



C.M.A(MD)No.662 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.662 of 2023

R.Shivakumar

... Appellant

Vs.

1.S.Sarpirasatham

2.IFFCO TOKIO General Insurance

Company Limited,
represented through its Authorized,
Having its Office at 80, Preetham Plaza,
1st Floor, Chandra Khandhi Nagar,
Ponmeni, Bye Pass Road, Madurai.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree, dated 30.01.2023, made in in M.C.O.P.No.256 of 2017 on the file of Special Sub Court (Motor Accident Claims Tribunal), Madurai.

For Appellant : Mr.C.Godwin
For R1 : No appearance
For R2 : Mr.V.Sakthivel

JUDGMENT

The claimant has filed this Civil Miscellaneous Appeal.

2. It is a case of injury. The nature of accident is that both the two wheelers



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were plying on the same direction. The contention of the injured is that the person who was driving in front of him was trying to turn to right side without any indication, hence, he hit the vehicle. Simultaneously, both the two wheeler drivers fell down. Moreover, the person who was plying in front was drunken. The version of second respondent is that the person who was driving the vehicle behind (injured) was a minor without helmet. He suffered head injury and was not having license. When injured hit the person who was plying in the front, the person in the front (1st respondent) fell down and hence, his petrol tank was damaged. The claimant is making a claim that his version is correct.

3. However, the Insurance Company submitted since the minor has hit the vehicle, the vehicle has fell down and the petrol tank has damaged. Therefore, it cannot be stated that he was trying to turn to the right side.

4. On considering the entire facts and also on perusing the order passed by the Tribunal, it is seen that the Tribunal has fixed the negligence as 50-50 on the two vehicles. But while granting the relief, the Tribunal has fixed 70% contributory negligence on the claimant. After hearing the arguments and after hearing the narration of accident, this Court is of the considered opinion that both



the two wheelers have committed the accident and the negligence ought to be fixed 50-50 on both the two wheelers. Therefore, the contributory negligence fixed on the claimant by the Tribunal as 70% is reduced to 50% by this Court, thereby, this Court is enhancing the total compensation granted by the Tribunal from Rs.1,98,990/- to Rs.3,31,650/-

5. The enhanced compensation awarded by this Court is as under:

	Awarded by the Tribunal	Awarded by this Court
Compensation arrived at	Rs.6,63,300/-	Rs.6,63,300/-
Contributory negligence	70%	50% (reduced)
Deducting contributory negligence	Rs.6,63,300 – Rs.4,64,310	Rs.6,63,300 – Rs.3,31,650
Total compensation	Rs.1,98,990/-	Rs.3,31,650/- (enhanced)

6.The 2nd respondent Insurance Company is directed to deposit Rs. 3,31,650/- (Rupees Three Lakh Thirty One Thousand Six Hundred and Fifty only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and



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costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal. The 2nd respondent Insurance Company is entitled to recover the same from the owner of the vehicle / 1st respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. Since this Court is enhancing the compensation, the claimant is liable to pay the balance Court fee.

7. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

18.03.2024

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

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- 1.Special Sub Court (Motor Accident Claims Tribunal),
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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