



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 24.01.2025
CORAM**

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3058 of 2024

Karthick

... Appellant

Vs.

1.Jagadesan

2. Reliance General Insurance Co. Ltd.,
Omalur Main Road, Barathipuram, Salem.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree in M.C.O.P.No.44 of 2023 dated 22.12.2023 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, No.1, Salem.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : Mr.P.Suresh Srinivasan

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal and also attributing 30% contributory negligence against the claimant, has filed the present appeal



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against the award passed by Motor Accident Claims Tribunal in M.C.O.P.No.44 of 2023 dated 22.12.2023 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, No.1, Salem.

2. The case of the claimant is that on 30.06.2022 at 09.30 AM., when he was riding a two wheeler bearing Reg. No.TN 52 Q 3672 on the Kumarapalayam to Salem Main Road, at that time, a Honda shine motorcycle bearing Reg. No.TN 34 AZ 6944 travelling in the opposite direction in a rash and negligent manner and the motorcycle came into the wrong side of the road and collided with the appellant vehicle. Due to which, the accident had happened and the claimant sustained fracture of Left distal and radius. The medical board assessed 30% disability, considering the nature of injury sustained by the claimant. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and



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negligent driving on the part of the first respondent/owner of the two wheeler. Having rendered such a finding, the Tribunal found that the claimant has driven the vehicle in wrong side and dashed against the first respondent's two wheeler and therefore, 30% contributory negligence was attributed against the claimant.

4. The Tribunal thereafter proceeded to fix the total compensation at Rs.3,49,115/- under various heads as follows :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Pain and suffering	50,000/-
2.	Loss of Income	26,000
3.	Medical exp.	1,17,115
4.	Transportation	20,000
5.	Nutrition expenses	20,000
6.	Attendar charges	20,000
7.	Damages to clothes	1,000
8.	Loss of Amenities	20,000
9.	Permanent disability	75,000
	Total	3,49,115/-

Out of the above amount, 30% was attributed towards contributory



negligence and the insurance company was directed to pay a sum of Rs.2,44,380/- with interest at the rate of 7.5% per annum.

5. The learned counsel for the appellant submitted that the claimant was aged about 27 years at the time of the accident and the Medical Board has assessed 15% permanent disability. However, the Tribunal has awarded a sum of Rs.5000/- per percentage which is very meager and in respect of the head viz., Pain and sufferings, the Tribunal has awarded a sum of Rs.50,000/- which has to be increased. Further, without any evidence or proof of contributory negligence, the Tribunal erroneously attributed 30% contributory negligence on the part of the claimant, which is not sustainable. Therefore, this Court may interfere with the award by allowing this appeal.

6. The learned counsel for the second respondent submitted that after considering all the evidences and witnesses, the Tribunal has rightly awarded compensation and fastened the contributory negligence on the appellant. This Court may not interfere with the same.



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7. The claimant not being satisfied with the quantum of compensation and negligence fixed by the Tribunal has filed this appeal.

8. Heard the learned counsel for appellant/claimant and the learned counsel for 2nd respondent.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. This Court also carefully went through the award passed by the Tribunal.

11. The Tribunal on considering the evidence available on record came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the first respondent. After having rendered such a finding, the Tribunal found that the claimant has come in wrong side of the road and on that ground, the Tribunal attributed 30% contributory negligence against the claimant. There is absolutely no material to show that the claimant has travelling



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from east to west direction. The Police has wrongly drafted the rough sketch. Therefore, the Tribunal was not right in attributing 30% contributory negligence against the claimant. Hence, the finding of the Tribunal is hereby interfered and set aside.

12. Insofar as the quantum of compensation is concerned, this Court finds that the Tribunal has fixed a sum of Rs.5,000/- per percentage for the disability which is meager and in respect of pain and suffering, the Tribunal has awarded a sum of Rs.50,000/- which is too low. Therefore, this Court is inclined to modify the same. In respect of disability, this Court enhances a sum of Rs.10,000/- per percentage as the accident had happened in the year 2022 and as sum of Rs.75,000/- has been awarded towards Pain and Sufferings.

13. The award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Pain and suffering	50,000/-	75,000
Loss of Income	26,000	26,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Medical exp.	1,17,115	1,17,115
Transportation	20,000	20,000
Nutrition expenses	20,000	20,000
Attendar charges	20,000	20,000
Damages to clothes	1,000	1,000
Loss of Amenities	20,000	20,000
Permanent disability	75,000	1,50,000
Total	3,49,115/-	4,49,115/-

14. In the light of the above discussion, this Appeal is partly allowed and 30% negligence fixed on the appellant is set aside. There shall be a direction to the 2nd respondent to deposit the entire compensation of Rs.4,49,115/- (rounded off to Rs.4,49,100/-) with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

24.01.2025



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M.DHANDAPANI.,J

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Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

To,

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Salem.

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