



CMA.No.719 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.719 of 2023

S.Vembu

... Appellant

Vs.

1.P.Sadasivam
2.IFFCO TOKIO General Insurance Company Limited,
Branch Office, Srivasam Arcade,
2nd Floor, Advaith Ashramam Road,
Salem – 636 004.

3.T.Mohan Kumar

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the award dated 13.09.2022 and made in MCOP.No.319 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem deal with MCOP Cases, Salem.

For Appellant : Mr.S.Vinod

For Respondents : No Appearance for R1
Mr.P.Sivakollappan for R2
Dispensed with for R3

J U D G M E N T



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The Civil Miscellaneous Appeal is filed challenging the award passed by the Motor Accident Claims Tribunal in MCOP.No.319 of 2018.

2. It is the case of the claimant that he suffered injury in a road accident that had occurred on 05.01.2018. According to him, he was travelling as a pillion rider on TVS-Victor two wheeler bearing registration No.TN-54L-7709 which was driven by her son. It is further stated that the rider of TVS-Victor vehicle driven the vehicle in a rash and negligent manner and turned to his right side without proper signal and indication. Due to sudden turning of the vehicle , driver lost his control and as a result of the same claimant suffered grievous injuries. Hence, the claim petition was filed seeking compensation of Rs.15,00,000/- against the respondents. The first respondent is the owner of the two wheeler, in which the claimant travelled as a pillion rider. The second respondent is the insurer of the two wheeler. The 3rd respondent is the owner of the Yamaha bike, who came in the opposite direction. According to the claimant, the 3rd respondent who came in the opposite direction on seeing the rash and negligent driving of the rider of the TVS-Victor vehicle stopped his two wheeler just at the place



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of occurrence. It is further stated that at the time of accident due to ill advice the son of the claimant had given a complaint to the police, as if the accident had occurred due to the rash and negligent driving of the 3rd respondent.

3. The respondents 1 and 2 filed counter affidavit and resisted the allegation in the claim petition, as if, the accident had occurred due to the negligence on the part of the driver of TVS-victor two wheeler. It was the specific case of the respondents 1 and 2 that the accident had occurred only due to the rash and negligent driving of the 3rd respondent vehicle.

4. Before the Tribunal, the claimant was examined as PW1 and an eye witness was examined as PW.2. Seven documents were marked on the side of the claimants as Exs.P1 to P7. The official of the second respondent/Insurance Company was examined as RW.1 and three documents were marked on the side of the 2nd respondent as Exs.R1 to R3. The disability certificate along with X ray was marked as Ex.C1.

5. The Tribunal based on the evidence available on record came to



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the conclusion that the accident had occurred due to the negligence on the part of the 3rd respondent vehicle and exonerated the respondents 1 and 2 from the liability. The award amount payable to the claimant was quantified at Rs.2,60,082/-. Aggrieved by the dismissal of the claim petition against the respondents 1 and 2 and also the quantum of compensation, the claimant has come before this Court.

6. The learned counsel appearing for the appellant would submit that the Tribunal failed to take into consideration the evidence of eye witness PW.2 and erroneously came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the 3rd respondent's vehicle. The learned counsel further submitted that the amount of Rs.5,000/- awarded by the Tribunal per percentage of disability is very much on lower side.

7. The learned counsel appearing for the second respondent/Insurance Company would submit that the claimant's son who was the driver of TVS-Victor vehicle preferred a police complaint against the 3rd respondent and a charge sheet was also filed against the 3rd



respondent in the criminal case, later he pleaded guilty as seen from Ex.R3.

He further submits that accident occurred only due to the negligence on the part of the 3rd respondent and the Tribunal was justified in dismissing the claim petition against the respondents 1 and 2, the owner and insurer of TVS-Victor vehicle.

8. Though it was pleaded by the claimant in the claim petition, the 3rd respondent had stopped the vehicle, in front of the place of accident and the accident occurred only due to the negligent driving of the TVS-Victor vehicle by claimant's son, the complaint given by her son, which was marked as Ex.P1-FIR proved that the accident had occurred only due to the negligence on the part of the 3rd respondent. When the claimant's son himself preferred a police complaint alleging the negligence on the part of the 3rd respondent, it is not open to the claimant to say that the accident had occurred due to the negligence on the part of her son. In order to prove the negligence on the part of the 3rd respondent, the claimant has examined one eye witness PW.2. Though in his proof affidavit, he mentioned that the accident had occurred due to the negligence on the part of the 3rd respondent, during cross examination he clearly admitted that the proof affidavit was



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prepared as instructed by the claimant. Taking into consideration, the said fact, the Tribunal, rightly rejected the evidence of PW.2 as not trustworthy.

It is seen from Exs.R2 and R3 based on police investigation, charge sheet was filed against the 3rd respondent in STC.No.731 of 2018. Therefore, the evidence available on record would prove that the accident had occurred due to the negligence on the part of the 3rd respondent. The findings rendered by the Tribunal that the 3rd respondent was responsible for the accident is based on proper appreciation of evidence available on record which requires no interference by this Court.

9. As far as the quantum of compensation is concerned, the accident had occurred in the year 2018, the Tribunal granted Rs.5,000/- per percentage of disability. A Division Bench of this Court in ***Future General India Insurance Company Limited vs. Manivannan and others*** (C.M.A.No.3334 of 2021, dated 15.06.2022), fixed that a sum of Rs.7,000/- per percentage of disability occurred in the year 2017. Hence, this Court is inclined to fix Rs.7,000/- per percentage of disability considering the date of accident.



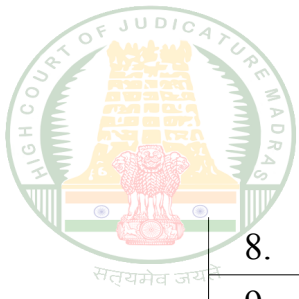
10. In Ex.C1 – disability certificate with x-ray issued by the

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Medical Board, the disability is assessed at 25%. Therefore, the claimant is entitled to Rs.1,75,000/- under the head loss of disability. Taking into consideration the nature of injury suffered by the claimant, the amount of Rs.10,000/- awarded under the head loss of amenities is enhanced to Rs.20,000/-. The amount awarded by the Tribunal under the head damage to the clothes is set aside and various other heads like pain and suffering, loss of income during treatment period, medical expenses, nutritious expenses, transport expenses, attender charges etc., are confirmed.

11. In view of the discussions made earlier, the amount awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Pain and suffering	30,000/-	30,000/-
2.	Loss of income	15,000/-	15,000/-
3.	Medical expenses	49,082/-	49,082/-
4.	Transport charges	10,000/-	10,000/-
5.	Extra nourishment	10,000/-	10,000/-
6.	Attender charges	10,000/-	10,000/-
7.	Damage to clothes	1,000/-	-



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8.	Loss of Amenities	10,000/-	20,000/-
9.	Permanent disability	1,25,000/-	1,75,000
	Total	Rs.2,60,082/-	Rs.3,19,082/-

In view of the discussions made earlier, the claimant is entitled to a sum of **Rs.3,19,082/-** as against a sum of **Rs.2,60,082/-** 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.319 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem dealing with MCOP Cases, Salem. 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.

12. Accordingly, this Civil Miscellaneous Appeal is partly



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allowed. No costs.

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Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accidents Claims Tribunal,
Special Sub Court No.1, Salem deal with MCOP Cases, Salem.

2.The Section Officer

VR Section, High Court, Madras.

S.SOUNTHAR, J.

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