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CMA.No.6 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.6 of 2025

Rajendran

...Appellant

Vs.

1. S.Harishbabu

2. United India Insurance Company Ltd.,
Motor 3rd Party Claims Hub,
1st Floor, 43/397-A, Annai Indira Gandhi Street,
Rajajipuram Part-II, Thiruvallur – 602 001.

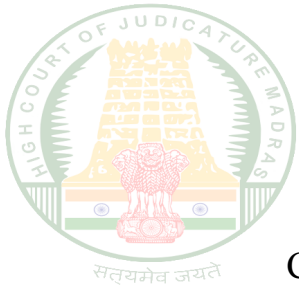
...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 16.02.2024 made in MCOP.No.159 of 2021 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Poonamallee, Thiruvallur District.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.J.Chandran, for R2
: Notice Dispensed with, for R1

JUDGEMENT



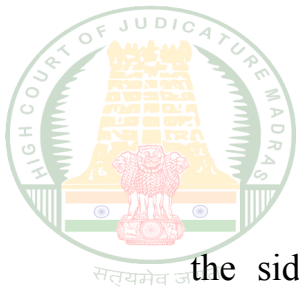
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Challenging the judgment and decree dated 16.02.2024 made in MCOP.No.159 of 2021 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Poonamallee, Thiruvallur District, the claimant is before this Court.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the appellant/claimant that, on 11.06.2021 at about 12.00 hours, when he was riding his two wheeler bearing Regn.No.TN-12-A-1324 in Chennai to Bangalore High road, at that time, a Bolero Maxi load van bearing Regn.No.TN-12-J-6373 owned by the 1st respondent insured with the 2nd respondent driven by its driver came in a rash and negligent manner and hit the two wheeler driven by the appellant, due to which the appellant sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition seeking compensation of Rs.10,03,000/-. Before the tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1 to P.10 and on



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the side of respondents no documents were marked and no witness was examined and the Disability Certificate was marked as Court document Ex.C.1.

After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place due to the rash and negligent driving on the part of the driver of the 1st respondent, however, fixed a contributory negligence of 20% on the part of the appellant for not possessing valid license and awarded a meagre compensation of Rs.2,07,313/-. Challenging the same, the appellant has filed the present appeal.

4. Learned counsel appearing for the appellant submitted that, the above said accident occurred solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle, due to which, the appellant sustained multiple fracture injuries all over his body and severe bleeding injuries on the back side of his head and lacerated wounds all over his body and the medical board also assessed a permanent disability of 30%, however, the tribunal had taken a sum of Rs.5,000/- per percentage of disability and awarded a meagre compensation under the head Disability and the compensation awarded under other heads are also on lower side and the same has to necessarily be enhanced.



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Further, the tribunal fixed a contributory negligence of 20% on the part of the appellant for not possessing valid license, which is on higher side and the same has to be rejected. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the Appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the accident is of the year 2021, however, the Tribunal had taken a sum of Rs.5,000/- per percentage of disability. In this regard, this Court perused Ex.C.1, which is the

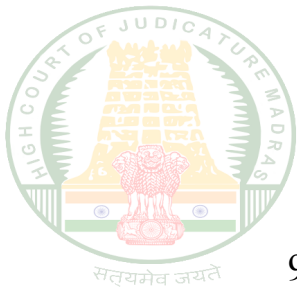


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disability certificate issued by the Medical Board and the same reveals that the appellant suffered disability of 30% and by erroneously adopting a sum of Rs.5,000/- per percentage of disability, the tribunal awarded a sum of Rs.1,50,000/-. However, as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.9,000/- per percentage of disability. Hence, the amount under the head Disability stands enhanced to a sum of Rs.2,70,000/- ($30\% \times \text{Rs.9,000/-} = \text{Rs.2,70,000/-}$).

8. Insofar as the compensation awarded under other heads are concerned, the tribunal had awarded a sum of Rs.5,000/-, Rs.10,000/-, and Rs.50,000/- under the heads Transport to hospital, Extra nourishment and Pain and suffering respectively, which are on the lower side and thereby, this Court is inclined to enhance the same to Rs.10,000/-, Rs.30,000/- and Rs.75,000/- respectively. Further, no compensation has been awarded under the heads Attender charges and Loss of income and thereby, this Court is inclined to award a sum of Rs.10,000/- and Rs.30,000/- ($2 \times 15,000 = 30,000/-$) respectively under the said heads.



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9. In view of the above, the compensation awarded by the Tribunal is

modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Compensation for Disability at 30%	1,50,000/-	2,70,000/-
Transport to hospital	5,000/-	10,000/-
Extra Nourishment	10,000/-	30,000/-
Pain and sufferings	50,000/-	75,000/-
Medical bills	44,141/-	44,141/-
Attender charges	-	10,000/-
Loss of income	-	30,000/-
Total	2,59,141/- After deducting 20% contributory negligence, the total compensation is fixed at Rs.2,07,313/-	4,69,141/-

10. Insofar as the negligence is concerned, the tribunal had fixed a contributory negligence of 20% on the part of the appellant for not possessing valid driving license. Mere non possession of driving license cannot be taken to mean that the contribution is highly on the side of the appellant/claimant. At best, not holding of valid driving license can only result in a contributory negligence of 10% and fixing 20% contributory negligence is perverse. Hence,



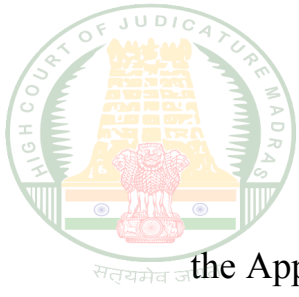
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this Court, modifies the contributory negligence fixed by the tribunal on the petitioner from 20% to 10%.

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11. After reducing 10% for the contributory negligence fixed on the part of the appellant for not possessing valid driving license from the total compensation arrived at by this Court ie., Rs.4,69,141/-, the compensation payable to the appellant/claimant by the 2nd respondent comes to Rs.4,22,226.90/-, rounded off to Rs.4,22,230/-.

12. Accordingly, the appeal is allowed in part and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.2,07,313/- to Rs.4,22,230/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.159 of 2021 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 four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of



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the Appellant 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 appellant. It is underscored that the appellant is not entitled to any interest for the default period, if any. No Costs.

10.01.2025

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1. The Motor Accident Claims Tribunal,
(Subordinate Judge),
Poonamallee, Thiruvallur District.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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