

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 19.02.2025**

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CORAM**THE HONOURABLE MR.JUSTICE S.SOUNTHAR****C.M.A.No.464 of 2025**

Rajendiran

... Appellant

VS.

1.Rajasekar

2.The Divisional Manager,

The Oriental Insurance Company Limited,

3rd Party Claims Hub, Vijayalakshmi Complex,1st Floor, No. 32/312, 13th Street,

Phase II, Sathuvacheri, Vellore – 9.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance and to set aside the award against the judgment and decree dated 04.04.2024 and made in M.A.C.T.O.P.No.284 of 2022 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (In the Court of the Special Sub Court, Tiruvannamalai).

For Appellant : Ms.N.Lavanya
for M/s.M.Malar

For R2 : Mr.N.Sampath

For R1 : Notice Dispensed With

J U D G M E N T

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.



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2. It is not in dispute that the appellant/claimant suffered injury in a road accident that had taken place on 03.04.2022. It is the case of the appellant that he was driving his TVS Scooty Zest Bike bearing Registration No.TN 25 BS 7043 on the left extreme side of the road from Tiruvannamalai to Tindivanam. The Two Wheeler namely Bajaj Pulsar belonging to the 1st respondent insured with the 2nd respondent bearing Registration No.TN 25 BT 2703 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.10,00,000/-.

3. Before the Tribunal, the appellant/claimant was examined as PW.1. On the side of the appellant, 5 documents were examined as Exs.P1 to P5. On the side of the respondent, Joyson Yogaraj, Junior Assistant, RTO, Tiruvannamalai and M.R.K.Rajaselvam, Medical Officer, Government Medial College Hospital, Tiruvannamalai, were examined as RW.1 and RW.2 respectively and 3 documents were marked as Exs.R1 to R3. The Disability Certificate issued to the appellant by the Medical Board, Tiruvannamalai was marked as Ex.C1.



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4. Based on the evidence available on record, the Tribunal awarded a sum of Rs.2,59,250/- in favour of the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the injured/claimant has come by way of this appeal.

5. Both the learned counsel appearing for the appellant as well as learned counsel appearing for the 2nd respondent have not advanced any arguments on the question of negligence and liability aspects. Therefore, facts necessary for deciding those questions are not discussed in this judgment.

6. The learned counsel appearing for the appellant/claimant would submit that the accident had taken place in the year 2022, however, while calculating the compensation on percentage basis, the Tribunal awarded only Rs.5,000/- per percentage and the same requires enhancement. She further submitted that the Tribunal fixed 15% contributory negligence only on the ground he did not possess valid driving licence and the same is against law settled by Apex Court.



7. The learned counsel appearing for the 2nd respondent/Insurance

Company would submit that having regard to the nature of the injuries suffered by the appellant/claimant, the amount of Rs.5,000/- awarded by the Tribunal is justifiable. The learned counsel further submitted that the amount of Rs.50,000/- awarded under the head of pain and sufferings and amount of Rs.75,000/- awarded under the head of loss of amenities are highly excessive and the same have to be reduced.

8. The Tribunal fixed contributory negligence on the claimant only on the ground that he did not possess valid driving licence. Non-possession 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. The Tribunal on proper appreciation of evidence of PW.1 and PW.2 and also Ex.P1-FIR, came to the conclusion that the negligence is only on the part of vehicle belonged to 1st respondent. The Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = 2008 (12) SCC 463***, while consider non-possession of driving license observed as follows:-

“8. If a person drives a vehicle without a licence, he



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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 above view was affirmed and followed subsequently by a Three Member Bench of Apex Court in ***Dinesh Kumar vs. National Insurance Company Ltd., and others***. Therefore, finding rendered by Tribunal that injured claimant contributed to accident by his mere failure to possess driving licence by placing reliance on ***M.Ramya vs. G.Ekambaram and another*** reported in ***2021 (1) TNMAC 451***, is unsustainable in view of law declared by Apex Court in the above mentioned judgments.



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10. Ex.C1 is the disability certificate issued by the Medical Board. It is noted by the Tribunal based on Ex.C1 that claimant suffered fracture shaft of right ulna and fracture right clavicle. The Medical Board which examined the claimant came to the conclusion that he suffered disability of 23%. Since the claimant has not produced any document to show that the disability suffered by him really interfered with his avocation and affected his earning power, the Tribunal proceeded to award compensation by following percentage method. The Tribunal awarded only Rs.5,000/- per percentage of disability.

11. In the case on hand, the accident occurred in the year 2022 and the petitioner suffered fracture of shaft of right ulna and fracture right clavicle, having regard to the nature of the injuries suffered by the claimant and also the date of accident, this Court feels it would be appropriate to fix Rs.10,000/- as compensation per percentage of disability. Therefore, for the disability of 23%, the claimant is entitled to Rs.2,30,000/- under the head disability.



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12. The amount of Rs.50,000/- awarded under the head of pain and sufferings is excessive and hence, the same is reduced to Rs.25,000/-.

Likewise, the Tribunal awarded a sum of Rs.75,000/- under the head of loss of amenities. Having regard to the nature of injuries suffered by the claimant and also the disability, this Court fixes a sum of Rs.25,000/- under the head of loss of amenities. The amount awarded by the Tribunal under the head extra nourishment, loss of income during treatment period, attender charges and transportation expenses 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.1,15,000/-	Rs.2,30,000/-
2.	Pain and Sufferings	Rs.50,000/-	Rs.25,000/-
3.	Extra Nourishment	Rs.15,000/-	Rs.15,000/-
4.	Attender Charges	Rs.10,000/-	Rs.10,000/-
5.	Transportation Expenses	Rs.10,000/-	Rs.10,000/-
6.	Loss of Amenities	Rs.75,000/-	Rs.25,000/-
7.	Loss of income during the treatment period	Rs.30,000/-	Rs.30,000/-
8.	Tribunal deducted 15% Contributory Negligence	Rs.45,750/-	Set aside
	Total	Rs.2,59,250/-	Rs.3,45,000/-



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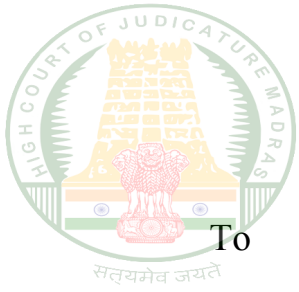
13. In view of the discussion made earlier, the total compensation awarded by the Tribunal is enhanced to Rs.3,45,000/- as against Rs.2,59,250/- as ordered by the Tribunal. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.3,45,000/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation (excluding the delay period of 26 days as per order in C.M.P.No.19414 of 2024, dated 06.02.2025) after deducting the amount already deposited, if any, to the credit of M.A.C.T.O.P.No.284 of 2022 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (In the Court of the Special Sub Court, Tiruvannamalai), within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is entitled to withdraw the award amount by making formal application.

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

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Index :Yes
Speaking order :Yes
Neutral Citation :Yes
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To

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(In the Court of the Special Sub Court, Tiruvannamalai).
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S.SOUNTHAR, J.

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