Eighty Nine Thousand and Two Hundred only)** with interest and costs. The respondent / Transport Corporation is directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.794 of 2017 on the file of the Motor Accident Claims Tribunal / Special Sub Court dealing with MCOP cases, Tirunelveli, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is permitted to withdraw the amount together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties shall bear their



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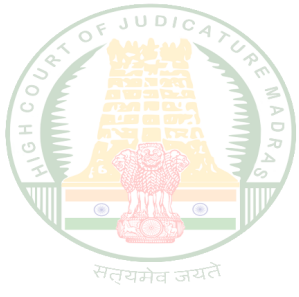
own costs. The appellant / claimant is **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

**17.07.2026**

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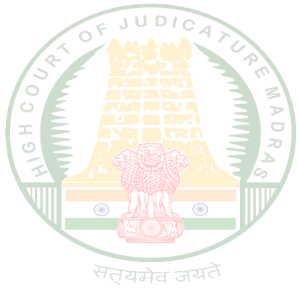
- 1.The Special Sub Judge,  
Motor Accident Claims Tribunal,  
Tirunelveli.
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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**Pre-Delivery Judgment made in  
C.M.A.(MD)No.993 of 2023**

**Dated : 17.07.2026**