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CMA.No.358 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.358 of 2025

Karumbayiram

... Appellant

Vs.

1.Kamaraj

2.Reliance General Insurance Company Limited,
No.6, Reliance House,
4th Floor, Haddows Road,
Chennai – 600 034.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the award amount in judgment and decree dated 02.09.2024 made in MCOP.No.1242 of 2023 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge-I, Court of Small Causes, Chennai by allowing this Civil Miscellaneous Appeal.

For Appellant :Mr.Amar D.pandiyan
for Mr.M.Karuppaiah

For Respondents :M/s.Sree vidhya for R2
Notice Dispensed with for R1



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J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this Court.

2. According to the claimant, on 27.11.2022, he was riding a two wheeler along with his neighbours from North to South and when he came near Nagamangalam to Sundakudi Road, near Ambalavarkattalai Sambath Odai, the TATA ACE vehicle insured with the second respondent belonged to the first respondent came in a rash and negligent manner and dashed against the two wheeler. As a result of the accident, the claimant suffered fracture in rib bone and filed claim petition seeking compensation of Rs.3,00,000/-.

3. The first respondent owner of the vehicle remained ex-parte. The second respondent filed counter and disputed negligence on the part of the driver of the TATA ACE and stated that the entire negligence was on



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the part of the claimant.

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4. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the TATA ACE vehicle. However, the Tribunal fixed 15% contributory negligence on the part of the claimant mainly on the ground that three persons had travelled in the bike and the amount payable to the claimant was quantified at Rs.1,00,000/-.

5. The learned counsel appearing for the appellant would submit that merely because three persons had travelled in the bike, the Court cannot presume that there was negligence on the part of the rider of the vehicle and hence fixing contributory negligence on the part of the rider of the bike is not in accordance with law. He further submitted that for the accident in the year 2022, the Tribunal granted only Rs.5,000/- per percentage of disability and the same requires enhancement. He also submitted that the amount of Rs.13,500/- awarded under the head loss of earning is very much on lower side.



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6. The Tribunal fixed 15% contributory negligence mainly on the admission of PW.1 that three persons had travelled in a bike. In ***Mohammed Siddique and another vs. National Insurance Co. Ltd. and others*** reported in ***2020 (1) TN MAC 161 (SC)*** the Apex Court has categorically held that merely because three persons travelled in a two wheeler that by itself cannot be treated as an act of negligence unless there is positive evidence to show that the said act contributed to the accident. In this regard, it would be appropriate to refer to the relevant observation of the Apex Court in the above mentioned judgment which reads as follows:-

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a Motorcycle along with the Driver and another, may not, by itself, without anything more, make him guilty of Contributory Negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the Driver of a Two-wheeled Motorcycle, not to carry more than one person on the Motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for Motorcycle Drivers and Pillion Riders. Therefore, the fact that a person was a Pillion Rider on a Motorcycle along with the Driver and one more person on the pillion, may be a



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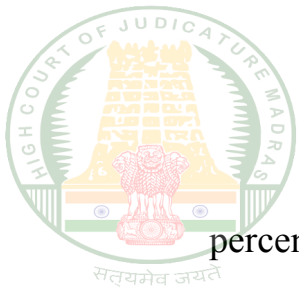


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violation of the law. But such violation by itself, without anything more, cannot lead to a finding of Contributory Negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim.”

7. In the case on hand, there is no positive evidence available on record to show that the very act of three persons travelling in the two wheeler resulted in the accident. In fact, the Tribunal based on evidence of claimant as PW.1 and contentions of FIR marked as Ex.P1 came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of TATA ACE vehicle. Having come to the said conclusion, the Tribunal ought not have fixed contributory negligence on the part of the claimant, in the absence of positive evidence as stated supra. Therefore, the findings of the Tribunal fixing 15 % contributory negligence is set aside.

8. The accident had occurred in the year 2022, Ex.C1-disability certificate issued by the Medical Board indicates that the claimants suffered disability of 10%. The amount of Rs.5,000/- awarded by the Tribunal per



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percentage of disability is very much on lower side. Having regard to the date of accident, this Court is inclined to fix Rs.9,000/- per percentage of disability. As a consequence, the claimants are entitled to Rs.90,000/- under the head disability. Having regard to the date of accident, this Court is inclined to fix Rs.18,000/- towards loss of earning during treatment period for one month.

9. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Disability	Rs.50,000/-	Rs.90,000/-
2.	Pain and sufferings	Rs.30,000/-	Rs.30,000/-
3.	Transportation	Rs.4,000/-	Rs.4,000/-
4.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-
5.	Loss of earnings	Rs.13,500/-	Rs.18,000/-
6.	Loss of amenities	Rs.10,000/-	Rs.10,000/-
	After deducting 15% of contributory negligence	Rs.99,875/-	-
	Total	Rounded off to Rs.1,00,000/-	Rs.1,62,000/-

10. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.1,62,000/-, The 2nd



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respondent/Insurance Company is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum from the date of claim petitions to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.1242 of 2023 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge-1, Small Causes Court, Chennai, within a period of six weeks from the date of receipt of copy of this common judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount by filing appropriate application before the Tribunal.

11. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

18.03.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accident Claims Tribunal Authority,
Special Subordinate Judge-1, Small Causes Court, Chennai.

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

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S.SOUNTHAR, J.

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