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C.M.A.No. 1299 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.06.2025
Pronounced on	30.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1299 of 2023

Vigneshwaran

...Appellant

Vs.

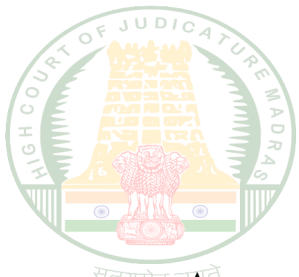
1. Manikandan

2. Revathi

3. The Oriental Insurance Company Limited,
D.No.39/40, Saradha Shopping Complex,
Workshop Road, Simmakal,
Madurai District 625 001.

...Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, praying to enhance the award in the order dated 09.02.2023 made in MCOP No.224 of 2022, on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.II, Salem.



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Appearance
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For Appellant : Mr.C. Paraneedharan
For Respondents : R1 & R2 - No appearance
Mr. N. Sampath for R3.

JUDGMENT

The claimant has filed this appeal, aggrieved over the inadequate Award of Rs.78,000/- made in M.C.O.P. No.224/2022 on the file of Motor Accidents Claims Tribunal (Special Sub-Court No.II), Salem, for the injuries sustained by the appellant/claimant.

2. The facts of the case are that on 06.11.2021, at about 6.15 p.m., the claimant was travelling as a pillion rider in a Motor Cycle bearing Registration No. TN 60 BZ 2944 at Devadanapatti-Periakulam Main Road and while nearing Devangar Polytechnic, the rider of the motorcycle rode the vehicle in a rash and negligent manner with great speed and dashed against a motorcycle bearing Registration No.KL 69 C 4506 and caused the accident. In the said accident the claimant/appellant suffered grievous injuries and was



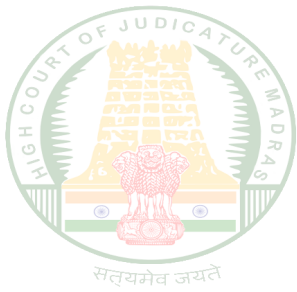
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immediately taken to the hospital for treatment. At the time of accident, the claimant/appellant was 25 years old and was working in a private company as a field officer earning a sum of Rs.19,000/- per month. Hence, he was constrained to file a claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him.

3. Before the Tribunal, in the counter filed by the 3rd respondent/Insurance Company, it was pleaded that the claimant has violated the Rule, i.e., three persons travelled in the motorcycle and therefore, the Insurance Company is not liable to compensate the claimant.

4. The Tribunal, after analysing the evidence on record, fastened 50% contributory negligence on the part of the claimant and directed the third respondent Insurance Company to pay compensation of 78,000/- (50% of the total compensation of Rs.1,56,000/-) to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation.



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5. Aggrieved over the quantum of compensation and challenging fastening of negligence on his part, the claimant has filed the present appeal.

6. Heard on both sides and perused the records.

7. There is no debate with regard to the Insurance coverage of the offending vehicle bearing Registration No. TN 60 BZ 2944 with the 3rd respondent Insurance Company at the time of accident. But, the 3rd respondent very much assails the claim of the claimant contending that since there was violation of the policy conditions, the claimant is not entitled for compensation.

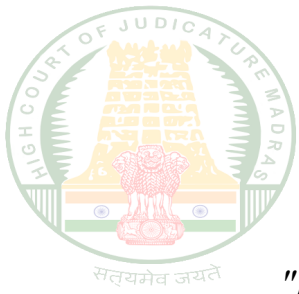
8. In certain cases, this Court had occasions to discuss the liability of the Insurance Company, for payment of compensation to the aggrieved parties under the circumstances where the number of passengers were exceeding the prescribed limit. However, the 3rd respondent Insurance Company has not preferred any appeal assailing the Award passed by the Tribunal. Only the claimant has preferred the present appeal questioning the



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fixation of 50% contributory negligence on his part by the Tribunal. While dealing with such identical circumstances, the Hon'ble Supreme Court in catena of decisions has held that merely by lifting a person or two, it cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. Breach of the condition of the policy was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. If the Insurance Company is able to prove that it is because of the additional persons, who are allowed to occupy the vehicle, the accident occurred, the position would be different. In the case on hand, the 3rd respondent Insurance Company failed to adduce any oral or documentary evidence to prove that it is because of the additional persons, the accident occurred. Conversely it is proved that the rider of the motorcycle bearing Registration No.60 BZ 2944 rode the vehicle in a rash and negligent manner and caused the accident. Moreover in the case on hand, the claimant was only travelling as a pillion rider in the offending motorcycle. In the case of ***Sunita Vs. Rajasthan State Transport Corporation*** reported in ***(2020)13 SCC 486*** , the Hon'ble Apex Court observed as under:



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"It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases"

9. The evidence on record clearly indicates that the rider of the motorcycle was negligent and that the question of contributory negligence arises only when there has been some act of omission on the part of the claimant. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to the negligence of the claimant. Thus the



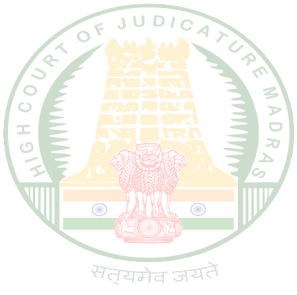
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accident occurred only due to the sole negligence on the part of the rider of the motorcycle. Consequently, there is no question of apportionment of liability for compensation on the part of the claimant.

10. Therefore, keeping it in mind the principles laid down by the Hon'ble Supreme Court, it appears that the findings of the Tribunal that there was contributory negligence on the part of the claimant appears to be passed without any proper reasoning and justification in the absence of clear evidence on record. Though it is contended on the side of the appellant that the Tribunal has awarded meagre amounts under the heads of pain and suffering, loss of amenities, loss of income, transport expenses to the hospital, extra nourishments and attender charges, this Court finds that the Tribunal has awarded just and reasonable compensation in the aforesaid heads, which requires no interference by this Court.

11. Therefore, in my considered view, the Tribunal has committed an error deducting 50% on the total compensation Award amount. Hence, the Award of the Tribunal needs to be modified.

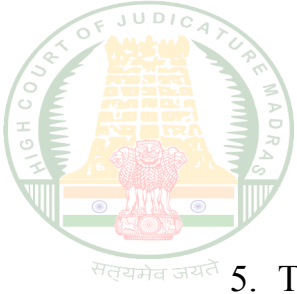


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12. In the result,

1. The appeal filed by the appellant/claimant is partly allowed. No costs.
2. 50% contributory negligence fastened on the part of the claimant by the Tribunal is set aside.
3. The 3rd respondent Insurance Company is directed to deposit a sum of Rs.1,56,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.224 of 2022 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.II, Salem, within a period of six weeks from the date of receipt of a copy of this judgment.
4. On such deposit being made, the appellant/claimant is at liberty to withdraw the same after filing a proper petition for withdrawal.



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5. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

30.06.2025

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Internet: Yes/No

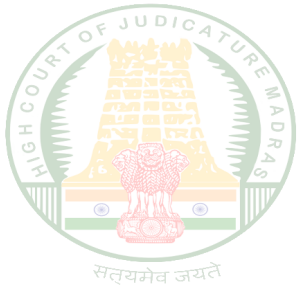
Index: Yes/No

Speaking/Non-speaking order

To,

1. The Motor Accident Claims Tribunal /
Special Subordinate Judge No.II, Salem
2. The Oriental Insurance Company Limited
D.No.39/40, Saradha Shopping Complex,
Workshop Road, Simmakal, Madurai District 625 001
3. The Section Officer, VR Section, Madras High Court, Chennai.

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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery Judgment made in

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30.06.2025