



CMA.No.339 of 2025

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

WEB COPY

**DATED : 21.02.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA.No.339 of 2025**

Pandian

... Appellant

Vs.

1.Vivek Arunachalam

2.ICICI Lombard General Insurance Company Limited,  
Rep. by its Branch Manager,  
Chottaboy Center, 2<sup>nd</sup> and 3<sup>rd</sup> Floor,  
140, Nungambakkam High Road,  
Chennai – 600 034.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the order and enhancement the award amount passed by the Motor Accident Claims Tribunal Judge, Chief Judicial Magistrate, Perambalur by its judgment dated 07.11.2024 and made in MCOP.No.220 of 2023.

For Appellant : Mr.J.John Britto Rahul  
for C.Vidhusan

For Respondents : Notice to R1 is dispensed with  
No Appearance for R2

**JUDGMENT**



CMA.No.339 of 2025

WEB COPY

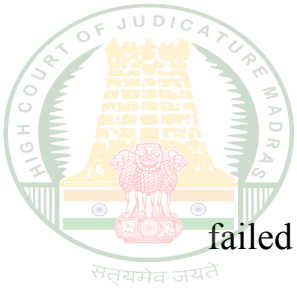
The appellant/injured claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal Chief Judicial Magistrate, Perambalur, in MCOP.No.220 of 2023, dated 07.11.2024, has come by way of this Civil Miscellaneous Appeal.

2. It is not in dispute that the claimant suffered pelvic ring injury in a road accident that had taken place on 21.02.2023. It is the case of the claimant that he was proceeding in his two wheeler bearing registration No.TN-46D-0758 and the car belonging to the first respondent insured with the second respondent bearing registration No.TN-46-AC-1213 came in a rash and negligent manner and dashed against the two wheeler of the claimant from behind. As a result of which, the claimant suffered pelvic ring injury and he was in hospital for nearly 10 days from 21.02.2023 to 02.03.2023. In order to ascertain the disability, the claimant was examined by Medical Board and Ex.C2-disability certificate was issued fixing disability at 13%.



3. The claim petition was resisted by the second respondent, denying the manner of accident as described in the claim petition. It was the specific case of the second respondent that the accident had occurred only due to the negligence of the claimant.

4. Before the Tribunal, the claimant was examined as PW.1, the pillion rider who also suffered the injury was examined as PW.2. On behalf of the claimants in this appeal, five documents were marked as Exd.P1 to P5. On behalf of the pillion rider, who also filed a separate original petition which was taken-up for enquiry, along with the petition filed by the claimant, two documents were marked as Exs.P6 and P7. On behalf of the second respondent, three witnesses were examined as RW.1 to RW3 and five documents were marked as Exs.R1 to R5 and the disability certificate issued to the claimant was marked as Ex.C2 and the disability certificate issued to the pillion rider was marked as Ex.C1. The Tribunal on consideration of evidence available on record came to the conclusion that the accident had occurred due to the rash and negligent driving of the vehicle belonging to the first respondent. However, the Tribunal fixed 10% contributory negligence on the part of the claimant on the ground that he



failed to wear helmet.

WEB COPY

5. The Tribunal after deducting the amount towards 10% contributory negligence awarded a sum of Rs.2,77,200/-. Not satisfied with the quantum of compensation, the claimant has come before this Court.

6. The learned counsel appearing for the appellant would submit that the claimant suffered the disability of 13%, as per the disability certificate issued by Medical Board as Ex.C2. The Tribunal committed serious error in awarding only Rs.5,000/- per percentage of the disability. He also submits that the amount awarded by the Tribunal under the head loss of income, extra nourishment, attender charges etc., needs enhancement.

7. Issuance of notice was dispensed with to the first respondent who remained ex-parte before the Tribunal. Though notice was served on the second respondent and the name of the Insurance Company is printed in the cause list, there is no representation.

8. A perusal of Ex.P2-discharge summary issued to the claimant would suggest that he suffered Pelvic ring injury-public diastasis/SI



Joint disruption (Rt). The petitioner was admitted to hospital on 21.02.2023

WEB COPY

and he was discharged on 02.03.2023. Therefore, it is clear that the petitioner has not suffered any head injury, therefore, in the absence of any head injury, the Tribunal ought not have fixed 10% contributory negligence on the claimant for his failure to wear helmet. The injury caused to him is not due to his failure to wear helmet. Therefore, the finding of the Tribunal fixing 10% negligence on the claimant is set aside.

