



CMA.No.974 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.974 of 2025

Muthu

... Appellant

Vs.

1.Sivaperumal @ Sathish
2. Nouroul Amine

3. The National Insurance Company Limited
Rep., by its Branch Manager,
Having office at No.13, Mudaliar Street,
Mayiladuthurai.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow this appeal and be pleased to enhance the amount awarded in MCOP No. 24 of 2019 dated 10.07.2023 on the file of Motor Accident Claims Tribunal, (In the Court of Sub Court), Karaikal.

For Appellant : Mr.K.Varadha Kamaraj

For respondents : M/s.N.B.Surekha for R3

R1 & R2-Notice dispensed with



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JUDGMENT

Aggrieved by the quantum of compensation fixed by the Motor Accident Claims Tribunal, the injured claimant has come before this Court by way of this appeal.

2. It is the case of the appellant/claimant that when he was riding the motorcycle on 11-10-2018 at Kamaraj Salai, Karikal from North to South direction, the first respondent had driven his lorry in a rash and negligent manner and dashed against the two-wheeler. As a result of the accident, the claimant suffered grievous injuries. Therefore, the claim petition was filed seeking compensation of Rs.20,00,000/-.

3. The first and second respondents, driver and owner of the lorry remained *ex-parte* before the Tribunal. The third respondent, insurer of the vehicle alone contested the claim petition on the ground that there was no negligence on the part of the driver of the lorry. It was stated by the third respondent that the accident had occurred only due to the negligence on the part of the claimant, who also failed to produce valid driving license.



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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 by the driver of the lorry. It also fixed 10% contributory negligence on the part of the claimant. The compensation payable to the claimant was quantified at Rs. 1,48,500/- after deducting 10% towards contributory negligence. Aggrieved by the quantum of compensation, the claimant has come before this court.

5. The learned counsel for the Appellant/ Claimant submitted that the Tribunal committed an error in fixing 10% contributory negligence on the part of the claimant for his failure to produce a valid driving license. The learned counsel also submitted that the amount of Rs.5,000/- per percentage of the disability awarded by the Tribunal is very much on lower side. He also sought for increase of the compensation under the heads of pain and suffering, loss of amenities and loss of income during treatment period.

6. The learned counsel for the third respondent/ Insurance Company submitted that the claimant failed to produce valid driving license at the time of the accident and hence, the Tribunal was justified



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WEB COPY in fixing 10% contributory negligence on the part of the claimant. The learned counsel further submitted that the amount awarded by the Tribunal on various heads are just and reasonable. Therefore, according to him, the award shall be confirmed.

7. The Hon'ble Apex Court in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436*** held that mere failure to hold the valid driving license is not a ground to fix contributory negligence on the part of the driver unless there is a positive evidence to show that the accident had occurred due to his negligence also. In the case on hand, the tribunal fixed 10% contributory negligence on the part of the claimant only on the ground that he failed to produce a valid driving license. Absolutely, there is no evidence available on record to show that negligent driving on the part of the claimant also contributed to the accident. In these circumstances, the finding rendered by the tribunal fixing 10% contributory negligence on the part of the claimant is set aside.

8. The Medical Board which examined the claimant issued Exhibit C1, Disability Certificate fixing 15% disability. The accident



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WEB COPY had occurred on 11-10-2018. Taking into consideration the date of accident and the prevailing cost of living, this court is inclined to fix Rs.7,000/- per percentage of the disability. Therefore, the claimant is entitled to Rs.1,05,000/- under the head disability (15% x 7,000).

9. It is seen from the records that the claimant suffered undisplaced fracture at condyle right tibia knee. He has been in hospital for 16 days from 11-10-2018 to 26-10-2018. Taking into consideration the nature of the injury and the period of hospitalization, the amount of Rs.15,000/- each awarded under the heads pain and suffering and loss of amenities are increased to Rs.25,000/- each.

10. The claimant in his claim petition stated that he was a Painter by profession and was earning a sum of Rs. 500/- per day. Even if there is no evidence to substantiate the avocation and income of the claimant, taking into consideration the plea raised by the claimant, the date of accident, cost of living, etc., a sum of Rs.15,000/- could be fixed as notional income. In that case, the claimant is entitled to Rs.45,000/- (Rs.15,000 x 3) under the head loss of income during treatment period. The amount of Rs.1,000/- awarded under the head damage to clothes is



WEB COPY set aside. In all, the claimant is entitled to Rs. 2,35,000/-.

11. 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	15,000/-	25,000/-	Enhanced
2.	Loss of amenities	15,000/-	25,000/-	Enhanced
3.	Transportation charges	10,000/-	10,000/-	Confirmed
3.	Nutritional expenses	10,000/-	10,000/-	Confirmed
5.	Attendant charges	15,000/-	15,000/-	Confirmed
6.	Damage to clothes	1,000/-	Nil	Set aside
7	Loss of income	24,000/-	45,000/-	Enhanced
8	Disability	75,000/-	1,05,000/-	Enhanced
	Total	1,65,000/-	2,35,000/-	Enhanced by Rs.70,000/-
	Less:10%contributory negligence	16,500/-	Set aside	Set aside
	Net compensation	1,48,500/-	2,35,000/-	Enhanced by Rs.86,500/-



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12. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,48,500/- is enhanced to Rs.2,35,000/-.The appellant 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. The 3rd respondent/Insurance company is directed to deposit the enhanced award amount along with interest 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. The appellant/claimant is permitted to withdraw the same along with interests and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs.

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Index:Yes/No
Internet:Yes/No
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To

1. Motor Accidents Claims Tribunal
Sub Court, Karaikal.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTCHAR, J.

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