



*C.M.A(MD)No.398 of 2015*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.398 of 2015**

**and**

**M.P(MD)No.2 of 2015**

National Insurance Company Limited,  
Represented by its Branch Manager,  
1<sup>st</sup> Floor, 135/1, Rose Building Main Road,  
Kovilpatti.

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

Vs.

[1.Pandi@Pandian](mailto:1.Pandi@Pandian)

... Respondent/Petitioner

2.A.Vijayakumar

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

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Thoothukudi in M.C.O.P.No.46 of 2011, dated 11.09.2012.

For Appellant : Mr.D.Sivaraman

For R1 : No Appearance

For R2 : Mr.S.C.Herold Singh



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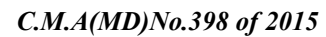
## **JUDGMENT**

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The present appeal has been filed by the insurance company challenging the award of the Motor Accident Claims Tribunal, Thoothukudi in M.C.O.P.No.46 of 2011.

2. According to the injured claimant, he was a pedestrian walking north to south direction at Mukkani in Thoothukudi-Trichendur Main road on the extreme left side of the road. At about 07.00 p.m., a Tata Sumo car which was owned by the 1<sup>st</sup> respondent and insured with the 2<sup>nd</sup> respondent came from the opposite direction and driven in a rash and negligent manner, had dashed against the petitioner. The claimant had fallen down and sustained multiple grievous injuries including fracture. According to the claimant, he was a firewood cutter and he was earning a sum of Rs.10,000/- per month. He claimed a sum of Rs.5,00,000/- towards compensation.

3. The owner of the Tata Sumo car had remained ex parte and the insurance company has filed a counter contending that the injured claimant had attempted to cross the road in a drunken mood without following traffic rules and hence, the claimant alone was responsible for the accident and there was no negligence on the part of the driver of Tata



compensation claimed by the petitioner.

Challenging the said award, the present appeal has been filed.

<https://www.mhc.tn.gov.in/judis>



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upon Exhibit P.2 accident register which discloses that the Assistant Civil Surgeon has recorded that the patient was “conscious, not oriented breath smell of alcohol”. The learned counsel for the appellant further relied upon the evidence of the doctor R.W.2 who had recorded the accident register. R.W.2 in her chief examination, has stated that there was smell of alcohol when the patient was brought to the hospital. During cross-examination also she had confirmed the said finding. However, suggestions have been put to the said doctor to the effect that without conducting urine examination or blood test, it could not be finally concluded that the man was in a drunken mood. However, the said suggestion was negated by the doctor.

6. The learned counsel appearing for the appellant had contended that while cross-examining the officials of insurance corporation, a suggestion has put to him to the effect that the injured claimant had crossed the road only after giving signal. Therefore, according to the learned counsel appearing for the appellant, the claimant has admitted that he was crossing the road when the accident has taken place. A combined reading of Exhibit P.2 and cross examination of R.W.1 and R.W.2, it is clear that the injured claimant had crossed the road in a drunken mood. Therefore, the claimant has contributed to the accident and 50% of compensation should be reduced.



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7. Though the claimant has been served, there is no appearance either in person or through counsel.

8. The main contention of the learned counsel appearing for the appellant is that the injured claimant had crossed the road in a drunken mood. The doctor who had examined the injured claimant at the first instance has recorded in Exhibit P.2 as “breath smell of alcohol”. She was examined as R.W.2. During her chief-examination, she has stated that she had recorded what she had found. In the cross-examination also she had confirmed her findings. The only objection that was raised on the side of the claimant is that without breath test or blood test, it cannot be confirmed that the claimant was under influence of alcohol. The Hon’ble Supreme Court in a judgment reported in **2021 (7) SCC 704 (Iffco Tokio General Insurance Company Limited Vs. Pearl Beverages Limited)** in paragraph no.84 has held that it is not possible for the insurance company to establish that the claimant was in a drunken mood, especially, when the matter was taken up after a long time. The reference of breath of alcohol recorded by the concerned doctor is enough to conclude that the injured or the death person was under the influence of alcohol. Therefore, this Court is of the opinion that the recording of the doctor under Exhibit P.2 is enough to come to a conclusion that the



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injured claimant was under the influence of alcohol at the time of accident. Therefore, this Court is of the view that he has contributed to the accident.

9. The learned counsel appearing for the appellant had further contended that according to the claimant, he was a firewood cutter. However, the injury said to have been sustained by him resulting in 45% permanent disability cannot be considered to be functional disability so as to make an award of Rs.45,000/- towards loss of earning capacity. A perusal of Exhibit P.6 disability certificate discloses that the claimant is aged about 70 years and 45% disability has been fixed under the said certificate. However, there is no reference about his loss of earning capacity. Without such an observations in the certificate, the tribunal was not right in awarding Rs.45,000/- towards loss of earning capacity.

10. In view of the above said facts, the award of the tribunal under the head of loss of earning capacity is reduced from Rs.45,000/- to Rs.25,000/- and the total award is reduced from Rs.1,57,000/- to Rs.1,37,000/-. In view of the fact that the claimant has also contributed to the accident by crossing the road under the influence of alcohol, this Court is inclined to fix the contributory negligence on the part of the



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claimant at 25%. Therefore, the final award amount is Rs.1,02,750/-. The said amount shall carry interest at 7.5% from the date of claim petition.

11. The award of the tribunal is modified and the Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

**25.04.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate Court,  
Thoothukudi.

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



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**R.VIJAYAKUMAR,J.**

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Judgment made in  
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