



C.M.A. (MD)No.1103 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1103 of 2022

and

C.M.P.(MD) No.8694 of 2022

S.Muthukumar

...Appellant/ Petitioner

Vs.

1.N.Karthik

.. 1st Respondent/ 1st Respondent

2.The Branch Manager,
Reliance General Insurance Co Ltd.,
Trichy, having its office at,
PLA Kanagu Towers 2nd Floor,
15-A, Thillai Nagar 11th Cross,
Trichy 620 018.

... 2nd Respondent/2nd Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 20.12.2019 made in MCOP.No.191 of 2016 on the file of the MACT, Principal Sub-Judge, Kumbakonam.

For Appellant : Mr. A.S.Mathialagan
For Respondents : Mr.V.Sakthivel (for R2)
No appearance (for R1)



C.M.A. (MD)No.1103 of 2022

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed seeking to set aside the judgment and decree made in M.C.O.P.No.191 of 2016, dated 20.12.2019 on the file of the learned Motor Accident Claims Tribunal, Principal Sub-Judge, Kumbakonam.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) The petitioner/claimant is the appellant herein.

(ii) On 22.04.2016, at about 10.00 am., the petitioner/claimant was riding a Starcity Motor Cycle bearing Registration No.TN-68- D-2072, at the time, a car bearing registration No.TN-10AH-0798 came in a rash and negligent manner and dashed against the petitioner's motor cycle, as a result, the petitioner sustained grievous injuries. Hence, the petitioner/claimant filed MCOP petition. The first respondent is the owner of the car and the second respondent is the insurer of the car.



C.M.A. (MD)No.1103 of 2022

WEB COPY

4. It is the stand of the second respondent/insurance company before the tribunal that the accident was occurred not only due to the rash and negligent driving of the car, but also rash and negligent driving of the driver of the motor cycle. Hence, the contributory negligent has to be fixed.

5. The first respondent/owner was set *ex-parte* before the tribunal on 29.06.2017.

6. To substantiate the case before the tribunal, on the side of the petitioner/claimant, he was examined as P.W.1 and Ex.P.1 to Ex.P.15 were marked. On the side of the respondents, no witnesses were examined and no documents were marked.

7. The tribunal, after considering the evidence and other documents of the petitioner/claimant, held that the accident occurred due to the rash and negligence driving of the car and fixed the compensation as follows:



C.M.A. (MD)No.1103 of 2022

WEB COPY

1.	Disability	Rs.5,25,000/-
2.	Pain and suffering	75,000/-
3.	Extra Nourishment	20,000/-
4.	Transport to Hospital	10,000/-
5.	Damages to clothes	1,000/-
6.	Attendant charges	29,000/-
7.	Medical Expenses	2,000/-
8.	Loss of Amenities	25,000/-
	Total	Rs.6,87,000/-
	Less 20% towards contributory negligence committed by the petitioner	1,37,400/-
	Total	Rs.5,49,600/-

8. The tribunal also held that since the claimant was having license only for Light Motor Vehicle(LMV) to drive the vehicle, he has also contributed some factors to the cause of the accident. Hence, the tribunal fixed 20% towards contributory negligence on the petitioner/claimant, as per judgment in the case of **National Insurance Co., Ltd., and others Vs., Thangadurai and others (2018(2) TNMAC 168 (DB))**. After deducting 20% towards the contributory negligence, the tribunal awarded a compensation of Rs.5,49,600/- with interest at



C.M.A. (MD)No.1103 of 2022

the rate of 7.5%.

WEB COPY

9. Challenging the said award, the petitioner/claimant has filed this appeal for enhancement.

10. It is the contention of the learned counsel for the petitioner that despite 50% disability arrived by the Medical Board, the tribunal has only calculated notionally disability to the tune of 25%. According to him, the same is not correct.

11. The learned counsel for the second respondent submits that the disability certificate produced by the claimant itself, it is only 20% towards the temporary disability not even partial permanent disability. Hence, he submitted that the tribunal in fixing the compensation cannot be faulted.

12. I perused the entire materials. The tribunal has fixed the compensation Rs.6,87,000/- and deducted 20% towards contributory negligence on the part of the petitioner, simply because the driving license did not have endorsement to drive the two wheeler. This Court is of the view that it is not a case of the respondents that because of non-possession of license at the relevant point of time,



C.M.A. (MD)No.1103 of 2022

the petitioner/claimant has rode vehicle in such a manner and caused accident.

When the rash and negligent has been established on the part of the driver of the car, the tribunal ought not to have fixed contributory negligence on the part of the petitioner/claimant, merely in non-possessing of driving license at the relevant point of time. In such view of the matter, the deduction made by the tribunal towards contributory negligence on the part of the petitioner/claimant is hereby set aside and the compensation of Rs.6,87,000/- fixed by the tribunal is awarded as compensation, added to that, taking note of the nature of the treatment and he was in hospital, another Rs.13,000/- is awarded and total compensation of Rs.7,00,000/- is entitled to the petitioner/claimant. Accordingly, the Civil Miscellaneous Appeal is allowed.

13.The second respondent/insurance company is directed to deposit the modified award amount of Rs.7,00,000/- (Rupees Seven Lakhs Only) as modified by this Court with accrued interest and costs at the first instance to the credit of M.C.O.P.No.191 of 2016, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Kumbakonam, within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the petitioner/claimant is permitted to withdraw the award



C.M.A. (MD)No.1103 of 2022

amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2023

Index : Yes/No

Internet : Yes/No

Rmk

To

- 1.The Motor Accident Claims Tribunal,
Principal Sub-Judge, Kumbakonam.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A. (MD)No.1103 of 2022

N.SATHISH KUMAR, J.

Rmk

C.M.A.(MD)No.1103 of 2022

10.03.2023