

CMA. No.2851 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.06.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A. No. 2851 of 2023

and

CMP No.26660 of 2023

National Insurance Company Limited,
Divisional Office,
No.2, Balaji Tower, 2nd Floor,
No.11, Ramakrishna Road,
Salem - 636 007.

... Appellant

Versus

1. Rengaswamy (Died)

2. Pazhaniswamy

3. Sundaram

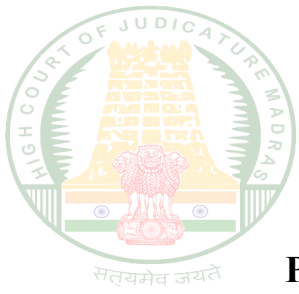
4. R.Kuppuswamy

5.R.Rajini

6.R.Sumithra

... Respondents

[R1-Died, R4 to R6 are brought on record as legal representatives of the deceased first respondent, viz., Rengaswamy vide Court order dated 14.03.2025 in CMP.Nos.11087 to 11089 of 2024.]



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PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the decree and judgment passed in M.C.O.P. No. 1998 of 2019, dated 24.06.2022, on the file of the Motor Accidents Claims Tribunal,(Special Subordinate Court No.2), Salem.

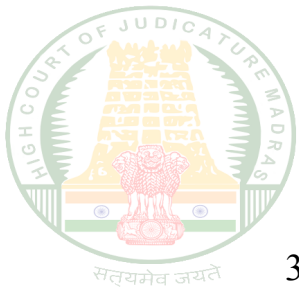
For Appellant : Mrs. N.B. Sureka

For Respondents : Mr. Nalliyappan and
: Mr. S. Ram Prabu (for R3)
: Mr. K. Vasanthanayagen (for R4 to R6)
: R1 - Died
: R2 - No Appearance

J U D G M E N T

Challenging the award dated 24.06.2022 passed by the Motor Accident Claims Tribunal (Special Court for Motor Accidents Cases and Subordinate Court No.2), Salem, in M.C.O.P. No. 1998 of 2019, the appellant/Insurance Company has preferred this appeal.

2. The claim petition was filed by the injured Mr. K. Rengasamy, first respondent in this appeal, claiming a compensation of Rs.20 Lakhs for the injuries sustained by him in an accident that had taken place on 02.05.2019. Pending appeal, the claimant/first respondent herein died and therefore, his legal heirs are brought on record.



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3. As per the claim petition filed by the first respondent herein, on 02.05.2019 at about 7:00 P.M., after finishing his work, he was riding his bicycle in Aattayampatti Main Road. When he was riding his cycle at a place called Vennandhur, near Kamarajar Statute, a two wheeler bearing Registration No. TN-28-BZ-5223 and a Lorry bearing Registration No. TN-25-A-5706 were proceeding in front of the bicycle of the claimant. At that time, the driver of the lorry had driven it in a rash and negligent manner and hit the two wheeler and the two wheeler rider in turn dashed against the bicycle driven by the claimant. In the impact, the left hand of the claimant was crushed under the lorry tyre. Immediately, the claimant was taken to the hospital for treatment. At the time of accident, the claimant was 57 years old and he was earning Rs.15,000/- per month as an agricultural coolie. The first respondent is the owner of the lorry and the second respondent is the insurer. The third respondent is the owner of the two wheeler against whom the claim petition was filed seeking compensation of Rs.20 lakhs.

4. On notice, the Insurance Company opposed the claim petition filed by the claimant and denied the averments made in the claim petition



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with respect to age, earning power of the claimant etc., It was specifically stated that the manner in which the accident said to have taken place has been falsely narrated by the claimant. It was stated that it was the rider of the two wheeler who was instrumental for the accident. It was further stated that the quantum of compensation claimed is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, on behalf of the claimant, the claimant examined himself as P.W.1 and another witness was examined as P.W.2. Exs.P1 to P9 documents were marked. On behalf of the respondents, three witnesses were examined as D.W.1 to D.W.3 and Exs.B1 and B2 were marked. That apart, a Certificate issued by the Medical Board for 80% of permanent disability, was marked as Court document under Ex.C1.

