



CMA.No.700 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.700 of 2025

Venkatesh

... Appellant

Vs.

1.A.Vijayakumar

2.The Branch Manager,
The New India Assurance Company Limited,
Branch Office, No.39-C, Bye Pass Road,
Dharmapuri.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 07.12.2022 passed in MCOP.No.288 of 2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant :Mr.S.P.Yuaraj

For Respondents :Mr.J.Chandran for R2
Notice dispensed with for R1



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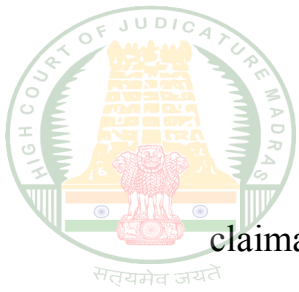
J U D G M E N T

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Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimant/appellant has come before this Court by way of this appeal.

2. It is not in dispute that the appellant/claimant suffered injury in a road accident that had taken place on 19.02.2018. It is the case of the appellant that he was riding his TVS XL Heavy Duty Vehicle bearing Registration No.TN 70/H-5353 in Rayakottai to Hosur road along with one Arjunan as a pillion rider. At that point of time, the lorry belonging to the first respondent insured with the 2nd respondent bearing Registration No.TN 29/AU 7150 came in the opposite direction and dashed against two wheeler of the claimant. As a result of which, the claimant sustained serious injuries. Therefore, the claim petition was filed by the claimant seeking compensation of Rs.25,00,000/-.

3. The first respondent/owner of the lorry remained ex-parte before the Tribunal and the claim petition was contested by the insurer of the lorry/ second respondent. It was stated by the second respondent in its counter that the accident had occurred only due to the negligence of the



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claimant. It was also stated that contributory negligence should be fixed on the claimant for not producing the valid driving licence and the registration certificate for his vehicle at the time of the accident.

4. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the vehicle insured with the second respondent. The compensation amount payable to the claimant was quantified at Rs.2,55,000/-, after deducting the 15% contributory negligence on the part of the claimant. Aggrieved by the same, the claimant has come before this Court.

5. The learned counsel appearing for the appellant/claimant would submit that failure to produce the valid driving license, registration certificate cannot be a ground for fixing contributory negligence. The learned counsel further submitted that the second respondent in its counter has not raised any plea regarding non wearing of helmet. However, the Tribunal on its own assumed that the claimant did not wear the helmet at the time of accident and hence, fixed contributory negligence on the part of the



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claimant.

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6. The learned counsel appearing for the 2nd respondent/ Insurance Company submits that failure to possess driving licence and registration certificate are serious violation of Motor Vehicles Act and Rules. He also submits failure to wear helmet shall be treated as negligence and hence, the Tribunal was justified in fixing contributory negligence at 15%. As far as quantum is considered, the learned counsel submits that the claimant was in hospital only for two days and hence the amount granted by Tribunal was justified in the facts and circumstances of the case.

7. As far as non wearing of helmet is concerned, the second respondent failed to raise a plea regarding alleged failure of claimant to wear helmet at the time of accident. More and above, the second respondent, even during the cross examination of claimant as PW.1 has not even suggested to him regarding non wearing of helmet. In the absence of any definite stand regarding non wearing of helmet it cannot be assumed that the injury was caused to the claimant due to the non wearing of the helmet. Hence, the Tribunal is not justified in fixing negligence based an alleged



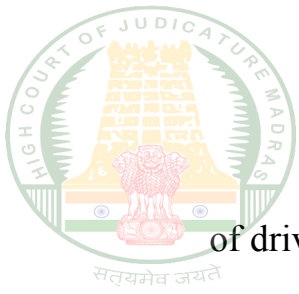
failure of insured claimant to wear helmet.

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8. As far as the failure to produce the valid driving licence is concerned, the same cannot be a ground for fixing contributory negligence on the part of vehicle belonged to claimant. The Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = (2008) 12 SCC 436***, while considering non-possession of driving license observed as follows:-

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

9. The Tribunal fixed contributory negligence on the claimant on the ground that he did not possess valid driving licence. Non-possession



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of driving licence *per se* is not a ground to fix contributory negligence on the side of injured claimant, when there is no positive evidence on record to suggest his negligence. Therefore, the Tribunal ought not have fixed the contributory negligence on the part of the claimant only based on his failure to possess driving licence. Likewise, mere non registration of vehicle would not result in accident unless there is rash and negligent driving by the user of the vehicle. The claimant entered box and deposed as PW.1. He talks about the rash and negligent driving by the driver of the lorry. It is also seen that FIR has been filed against the driver of the lorry and hence the Tribunal was justified in coming to the conclusion that the accident had occurred due to the negligence of the lorry driver. In the absence of any positive evidence to suggest that the claimant is also guilty of rash and negligent driving, mere failure to produce registration certificate *per se* cannot attract fixation of negligence against him. However, it is always open to take action against the claimant for driving to the vehicle without registration certificate and without driving licence in accordance with law. Therefore, finding rendered by the Tribunal fixing 15% contributory negligence on the part of the claimant is set aside.



10. The accident had occurred in the year 2018, the Tribunal fixed only Rs.5,000/- per percentage of disability. The competent medical board examined the claimant and issued disability certificate as Ex.C1 fixing negligence at 40%. Taking into consideration the year of accident, this Court is inclined to fix Rs.7,000/- per percentage of disability. The amount awarded by the Tribunal under the head loss of amenities is also on the lower side. Therefore, the same is enhanced to Rs.20,000/-. The Tribunal awarded Rs.17,000/- towards loss of income during treatment period by fixing notional income of Rs.8,500/-. Taking into consideration the accident had occurred in the year of 2018, this Court is inclined to fix Rs.16,500/- as notional income and the claimant is entitled to loss of income for two months. Therefore, the compensation awarded under the head loss of income is increased to Rs.33,000/-. The amount awarded by the Tribunal under head damage to clothes is set aside, the amount awarded by the Tribunal under other heads are confirmed. Therefore, 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.2,00,000/-	Rs.2,80,000/-
2.	Medical expenses	Rs.22,500/-	Rs.22,500/-



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Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
3.	Loss of income	Rs.17,000/-	Rs.33,000/-
4.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
5.	Transportation Expenses	Rs.5,000/-	Rs.5,000/-
6.	Additional nourishment	Rs.10,000/-	Rs.10,000/-
7.	Damages to the clothes	Rs.1,500/-	Set aside
8.	Attender charges	Rs.5,000/-	Rs.5,000/-
9.	Loss of amenities	Rs.14,000/-	Rs.20,000/-
	Less 15% contributory negligence	(-) Rs.45,000/-	-Nil-
	Total	Rs.2,55,000/-	Rs.4,00,500/-

11. In view of the discussion made earlier, the total compensation awarded by the Tribunal is enhanced to Rs.4,00,500/- as against Rs.2,55,000/- as awarded by the Tribunal. The 2nd 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 petition to the date of realisation after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.288 of 2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is entitled to withdraw the



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award amount by making formal application.

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

10.03.2025

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
1.The Motor Accident Claims Tribunal
Special Subordinate Court, Krishnagiri.

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

S.SOUNTHAR, J.

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