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CMA No. 3330 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 3330 of 2024

1. MADHAVAN

S/o. Gunasekaran, No.1/50, Kalaingnar
Street, Karasangal, Kancheepuam-601
301

Appellant(s)

Vs

1. Y.Pushparaj

No.3/248,A/3, Amman Nagar,
Bandisholai Spring Field Post,
Coonoor, The Nilgiris-643 104

2.The Manager

Reliance General Insurance Co.Ltd.,
6th Floor, Reliance House,
Nungambakkam, Chennai-600006

Respondent(s)

CMA No. 3330 of 2024

PRAYER

To allow the present appeal award enhanced compensation in judgment and decree dated 06-08-2024 in MCOP.no.1419/2018 on the file of the Motor Accidents Claims Tribunal-II Judge, Small Causes Court, Chennai

**CMA No. 3330 of 2024**

For Appellant(s): R.Nalliyappan

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For Respondent(s): Mr. P. Suresh Srinivasan For R2

JUDGEMENT

This Civil Miscellaneous Appeal has been filed to enhance the compensation in judgment and decree dated 06-08-2024 in MCOP. No.1419/2018 on the file of the Motor Accidents Claims Tribunal-II Judge, Small Causes Court, Chennai.

2. The brief facts of the case:

On 29.01.2018 at about 10.00 hours, when the claimant was riding the motorcycle bearing registration No. TN 11 AA 8024 alongside Mudichur 400 feet bye pass road near Madhanapuram from South to North direction, at that time the van bearing registration No. TN 43 F 0464 came from the opposite direction in rash and negligent manner dashed against the claimant's motorcycle, due to which, the claimant sustained grievous injuries.

3. Thereafter, the claimant filed MCOP. No.1419/2018 on the file of the Motor Accidents Claims Tribunal-II Judge, Small Causes Court, Chennai, claiming compensation of Rs.24,00,000/-. The second respondent Insurance company contested the case by filing counter.

4. On the side of the petitioner, the petitioner was examined as PW.1 and documents were marked as Ex.P1 to Ex.P11. On the side of the respondent, its



official was examined as R.W.1 and documents marked as Ex.R1 to Ex.R4.

5. After considering the oral and documentary evidence on either side, the tribunal has dismissed the claim petition by holding that the petitioner did not possessed valid driving licence at the time of the accident, therefore as tortfeasor, the petitioner cannot claim compensation from the second respondent. Challenging the same, the appellant filed this appeal.

6. The learned counsel for the appellant submits that the accident was happened due to the rash and negligence driving of the driver of the van but tribunal has failed to appreciate the facts and circumstances erroneously dismissed the petition. Further, to substantiate his claim, he relied on the judgement of this Court in the case of T. Vinoth Kumar Vs. Sekar reported in 2025 (2) TNMAC 85:

10. A close reading of the above judgment would make it clear that mere breach of policy condition by the insured like disqualification of the driver, invalid driving licence etc., are not by themselves defences available to the insurer against either the insured or the third party. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of policy. In Paragraph No.102.(vi), it is clearly mentioned that the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident

7. The learned counsel appearing for the insurance company submits that the petitioner did not possessed driving licence at the time of accident since the petitioner was minor at the time of the accident. Therefore, the Tribunal has



rightly dismissed the petitioner's claim which requires no interference.