6. The Tribunal had considered that the First Information Report in Crime No.99 of 2019 was registered as against the rider of the two wheeler. However, the Tribunal concluded that such First Information Report was registered on the basis of the complaint given by the claimant soon after he was admitted in the hospital. In his complaint, the

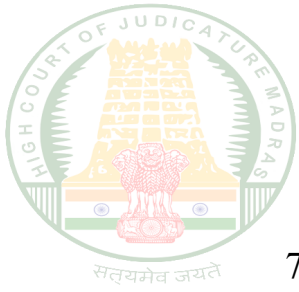


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complainant has stated that due to the negligent driving of the driver of the lorry as well as the rider of the two wheeler, the claimant suffered injuries.

Even in the First Information Report, there is reference about the negligent driving of the driver of the Lorry. It was further concluded that the First Information Report cannot be the basis for determining the claim petition where the claimant suffered grievous injury. Accordingly, the Tribunal held that the driver of the Lorry was also instrumental for causing the accident. As regards payment of compensation, the Tribunal, on considering the fact that the Doctor had assessed the permanent disability of the claimant at 80% and taking note of the oral and documentary evidence, as per order dated 24.06.2022, awarded as follows:-

<i>Sl.No</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>
1.	Loss of earning for 80% of functional disability	Rs.7,60,320/-
2.	Pain and suffering	Rs.1,00,000/-
3.	Loss of amenities	Rs.1,00,000/-
4.	Medical expenses, loss of income during the period of treatment, and Transportation	Rs.50,000/-
5.	Extra Nourishment	Rs.50,000/-
6.	Attendant charges	Rs.50,000/-
7.	Damage to clothing	Rs.1,000/-
	Total	Rs.11,11,320/-



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7. Assailing the award of compensation, the present Appeal is filed by the appellant-Insurance Company.

8. The learned counsel for the appellant/Insurance Company submits that at the time of the accident, the two-wheeler bearing Registration number TN-28-B -5223, belonging to the third respondent, namely one Mr.Sundaram, was driven by its rider in a rash and negligent manner and hit the claimant. It was the rider of the Two wheeler which was instrumental for the accident. The Tribunal did not take note of the fact that the First Information Report was registered only as against the two wheeler and not as against the driver of the Lorry. Furthermore, at the time of accident, the rider of the two-wheeler did not possess a valid insurance certificate and therefore, suppressing the manner of accident, the claim petition was filed before the Tribunal. When the First Information Report was registered only against the rider of the two-wheeler, there is no reason to make the Insurance Company liable to pay compensation to the claimant. In fact, the complaint was given by the claimant when he was in the hospital. Based on such complaint, the First Information Report was registered against the rider of the motorcycle. Furthermore, the third



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respondent, the owner of the two-wheeler, did not participate in the trial and he was set *ex parte*. In such circumstances, the Tribunal committed a grave error in mis-interpreting the contents of the First Information Report, besides refused to believe the contents contained in the First Information Report. In addition, he pointed out that the said First Information Report, in Crime No.99 of 2019, was taken on file in S.T.C.No.6222 of 2019, wherein, the rider of the two-wheeler admitted his guilt and paid the fine amount. Therefore, the learned counsel for the appellant prayed for setting aside the award of the Tribunal and to allow this appeal.

9. On the above submissions, this Court heard the learned counsel for the claimants and also perused the materials available on record.

10. Though, it is submitted by the learned counsel for the appellant that the First Information Report registered as against the rider of the two-wheeler and the driver of the Lorry, the case in S.T.C. No. 6222 of 2019, was ended by finding guilt on the rider of the two-wheeler, directing him to pay fine amount, no records were produced before this Court in this regard. However, it is well-settled that the First Information Report need not be

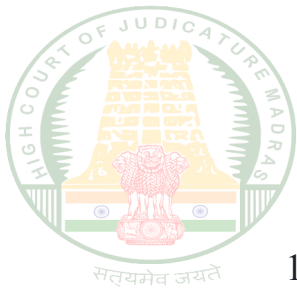


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wholly relied upon for determination of the compensation amount payable, and it need not also be simply brushed aside in its entirety. The First Information Report will also throw some light with respect to the manner in which the accident taken place inasmuch as it was registered at the earliest point of time. In this case, soon after the accident, the claimant was taken to hospital, where, he has given a statement with respect to the manner in which the accident had occurred.

