



C.M.A.No.492 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.492 of 2025

Vembarasan

... Appellant

VS.

1.V.Raja

2.The New India Assurance Company Limited,
TP-HUB, No. 252/2, 1st Floor,
N.M Arcade, Opposite to ARRS Multiplex,
Meyyanur, Salem-636 004.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against Judgment and Award of the Special Sub Judge No.1 Court (Motor Accident Claims Tribunal) at Salem, dated 10.06.2023 in M.C.O.P.No.311 of 2023.

For Appellant : Mr.R.P.Ruban Chakravarthy
for M/s.S.Kaithamalai Kumaran

For R2 : Mr.C.Ramesh Babu

For R1 : Notice Dispensed With



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J U D G M E N T

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Not satisfied with the quantum of compensation awarded by the Special Sub Judge No.1 Court (Motor Accident Claims Tribunal), Salem in M.C.O.P.No.311 of 2023, dated 10.06.2023, injured/claimant has come by way of this appeal.

2. It is not in dispute that the appellant/claimant suffered injuries in a road accident that had occurred on 06.01.2023. It was the case of the claimant that he was proceeding in his Hero Honda Splendor Pro Bike bearing Registration No. TN 30 A 5946 in Dharmapuri-Salem By-pass road by following traffic rules. A lorry bearing Registration No.TN 52 J 0189 belonged to the 1st respondent insured with the 2nd respondent was driven by it's driver in a rash and negligent manner and he applied brake suddenly. In spite of the attempt made by the claimant to stop his vehicle, his bike dashed against backside of the lorry. As a result of the accident, the claimant fell down and received injuries in his left head. For the grievous injuries suffered by the claimant in the accident, a claim petition was filed seeking compensation of Rs.5,00,000/-.



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3. The 1st respondent remained *exparte* before the Tribunal and the claim petition was contested by the 2nd respondent on the ground that the accident had occurred only due to the negligence on the part of the claimant.

4. Before the Tribunal, the appellant/claimant was examined as PW.1 and on behalf of the claimant, 10 documents were marked as Exs.P1 to P10. On behalf of the 2nd respondent-Insurance Company, no witness was examined and no document was marked. The Disability Certificate with x-ray issued by the Medical Board to the claimant was marked as Ex.C1.

5. The Tribunal based on the evidence available on record, came to the conclusion that the claimant also contributed to the accident and hence, 50% contributory negligence was fixed on the part of the claimant. The amount payable to the claimant was quantified at Rs.1,28,500/- after deducting 50% towards contributory negligence. Aggrieved by the said award and quantum of compensation, the claimant has come before this Court.



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6. The learned counsel appearing for the appellant/claimant would submit that accident had occurred due to the negligence on the part of the driver of the lorry in applying sudden brake and hence, the Tribunal committed an error in fixing contributory negligence on the part of the claimant. He also submitted that the amount of Rs.5,000/- per percentage of disability fixed is very much on lower side considering the date of accident.

7. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that by taking this Court to evidence of PW.1 and contents of Ex.P1-FIR, the Tribunal rightly fixed contributory negligence on the part of the claimant and sought for dismissal of the appeal.

8. The claimant was examined as PW.1. In his evidence, he clearly admitted that his vehicle dashed against the left hand backside of the lorry. He also admitted in his evidence that Motor Vehicle Inspector noted damage to front head light and right hand side indicator in his two wheeler. Therefore, it is clear that motor bike driven by the claimant was dashed against the backside of the lorry. The Motor Vehicle Inspector's Report for lorry and bike were marked as Exs.P6 and P7 respectively. Had the claimant



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maintained good minimum distance, he could have easily avoided the accident. Therefore, the Tribunal was justified in fixing 50% contributory negligence on the part of the claimant and the same requires no interference by this Court.

9. The claimant was examined by the Medical Board and Ex.C1-Disability Certificate was issued fixing the disability at 10%. The accident had occurred in the year 2023. Taking into consideration the date of accident and cost of living, this Court feels it would be appropriate to fix Rs.9,000/- per percentage of disability. Therefore, the claimant is entitled to Rs.90,000/- under the head permanent disability. As per Ex.P4-Discharge Summary, claimant was in hospital for 9 days. Therefore, the amount awarded by the Tribunal under the other heads like pain and sufferings, loss of income, transport expenses, nutrition expenses, attender charges etc., appear to be reasonable and the same are confirmed.

10. In all the claimant is entitled to Rs.2,97,000/-, after deducting 50% of the amount towards contributory negligence, the amount payable to the claimant is fixed at Rs.1,48,500/-. In view of the discussions made



earlier, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
2.	Loss of Income	Rs.36,000/-	Rs.36,000/-	Confirmed
3.	Transportation Expenses	Rs.30,000/-	Rs.30,000/-	Confirmed
4.	Nutrition Expenses	Rs.30,000/-	Rs.30,000/-	Confirmed
5.	Attender Charges	Rs.30,000/-	Rs.30,000/-	Confirmed
6.	Damages to the clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
7.	Loss of Amenities	Rs.30,000/-	Rs.30,000/-	Confirmed
8.	Loss of Permanent Disability	Rs.50,000/-	Rs.90,000/-	Enhanced
Total		Rs.2,57,000/-	Rs.2,97,000/-	Enhanced
50% of the award amount deducted towards Contributory Negligence		Rs.1,28,500/-	Rs.1,48,500/-	-
Total		Rs.1,28,500/-	Rs.1,48,500/-	Enhanced by Rs.20,000/-

11. Accordingly, the compensation awarded by the Tribunal is enhanced to Rs.1,48,500/- from Rs.1,28,500/-. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.1,48,500/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.311 of 2023



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on the file of the Special Sub Judge No.1 Court (Motor Accident Claims Tribunal), Salem, after deducting the amount deposited already, if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount by making formal application before the Tribunal.

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

21.03.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm

To

- 1.The Special Sub Judge No.1 Court
(Motor Accident Claims Tribunal), Salem.
- 2.The New India Assurance Company Limited,
TP-HUB, No. 252/2, 1st Floor,
N.M Arcade, Opposite to ARRS Multiplex,
Meyyanur, Salem-636 004.
- 3.The Section Officer,
VR Section, High Court, Madras.



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S.SOUNTHAR, J.

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