



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 25.04.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**CMA No.1004 of 2024**

Krishnan

..Appellant

.VS.

1.Ranjith

2.The National Insurance Co., Ltd.,  
IInd Floor, LRN Building, Saradha College Road,  
Salem District - 636 007.

..Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order in MCOP No.1415 of 2021, dated 02.08.2022, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Salem.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Dr.C.Paranthaman for R3

**JUDGMENT**

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.1415 of 2021, dated 02.08.2022 has filed this appeal seeking for enhancement of compensation.



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2.The case of the claimant is that on 12.08.2021, he was riding a two wheeler from Magudamchavadi-Konganapuram and at about 9.00 a.m. when the vehicle came near Panchayat Union Primary School, the offending vehicle was driven by the 1st respondent in a rash and negligent manner and it hit the two wheeler of the claimant as a result of which, the claimant fell down from the vehicle and sustained fracture on his right leg bone and he also underwent surgery and underwent treatment for nearly six days as an inpatient. The permanent disability was assessed by the Medical Board at 20%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent. The Tribunal having rendered such a finding, attributed 30% contributory negligence against the claimant on the ground that the claimant was not possessing a driving license and he was also not wearing a headgear. Thus, the total negligence was fixed at 70% against the 1st respondent and the 2nd respondent was directed to pay the compensation, since the offending vehicle was insured with the 2nd respondent.



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4.The Tribunal thereafter calculated the total compensation at Rs.5,67,052/- in the following manner:

| S.No | Compensation awarded under the head                             | Amount (in Rs.) |
|------|-----------------------------------------------------------------|-----------------|
| 1.   | Pain and Sufferings                                             | 1,00,000        |
| 2.   | Loss of convenience                                             | 80,000          |
| 3.   | Medical Expenses as per Ex.P.11                                 | 1,77,052        |
| 4.   | Attendant Charges                                               | 10,000          |
| 5.   | Disability as per Ex.C.1 (6000 x 20%)                           | 1,20,000        |
| 6.   | Temporary Loss of Income                                        | 60,000          |
| 7.   | Transport to Hospital                                           | 10,000          |
| 8.   | Extra Nourishment                                               | 10,000          |
|      | <b>Total</b>                                                    | <b>5,67,052</b> |
|      | 30% deduction towards contributory negligence of the petitioner | <b>1,70,115</b> |
|      | <b>Total compensation awarded to the appellant</b>              | <b>3,96,936</b> |

5.Out of the above compensation, 30% was reduced towards contributory negligence and the balance amount of Rs.3,96,936/- was directed to be paid with 9% interest.

6.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal and also attributing 30% contributory negligence against the claimant



has filed the present appeal before this Court seeking for enhancement of compensation.

7. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing on behalf of the appellant and Dr.C.Paranthaman, learned counsel appearing on behalf of the 2nd respondent.

8. This Court has carefully considered the submissions made on either side and also the materials available on record.

9. In the considered view of this Court, the Tribunal after having come to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent, ought not to have attributed contributory negligence against the claimant only on the ground that the claimant was not having a valid driving license and that the claimant was not wearing a headgear.

10. Insofar as the claimant not having valid driving license, that by itself is not a ground to attribute contributory negligence. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Dinesh Kumar J vs. National Insurance Company Limited and others*** reported in ***2018 1 SCC 750***.



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11. In view of the above, the Tribunal attributing contributory negligence against the claimant on the ground where the claimant was not having a valid driving license is hereby set aside.

12. Insofar as the contributory negligence that was attributed for not wearing a headgear, it is seen that the claimant has not sustained any head injuries in this case. That apart, by not wearing the headgear, the claimant has not in any way contributed to the negligence resulting in the accident. Therefore, there is no ground of attributing contributory negligence on the premise that the claimant was not wearing a headgear. Accordingly, 30% contributory negligence that was attributed against the claimant by the Tribunal is hereby set aside.

13. Insofar as the quantum of compensation is concerned, except the head of 'Disability', under all the other heads, a very reasonable compensation has been fixed and the same does not require the interference of this Court.

14. Insofar as the head under 'Disability', the Tribunal has fixed a sum of Rs.6000/- per percentage. In the instant case, the accident had taken place in the year 2021 and considering the judgment of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022, this Court is inclined to fix a sum of Rs.7000/- per percentage.

Thus, the total compensation under the head of 'Disability' works out to Rs.1,40,000/-



(Rs.7000 x 20%).

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15. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

| S.No | Compensation awarded under the head | Amount (in Rs.) |
|------|-------------------------------------|-----------------|
| 1.   | Pain and Sufferings                 | 1,00,000        |
| 2.   | Loss of convenience                 | 80,000          |
| 3.   | Medical Expenses as per Ex.P.11     | 1,77,052        |
| 4.   | Attendant Charges                   | 10,000          |
| 5.   | Disability (7000 x 20%)             | 1,40,000        |
| 6.   | Temporary Loss of Income            | 60,000          |
| 7.   | Transport to Hospital               | 10,000          |
| 8.   | Extra Nourishment                   | 10,000          |
|      | <b>Total</b>                        | <b>5,67,052</b> |

16. The Tribunal has directed the Insurance Company to pay interest at the rate of 9% per annum. The same is on the higher side and the same is reduced to 7.5%. Hence, the above compensation fixed by this Court shall be paid by the Insurance Company with interest at the rate of 7.5% per annum. It goes without saying that the Tribunal has applied the pay and recovery principle in this case, since the 1st respondent did not have a valid driving license. Therefore, whatever compensation is paid by the Insurance Company to the claimant pursuant to this order, can always be



recovered from the 1st respondent.

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17.The compensation awarded by the tribunal at Rs.3,96,936/- is enhanced to Rs.5,67,052/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.5,67,052/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgement. Insofar as the enhanced compensation of Rs.1,70,115/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 425 days as was ordered by this Court in C.M.P.No.1562 of 2024, dated 20.03.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

18.This Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

**25.04.2024**

Index : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral citation : Yes/No  
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**N. ANAND VENKATESH., J**

SSR

To

The Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Salem.

**CMA No.1004 of 2024**

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