11. Admittedly, the driver of the Lorry hit the two-wheeler and who in turn collided against the claimant's bicycle. In the impact, the left hand of the claimant was crushed under the Lorry tyre. It is also to be noted that when two vehicles collide against each other, normally, the liability has to be fixed in equal proportion. Therefore, it can be safely presumed that both the driver of the Lorry as well as the two-wheeler are at fault and they are jointly liable for contributing to the accident. Therefore, this Court fixes 30% of the contributory negligence on the part of the driver of the two wheeler and the third respondent being the owner of the vehicle is liable to pay 30% of the compensation.



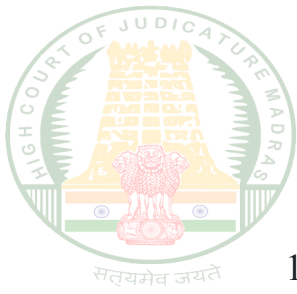
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12. Even though the claimants have not filed any appeal seeking enhancement of compensation, on perusal of records, it was noted that the Tribunal fixed a meagre amount of Rs.8000/- per month as notional income of the claimant and proceeded to determine the compensation. Even though the claimant did not file any documentary proof, taking note of the fact that the accident had taken place on 02.05.2019 and the claimant was hale and healthy that he was riding the cycle, this Court fixes his notional income at Rs.12,000/- per month. As far as the future prospects fixed 10% is not disturbed and the same is hereby maintained. Accordingly, the monthly income of the claimant is arrived at Rs.13,200/- per month. Consequently, the Loss of Income for the functional disability of the claimant is determined as follows:-

<i>S.No.</i>	<i>Description</i>	<i>Amount</i>
1	Notional income per month including 10% future prospects	Rs.13,200/-
2	Annual income	Rs.1,58,400/-
3	By adding multiplier '9'	Rs.14,25,600/-
4	Loss of income for the functional disability @ 80%	Rs.11,40,480/-

Thus, the loss of earning of the claimant is arrived at Rs.11,40,480/- as mentioned above.

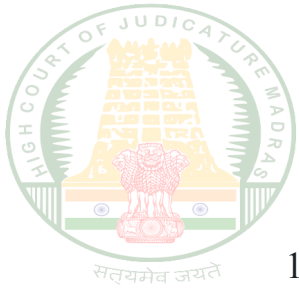


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13. In all other respects, the award passed by the Tribunal is fair and reasonable and it does not call for any interference. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of earning for 80% of functional disability	Rs.7,60,320/-	Rs.11,40,480/-
2.	Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-
3.	Loss of amenities	Rs.1,00,000/-	Rs.1,00,000/-
4.	Medical expenses, loss of income during the period of treatment, and Transportation	Rs.50,000/-	Rs.50,000/-
5.	Extra Nourishment	Rs.50,000/-	Rs.50,000/-
6.	Attendant charges	Rs.50,000/-	Rs.50,000/-
7.	Damage to clothing	Rs.1,000/-	Rs.1,000/-
	Total	Rs.11,11,320/-	Rs.14,91,480/-

14. Accordingly, the amount of **Rs.11,11,320/-** determined by the Tribunal is modified and/or enhanced to **Rs.14,91,480/-** , out of which 70% i.e., **Rs.10,44,036/-** is directed to be paid by the appellant-Insurance Company and the balance 30% i.e., **Rs.4,47,444/-** has to be paid by the owner of the two wheeler/third respondent.



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15. In the result, the decree and judgment passed in M.C.O.P. No.1998 of 2019, dated 24.06.2022, on the file of the Motor Accidents Claims Tribunal, Special Sub - Court No.2, Salem, is hereby modified to the extent indicated above.

16. The appellant /Insurance Company is directed to deposit the sum of **Rs.10,44,036/-** and the third respondent is directed to deposit the sum of **Rs.4,47,444/-** to the credit of M.C.O.P No.1998 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be equally apportioned among the claimants. On such deposit being made, the Tribunal is directed to transfer their respective share amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the claimants. The claimants are directed to pay the necessary additional Court fee for the enhanced compensation amount, if required.



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17. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, the connected miscellaneous petition is also closed.

19.06.2025

Speaking / Non-Speaking order

Neutral Case Citation : Yes/No

Index :Yes/No

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To

1.The Motor Accidents Claims Tribunal,
(Special Subordinate Court No.2), Salem.

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



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T.V.THAMILSELVI,J.

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