



CMA.No.429 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.429 of 2025

Thangaraj

... Appellant

Vs.

1.S.P.Maruthachalam

2. National Insurance Company Limited
Rep by its Manager, 19/B, S.R.Complex,
Rajamani Thottam, Bhavani main Road,
NH 47, Sankari Salem District

3. National Insurance Company Limited
Rep by its Manager, 1st Floor, 403 B-10,
Karthikeya Complex, Mettur Main Road,
Bhavani, Erode District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and Judgment made in MCOP No.156 of 2018 on the file of the Motor Accidents Claims Tribunal cum IV Additional District and Session Judge, Erode at Bhavani dated 22.01.2021.

For Appellant : Mr.C.Kulanthaivel

For Respondents :R1-Notice dispensed with
Mr.D.Bhaskaran for R2 & R3.



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the injured claimant seeking enhancement of the compensation.

2. According to the appellant/claimant, he sustained a fracture injury in a road accident that had occurred on 19-03-2018. According to him, he was proceeding in his motorcycle from South to North direction in Bhavani to Mettur main road. When he came near CSI Church, Urachikottai, the lorry belonged to the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the two-wheeler from backside. As a result of the accident, the claimant suffered right iliac wing non-displaced fracture. Hence, the claim petition was filed seeking compensation of Rs.3,00,000/-.

3. The first respondent, owner of the lorry remained exparte before the Tribunal and the claim petition was opposed only by the insurer of the lorry on the ground that the accident had occurred only due to the rash and negligent driving on the part of the injured claimant. It was also stated that the claimant was riding his two-wheeler without driving



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license and registration certificate. Therefore, he was not entitled to claim compensation.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred primarily due to the negligence on the part of the driver of the lorry. However, it found that there was contributory negligence to the extent of 45% on the part of the deceased. The compensation payable to the claimant was quantified at Rs. 1,67,600/-. After deducting 45% of the said amount towards contributory negligence, the award was passed fixing compensation at Rs.92,180/-. Aggrieved by the quantum, the claimant has come before this court.

5. The learned counsel for the Appellant submitted that the fixation of contributory negligence to the extent of 45% by the Tribunal is untenable in the law and the same is to be set aside. The learned counsel further submitted that the amount of Rs.2,000/- fixed by the Tribunal per percentage of the disability is very meagre.

6. The learned counsel for the Second Respondent/Insurance Company submitted that the Tribunal, based on the evidence available on record, came to the conclusion that the injured dashed his two-wheeler



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7. It is seen from the averments contained in the claim petition, it was stated by the claimant that the lorry had hit the two-wheeler of the claimant from behind. However, a perusal of the MVI report of the two-wheeler would suggest that there was no damage to the two-wheeler on the back side and it suffered damage only on the front number plate and headlight. Had the two-wheeler was hit by the lorry from behind, there must be a damage on the back side of the two-wheeler and also damage on the front side of the lorry. A perusal of the MVI report of the two-wheeler, marked as Exhibit R1, would suggest that the two-wheeler was damaged only on the front portion and not in the back side. Likewise, in the Exhibit R2, MVI report of the lorry, there was no mention about the damage to the lorry on the front portion.

8. Taking into consideration these vital facts, the Tribunal rightly came to the conclusion that the deceased only hit the lorry from behind. The driver of the lorry was examined as RW2. He clearly deposed in his evidence that when he reduced the speed of his vehicle by having applied



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brake after noticing the bus proceeding towards the lorry, the two-wheeler dashed against his vehicle. Therefore, it is clear that there is negligence on the part of both the vehicles. The lorry being a heavy vehicle, this Court is inclined to fix 55% negligence on the part of the lorry and 45% negligence on the part of the claimant who had driven the two-wheeler. Therefore, the negligence fixed by the Tribunal on the part of the claimant at 45% is affirmed for different reasons.

9. A perusal of Exhibit P7, Discharge Summary would indicate that the claimant suffered right iliac wing non-displaced fracture. The medical board which assessed the claimant issued Exhibit C1, Disability Certificate fixing the disability at 20%. The Tribunal awarded only Rs. 2,000/- per percentage of the disability. Having regard to the date of accident (2018), this Court is inclined to fix Rs.7,000/- per percentage of the disability. Therefore, the claimant is entitled to Rs.1,40,000/- (Rs.7,000 x 20) under the head disability.

10. The Tribunal awarded Rs.50,000/- under the head pain and suffering. It is seen from the discharge summary, the claimant was in hospital only for 5 days. Therefore, the amount of Rs.50,000/- awarded by



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the Tribunal under the head pain and suffering is on higher side and the same is reduced to Rs.30,000/-. Having regard to the fact that the claimant suffered fracture in his iliac wing, this Court is inclined to award a sum of Rs.20,000/- towards loss of amenities. The Tribunal awarded Rs.30,100/- under the head medical expenses and the same is based on Exhibit P-8, medical bills. Hence, the same is confirmed. The amount awarded by the Tribunal under the heads loss of earning, transportation expenses, damage to clothes etc., are affirmed.

11. The Tribunal awarded a sum of Rs.75,000/- under the head Extra Nourishment. A close perusal of the award would indicate that the Tribunal awarded only Rs.7,500/-. However, there is a typographical error in the award as if the amount awarded towards extra nourishment was Rs. 75,000/-. Be that as it may, the claimant was in hospital only for 5 days. Therefore, taking into consideration the period of hospitalization, this Court is inclined to fix only Rs.7,500/- towards Extra Nourishment.



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

Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	50,000/-	30,000/-	Reduced
2.	Disability	40,000/-	1,40,000/-	Enhanced
3.	Transportation charges	10,000/-	10,000/-	Confirmed
4.	Loss of earning	28,000/-	28,000/-	Confirmed
5.	Medical expenses	30,100/-	30,100/-	Confirmed
6.	Damage to clothes	2,000/-	2,000/-	Confirmed
7	Loss of amenities	Nil	20,000/-	Granted
8	Extra Nourishment	7,500/-	7,500/-	Confirmed
	Total	1,67,600/-	2,67,600/-	Enhanced by 1,00,000/-
	Less:45%contributory negligence	75,420/-	1,20,420/-	confirmed
	Net compensation	92,180/-	1,47,180/-	Enhanced by Rs.55,000/-



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13. The total amount payable to the claimant is fixed at Rs. 2,67,600/-. After deducting 45% contributory negligence, the compensation is fixed at Rs. 1,47,180/-.

14. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.92,180/- is hereby enhanced to Rs.1,47,180/-. The appellant/claimant is entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization (excluding the delay period of 72 days as per order in CMP.No.30103 of 2024). The 2nd respondent /Insurance Company is directed to deposit the enhanced award amount, to the credit of MCOP No.156 of 2018 on the file of the Motor Accidents Claims Tribunal cum IV Additional District and Session Judge, Erode District at Bhavani, along with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimant is permitted to withdraw the same along with interest and costs, less the



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Tribunal. No costs.

23.04.2025

Index: Yes/No
Internet: Yes/No
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To

1. Motor Accidents Claims Tribunal
IV Additional District and Session Judge, Erode, Bhavani,
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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