9. For accident occurred on 21.02.2023, the Tribunal awarded only Rs.5,000/- per percentage. Ex.C2-disability certificate would indicate that the claimant suffered disability at 13%. Taking into consideration year of accident, this Court is inclined to fix Rs.9,000/- per percentage of disability. Therefore, the claimant is entitled to a sum of Rs.1,17,000/- (9,000x13). As per discharge summary marked as Ex.P2, the claimant was in hospital for nearly 10 days. The Tribunal granted compensation for loss of income for four months by taking the monthly income at Rs.12,000/-. In view of the fact that the accident had occurred in the year 2023, the notional income can be fixed at Rs.18,000/- and the claimant is entitled to a sum of Rs.72,000/- under the head loss of income during treatment period. Taking



CMA.No.339 of 2025

into consideration, the claimant was inpatient for nearly 10 days, this Court feels that the amount awarded under the head extra nourishment and attender charges shall be increased to Rs.10,000/-(each) and the amount awarded under the head damage to the clothes is set aside. The amount awarded by the Tribunal under all other heads are confirmed. Therefore, the total amount payable to the claimant is Rs.3,94,815/- without any deduction under the head contributory negligence. Therefore the award passed by the Tribunal is modified as follows.

| S.No | Description                          | Amount awarded by Tribunal (Rs)               | Amount awarded by this Court (Rs) |
|------|--------------------------------------|-----------------------------------------------|-----------------------------------|
| 1.   | Partial permanent disability         | 65,000/-                                      | 1,17,000/-                        |
| 2.   | Transport to hospital                | 10,000/-                                      | 10,000/-                          |
| 3.   | Extra nourishment                    | 5,000/-                                       | 10,000/-                          |
| 4.   | Medical Bills                        | 1,25,815/-                                    | 1,25,815/-                        |
| 5.   | Attender's charge                    | 3,000/-                                       | 10,000/-                          |
| 6.   | Pain and sufferings and mental agony | 50,000/-                                      | 50,000/-                          |
| 7.   | Temporary loss of income             | 48,000/-                                      | 72,000/-                          |
| 8.   | Damage to clothes                    | 1,000/-                                       | -                                 |
|      |                                      | 3,07,815/-<br>rounder off to<br>Rs.3,08,000/- | 3,94,815/-                        |



|                                                       |                                            |               |
|-------------------------------------------------------|--------------------------------------------|---------------|
| Loss of 10% contributory negligence fixed on claimant | (3,08,800x10%=<br>30,800)<br>Rs.2,77,200/- | Rs.3,94,815/- |
|-------------------------------------------------------|--------------------------------------------|---------------|

10. In view of the discussions made earlier, the claimant is entitled to a sum of Rs.3,94,815/- as against a sum of Rs.2,77,200/-(rounded off) awarded by the Tribunal. The claimant is entitled to interest at the rate of 7.5% on the enhanced award. The respondents are directed to deposit the enhanced amount with interest within a period of four weeks from the date of a copy of this judgment, to the credit of MCOP.No.220 of 2023, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, by making formal application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.



CMA.No.339 of 2025

21.02.2025

WEB COPY

Index : Yes/No

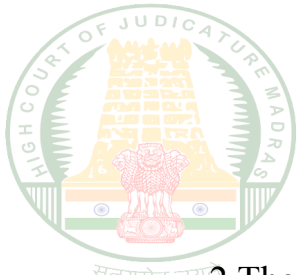
Speaking order: Yes/No

Neutral Citation: Yes/No

ub

To  
1.The Motor Accident Claims Tribunal  
Chief Judicial Magistrate, Perambalur

8/10



CMA.No.339 of 2025

2.The Section Officer  
VR Section,  
High Court, Madras.

**S.SOUNTHAR, J.**  
ub



WEB COPY



CMA.No.339 of 2025

**CMA.No.339 of 2025**

**21.02.2025**