8. Heard the submission of the learned counsel for the petitioner and the learned counsel for the Insurance Company.

9. The fact reveals that that on 29.01.2018, the petitioner was riding the motorcycle bearing registration No. TN 11 AA 8024 alongside Mudichur 400 feet bye pass road near Madhanapuram from South to North direction, at that time the van bearing registration No. TN 43 F 0464 came from the opposite direction hit against the petitioner's motorcycle. Thereby, the appellant sustained injuries. Thereafter, the complaint was lodged, based on that FIR registered against the driver of the first respondent in FIR No. 57 of 2018 under Section 279, 337 IPC. Admittedly, at the time of the accident, the said van was insured with second respondent herein. There is no evidence produced on the side of the first respondent to deny the rash and negligent driving of the driver of the van. In fact, the second respondent alone contested the case before the Trial Court. As per FIR allegation rash and negligence is attributed to the driver of the van/first respondent herein and there is no contra evidence produced on the side of the respondent to deny the same. On the other side, the petitioner proved the rash and negligent driving of the Van driver. Before, the Trial Court on the side of the second respondent official was examined as R.W.1, who admits that vehicle was insured at the time of the accident and petitioner is third party to the policy. She also admits that FIR was lodged against the driver of the first



respondent. As per the evidence of P.W.1, appellant sustained grievous injuries all over the and after the accident the appellant is not able to do his work as he did before to that effect he produced medical records and medical bills. With the help of oral and documentary evidence, the appellant has proved that the accident was happened due to the rash and negligence driving of the first respondent. But the Trial Court without considering the above facts erroneous dismissed the petition holding that at the time of the petitioner was minor. Admittedly, the petitioner was aged about 15 years at the time of the accident. Even assuming that the petitioner is minor at the time of accident, but the accident was not happened due to rash and negligent driving of driver of the van. However, the appellant also contributed the accident. But the court below dismissed the petition entirely as such is erroneous and liable to be set aside. Accordingly, the findings of the Trial Court is set aside. Further the ratio laid down by the above Court is squarely applicable to this case. Considering the fact, the appellant was minor at the time of the accident. Therefore, this Court is inclined to fix 20% towards contributory negligence upon the appellant.

10. Further, the appellant sustained simple injury. Hence, this Court is inclined to adopt per percentage method. As per Ex.C1/Disability certificate, the medical board assessed 52% disability. However, this Court fix 40% towards disability and the accident is of the year 2018. Hence, this court is inclined to fix Rs.7,000/- per percentage of disability. Therefore, the appellant is entitled to



Rs.2,80,000/- under the head of disability.

11. Further, this court fix Rs.10,000/- as notional income of the appellant.

Owing to the injury, the appellant would have lost his income for three months.

Hence, the appellant is entitled to Rs.30,000/- under the head of loss of income.

Further, this Court fix Rs.50,000/- under the head of pain and sufferings and

Rs.10,000/- under the head of loss of amenities, and Rs.9,000/- under the head

of attender charges. Further, the appellant has spent Rs.92,000/- under the head

of medical bills to that effect medical bills were marked as Ex.P6. Accordingly,

the appellant is entitled to Rs.92,000/- under the head of medical bills.

S.N o.	Head	Compensation awarded by this Court
1.	Pain and sufferings	Rs. 50,000/-
2.	Loss of Income	Rs.30,000/-
3.	Medical Expenses	Rs.92,000/-
4.	Transportation expenses	NII
5.	Extra Nourishment	NII
6.	Attender charges	Rs.9,000/-
7.	Damages to cloths and article	Nil
8.	Lost of amenities	Rs.10,000/-
9.	For disability	Rs.2,80,000/-
10	Total	Rs.4,71,000/-

12. After deducting 20% towards contributory negligence, the appellant is entitled to Rs.3,76,800/-. In view of the discussions made earlier, this Court is inclined to award Rs.3,76,800/- as compensation to the appellant. The 2nd



respondent is directed to deposit the said amount - 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 **MCOP No. 1419** of 2018, on the file of Motor Accidents Claims Tribunal-II Judge, Small Causes Court, Chennai within a period eight weeks from the date of receipt of a copy of this judgement. On such deposit, the **appellant/claimant** is permitted to withdraw the award amount by making formal application before the Tribunal.

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

02-07-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Motor Accidents Claims Tribunal-II Judge, Small Causes Court, Chennai.
2. The Section Officer, V.R Section, High Court, Madras.



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