



C.M.A.(MD)Nos.1066 and 1067 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **03.09.2024**

CORAM :

**THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A(MD)Nos.1066 and 1067 of 2009**

**In C.M.A(MD)No.1066 of 2009:**

Narendran @ Regan

... Appellant/Petitioner

**Vs.**

1.Abraham

2.The New India Assurance Company Limited,  
through its Divisional Manager,  
84A, Thiruvananthapuram Road,  
Palayamkottai.

...Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2009 passed in M.C.O.P.No.1297 of 2006 on the file of the Motor Accident Claims Tribunal Judge (Additional District Judge/FTC No.I.), Tirunelveli

**In C.M.A(MD)No.1067 of 2009:**

Narendran @ Philip

... Appellant/Petitioner

**Vs.**

1.Abraham

2.The New India Assurance Company Limited,  
through its Divisional Manager,



C.M.A.(MD)Nos.1066 and 1067 of 2009

84A, Thiruvananthapuram Road,  
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...Respondents/Respondents

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**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2009 passed in M.C.O.P.No.1298 of 2006 on the file of the Motor Accident Claims Tribunal Judge (Additional District Judge/FTC No.I), Tirunelveli

**In both appeals:**

For Appellants : Mr.T.Selvakumaran

For R2 : Mr.J.S.Murali

R1 :No appearance

**COMMON JUDGMENT**

The instants appeals seek enhancement of compensation.

2. The claimants, who are the rider and the pillion rider of the two-wheeler and sustained injuries due to the accident caused by the insured vehicle, an Auto, had preferred the claim petitions seeking compensation for the injuries suffered by them.

3. The 2<sup>nd</sup> respondent, being the insurer of the offending vehicle,



C.M.A.(MD)Nos.1066 and 1067 of 2009

filed a counter stating that the accident took place due to the negligence of the two-wheeler rider ; that the auto driver did not have a valid license; and therefore, the 2<sup>nd</sup> respondent is not liable to pay compensation.

4. The owner of the autorickshaw remained ex parte before the Tribunal.

5. The claimants examined three witnesses as P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.17. The 2<sup>nd</sup> respondent examined R.W.1 and R.W.2 and marked Ex.R.1 to Ex.R.3.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the claimant in M.C.O.P.No.1297 of 2009 is entitled to a total compensation of Rs.3,11,552/- and the claimant in M.C.O.P.No.1298 of 2009 is entitled to a total compensation of Rs.1,35,000/- and apportioned the contributory negligence on the rider of the two-wheeler at 50% and directed the 2<sup>nd</sup> respondent to pay 50% of the compensation amount determined to the claimants.



7. The learned counsel for the appellants submitted that only reason for fixing 50% contributory negligence on the rider of the two-wheeler was that three persons had travelled in the two-wheeler; that merely because three persons had travelled in the two-wheeler, it would not automatically lead to contributory negligence; and that the compensation awarded by the Tribunal is meagre. He therefore prayed for enhancement of compensation.

8. Though notice has been served on the 1<sup>st</sup> respondent and his name is printed in the cause list, none entered appearance.

9. The learned counsel for the 2<sup>nd</sup> respondent, per contra, submitted that admittedly, three persons travelled in the two-wheeler, and hence, the Tribunal was right in fixing 50% contributory negligence and that the award of the Tribunal is just and reasonable.

10. The points for consideration in the instant appeal are as follows:

a) Whether the finding of the Tribunal fixing 50% contributory negligence on the rider of the two-wheeler is justified; and



b) Whether the compensation awarded by the Tribunal is just and reasonable.

11. Admittedly, the claimants along with another person were riding the two-wheeler at the time of accident. However, the question is whether travel of three persons in the two-wheeler would automatically lead to contributory negligence. The 2<sup>nd</sup> respondent has not let-in any evidence to show that the rider of the two-wheeler had contributed to the accident in any other manner. R.W.1 and R.W.2, were examined by the 2<sup>nd</sup> respondent, did not speak about the accident.

12. The Division Bench of this Court, in **Divisional Manager, National Insurance Co. Ltd. Dindigul Vs. M.Amutha** reported in **2023(2) TN MaC 585**, held that three persons traveling in two-wheeler though violation of law, would not automatically lead to contributory negligence. However, taking into consideration the fact that three persons travelled in the two-wheeler and considering the manner in which the accident took place, this Court is of the view that it would be just and reasonable to fix contributory negligence at 10% both on the riders of the two-wheeler/claimants. The point No.1 is answered accordingly.



C.M.A.(MD)Nos.1066 and 1067 of 2009

**13.** As regards quantum of compensation, this Court is of the view that considering the nature of injuries and the disability certificates produced on the side of the claimants, the Tribunal had determined the compensation at Rs.3,11,552/- and Rs.1,35,000/- respectively.

**14.** Though the learned counsel for the appellant pleaded for enhancement of compensation, he is unable to point out any infirmity in the said award of compensation which requires enhancement. Therefore, there is no need to modify the quantum of compensation and the same is confirmed.

**15.** Since contributory negligence on the rider is reduced from 50% to 10%, the 2<sup>nd</sup> respondent would be liable to pay (Rs.311,552 - 10%) Rs.2,80,396.80/- rounded off to **Rs.2,80,397/- (Rupees Two Lakhs, Eighty Thousand, Three Hundred and Ninety Seven Only)** to the claimant in MCOP.No.1297 of 2006 (C.M.A(MD)No.1066 of 2009) and to pay (Rs.1,35,000 – 10%) **Rs.1,21,500/- (Rupees One Lakh, Twenty One Thousand, Five Hundred Only)** to the claimant in MCOP.No.1298 of 2006(C.M.A(MD)No.1067 of 2009).



C.M.A.(MD)Nos.1066 and 1067 of 2009

16. The 2<sup>nd</sup> respondent shall deposit the said amount with accrued interest within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants in both appeals are permitted to withdraw the same by filing a suitable application.

17. The 2<sup>nd</sup> respondent is at liberty to recover the said amount from the owner in accordance with the judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd., Vs. Shri Nanjappan and Others*** reported in ***2004 (1) TN MAC (SC) 211.***

18. In fine, these appeals are partly allowed. No costs.

**03.09.2024**

Index : Yes / No  
Neutral Citation : Yes / No  
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To  
1. Motor Accident Claims Tribunal Judge  
(Additional District Judge/FTC No.I.), Tirunelveli  
  
2. The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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C.M.A.(MD)Nos.1066 and 1067 of 2009

**SUNDER MOHAN, J.**

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**Judgment made in**  
**C.M.A(MD)Nos.1066 and 1067 of 2009**

**03.09.2024**