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CMA No. 1808 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1808 of 2023

Arumugam

S/o. Kannan, Mettu Street, Alampadi
Village, Kandachipuram Tk,
Villupuram Dt.

Appellant(s)

Vs

1.Madhan Kumar

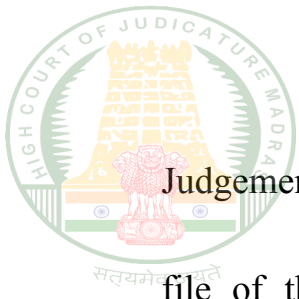
2.The Divisional Manager,
ICICI Lombard General Insurance
Company Limited,
No.142, ECR Main Road, 1st Floo,
Kottupalayam, Puducherry.

3.Govardhanan

Respondent(s)

PRAYER

This Civil Miscellaneous Appeal has been filed under Section 173 of the
Motor Vehicles Act, 1988, to enhance the compensation amount awarded in the



Judgement and Decree dated 11.04.2023 made in MCOP No.205 of 2022 on the file of the Motor Accident Claims Tribunal Judge the Special Sub Judge (MCOP) Tiruvannamalai.

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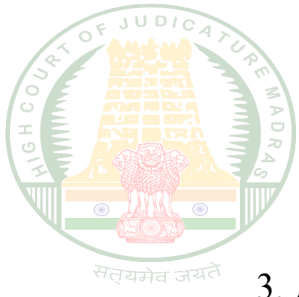
For Appellant(s): S.Panneer Selvam

For Respondent(s): M/s. M.Jayaraj For R2
R1 and R3 - No Appearance

ORDER

Challenging the award passed by the Tribunal, the appellant has filed this appeal seeking enhancement of the compensation amount awarded in the Judgment and Decree dated 11.04.2023 made in M.C.O.P. No. 205 of 2022 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai.

2. The learned counsel for the appellant argues that the accident occurred in the year 2022, but the Tribunal fixed the notional income at only Rs.10,000/-, which is very low. Therefore, he prays for enhancement of the notional income fixed by the Tribunal.



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3. Admittedly, the appellant is a flower merchant, but the Tribunal fixed only 10% as notional income. As per the medical records, the appellant sustained 80% partial permanent disability. Although the Tribunal applied the multiplier method and granted compensation, it failed to apply the proper percentage relevant to the disability sustained.

4. The learned counsel for the second respondent submitted that since there was no proof of permanent disability, the compensation awarded by the Tribunal is more than sufficient. Even though the income was fixed on the lower side, the compensation granted under other heads is highly excessive.

5. The learned counsel for the appellant also raised objections regarding the Tribunal fixing 50% contributory negligence on the part of the appellant, which he claims is unwarranted. This finding was based on the non-possession of a driving licence at the time of the accident. In support of his argument, the appellant relied on the following decisions:



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(i) 2008 (12) SCC 436, wherein it was held:

“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 who was driving 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.”

(ii) 2018 (1) SCC 750, in which the Hon’ble Supreme Court held:

“Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry, but that it was the motorcycle which had suffered damage and that there was no eyewitness. We are in agreement with the submission urged on behalf of the appellant that the plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on the part of the appellant is held to be without any basis, the second aspect, which weighed both with the Tribunal and the High Court—that the appellant had not produced the driving licence—would be of no relevance.”

6. Relying on the above precedents, the learned counsel for the appellant prays for the removal of the 50% contributory negligence fixed upon the claimant/appellant.

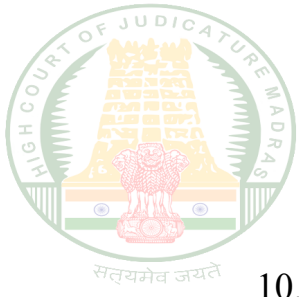


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7. By way of reply, the learned counsel for the respondent argues that the Tribunal rightly fixed contributory negligence based on the judgment of the Hon'ble High Court in *M. Ramya vs. G. Ekambaram and Another*, reported in **2021 (1) TNMAC 451**.

8. In that case, the Hon'ble Court suggested that contributory negligence may be fixed at 15% in cases where the claimant was driving the vehicle without a valid driving licence. Therefore, the Tribunal rightly fixed the contributory negligence at 15% in the present case. Furthermore, the learned counsel for the respondent pointed out that there was negligence on the part of the claimant at the time of the accident, as proved through the evidence of R.W.1, the RTO official, who stated that no driving licence had been issued in the name of the claimant.

9. However, this Court is of the view that fixing 15% contributory negligence upon the claimant is excessive, and based on the facts and precedents, it is inclined to reduce the contributory negligence to **10%**.



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10. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of Functional Disability (80%)	16,80,000/-	16,80,000/-
2.	Pain and sufferings	75,000/-	75,000/-
3.	Extra nourishment	25,000/-	25,000/-
4.	Attendant charges	25,000/-	25,000/-
5.	Medical Expenses	39,535/-	39,535/-
6.	Transportation charges	20,000/-	20,000/-
7.	Loss of Amenities	1,50,000/-	1,50,000/-
	Total	20,14,535/-	20,14,535/-
	Less contributory negligence	3,02,180/- (15% of the award)	2,01,454/- (10% of the award)
TOTAL		Rs.17,12,355/-	Rs.18,13,081/-

Hence, the appellant / claimant is entitled to a sum of Rs.18,13,081/- (i.e., Rs.20,14,535 - Rs.2,01,454 = Rs.18,13,081/-).



11. Accordingly, the award passed by the Tribunal is modified to the extent indicated above.

12. In view of the above, this Civil Miscellaneous Appeal is **disposed of**. There shall be no order as to costs.

(i) The compensation awarded by the Tribunal is enhanced from Rs.17,12,355 /- to Rs.18,13,081 /-.

(ii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iii) The second respondent, the Divisional Manager, ICICI Lombard General Insurance Co, Ltd., Puducherry, is directed to deposit the enhanced compensation amount i.e., Rs.18,13,081 /- (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 M.C.O.P.No.205 of 2022 on the file of the Motor Accident Claims Tribunal, the Special Sub Judge (MCOP), Tiruvannamalai, within a period of four weeks from the date of receipt of a copy



of this order.

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(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same, after following due process of law.

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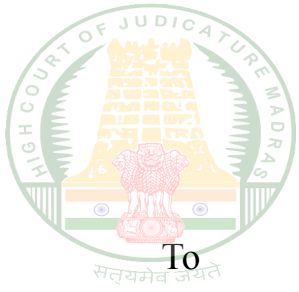
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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1. The Motor Accident Claims Tribunal,
the Special Sub Judge (MCOP),
Tiruvannamalai.

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

3. The Divisional Manager,
ICICI Lombard General Insurance
Company Limited,
No.142, ECR Main Road, 1st Floor,
Kottupalayam, Puducherry.



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T.V.THAMILSELVI, J.

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