



C.M.A.(MD)No.684 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 23.02.2023

Delivered On : 03.03.2023

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.684 of 2020

M/s.United India Insurance Company Limited,  
Through the Branch Manager,  
No.77, Oriental Complex, A.A. Street,  
Salem, Salem District.

... Appellant / 2<sup>nd</sup> respondent

Vs.

1.S.Kalidoss

... 1<sup>st</sup> Respondent /Petitioner

2.Selvaraj

... 2<sup>nd</sup> Respondent / 1<sup>st</sup> Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.101 of 2017, dated 30.01.2020, on the file of the Motor Accidents Claims Tribunal – Principal District Court, Dindigul.

For Appellant

: Mr.B.Rajesh Saravanan

For Respondents

: Mr.C.K.M.Appaji for R1



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## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award made in made in M.C.O.P.No.101 of 2017, dated 30.01.2020, on the file of the Motor Accidents Claims Tribunal – Principal District Court, Dindigul. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No..101 of 2017, is as follows:-

On 23.07.2016, at about 11.30 am., when the petitioner was travelling as a pillion rider in a two wheeler bearing Registration No.TN-57-BA-3901, along the Oddanchatram to Dindigul main road, keeping the left side of the road a Hyndai Car bearing Registration No.TN-30-AE-6030 came in a rash and negligent manner from the opposite direction, overtaking a lorry, dashed against the motorcycle. The petitioner sustained fracture in the leg and injuries all over the body. The rider of the motorcycle by name Bhuvaneshkumar and another pillion rider, namely, Thiruvadi Kumar, sustained grievous injuries. They were admitted in Oddanchatram Government Hospital. After getting first aid, the



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petitioner was shifted to Kovai Medical Centre, Coimbatore and he took treatment as inpatient from 23.07.2016 till 29.07.2016, then, he took treatment as out patient. The petitioner claim a sum of Rs.10,00,000/- as compensation.

3. A brief substance of the counter and additional counter filed by the second respondent, in M.C.O.P.No.101 of 2017, is as follows:-

The age, profession, injuries, period of treatment, damages to properties are all denied. The accident did not happen due to the negligence of the car driver. The driver of the car drove the car in a slow and careful manner, observing the traffic Rules, keeping the left side of the road. It is wrong to state that the car was overtaking a lorry at the time of accident. There was no such lorry as stated in the petition. It was the rider of the motorcycle who came from the opposite direction in a rash and negligent manner, dashed against the Car. Three persons travelled in the motorcycle. The rider of the motorcycle was a minor having no driving licence. The driver, owner and insurance company of the motorcycle are necessary parties to the claim petition. The injuries are simple in nature. The compensation claimed is high and excessive.



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4. One (1) witness was examined and 5 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 2,39,238/- as compensation.

5. Against the award, the appellant- Insurance Company has filed this Appeal on the following grounds:-

The Tribunal failed to consider that the claimant was travelling in a two wheeler as a pillion rider along with 2 others, which is against the law. The Tribunal failed to consider that the claimant was not examined. No eye witness was examined, only the father of the claimant was examined, who was not an eye witness. The Tribunal failed to consider that the person, who drove the motorcycle was a minor, who was not having valid driving licence. The compensation is excessive.

6. On the side of the appellant, it is stated that the claimant is a minor, he and 2 other minors travelled in the bike. The bike was rode by a minor and the same was hit a car, which was insured with the appellant. Negligence to be fixed on the rider of the motorcycle and not on the driver of the car. No eye witness was examined. The calimant was not examined.



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7. On the side of the claimant, it is stated that it was the car driver, who was rash and negligent. F.I.R was registered against the car driver. No witness was examined on the side of the appellant. Ex.P1 is the copy of F.I.R. Since the claimant was mentioned as a minor, father of the claimant was examined as P.W.1. P.W.1 was not an eye witness. Based on the evidence of P.W.1 and based on Ex.P1-F.I.R, the Tribunal fixed the liability on the car driver.

8. On the side of the appellant, it is stated that the rider of the two wheeler was a minor, who was not having valid driving licence. The appellant has not chosen to examine any witness or to mark any document to that effect. Admittedly, three persons travelled in the motorcycle, at the time of accident, which is against the motor vehicles Act. Hence, it is decided that the claimant is also liable for contributory negligence and 15% contributory negligence is fixed on the claimant and the driver of the car is liable for 85% contributory negligence.

9. On the side of the appellant, it is stated that the quantum fixed by the Tribunal is excessive. On the side of the claimant, it is stated that the quantum fixed by the Tribunal is very low.



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10. Wound certificate was marked as Ex.P2. Discharge Summary was marked as Ex.P3. Disability certificate was marked as Ex.P5. In Ex.P5, it is stated that the claimant suffered 10% disability. The Doctor, who gave the disability certificate or the Doctor, who gave the treatment to the claimant, was not examined as a witness. Hence, it is decided that there is no evidence to show that the claimant sustained any permanent disability. For 10% disability, the claimant is entitled to Rs.30,000/- as compensation. Medical bills are marked as Ex.P4. On the basis of Ex.P4, the Tribunal awarded a sum of Rs.1,57,238/- and the same is rounded off to Rs.1,57,250/-.

11. The Tribunal awarded Rs.3,000/- towards attender charges, Rs.2,000/- towards loss of articles, Rs.2,000/- towards transport expenses, which are all reasonable.

12. The Tribunal awarded Rs.30,000/- towards pain and sufferings. Considering the fact that the claimant has having only 10% disability, it is decided that the claimant is entitled to Rs.20,000/- towards pain and sufferings. The Tribunal awarded Rs.15,000/- towards extra nourishment and the same is reduced to Rs.10,000/-.



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13. The total compensation is calculated as follows:-

|                     |   |                |
|---------------------|---|----------------|
| 10% Disability      | : | Rs. 30,000/-   |
| Medical expenses    | : | Rs.1,57,250/-  |
| Pain and sufferings | : | Rs. 20,000/-   |
| Extra nourishment   | : | Rs. 10,000/-   |
| Attender charges    | : | Rs. 3,000/-    |
| Transport expenses  | : | Rs. 2,000/-    |
| Loss of articles    | : | Rs. 2,000/-    |
| Total compensation  | : | Rs. 2,24,250/- |

14. After deducting 15% (Rs.33,638/-) towards contributory negligence, the claimant is entitled to Rs.1,90,612/- as compensation.

**15. This Appeal is partly allowed.** The compensation is reduced from Rs.2,39,238/- to Rs.1,90,612/-.

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.1,90,612/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date



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of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the Insurance Company, the claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. Excess amount, if any, shall be refunded to the appellant – Insurance Company. The claimant is not entitled for interest for the default period, if there is any. No costs.

**03.03.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/No  
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1.The Motor Accidents Claims Tribunal –  
Principal District Court,  
Dindigul.

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



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**R. THARANI, J.**

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Pre-delivery Judgment made in  
C.M.A.(MD)No.684 of 2020

**03.03.2023**