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CMA.No.1139 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA No.1139 of 2025**

Selvi

... Appellant

**Vs.**

1. M.Haseem Ali

2. United India Insurance Company Ltd.,  
Branch Office No.2, Trichy-17.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award dated 06.01.2023 made in MCOP No.485 of 2018 on the file of the Sub Court, Motor Accident Claims Tribunal, Kangeyam.

For appellant : Ms.D.Jeevitha

for Mr.D.Rameshkumar

For Respondents : Mr.P.Sankaranarayanan for 2nd respondent

**JUDGMENT**



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Not satisfied with the quantum of compensation awarded by the Tribunal and also as against the the fixation of contributory negligence, the claimant has come before this court by filing the present appeal.

2. According to the appellant/claimant, she had suffered fracture injuries in a road accident that that occurred on 17.01.2016. It is the case of the appellant that she was travelling as a pillion rider along with her husband in a two wheeler bearing registration No.TN-39-C-4516. When she was proceeding from West to East direction on the Kangeyam-Tiruppur Main Road, a two wheeler bearing registration No.TN 47 AF 5671 belonging to the first respondent, insured with the second respondent came in a rash and negligent manner and dashed against the two wheeler driven by the husband of the appellant/claimant. As a result of accident, the claimant was thrown away from the vehicle and sustained grievous injuries. Hence, she filed claim petition seeking compensation of Rs.5,00,000/- before the Tribunal.

3. The first respondent remained exparte before the Tribunal and



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the claim petition was opposed by the second respondent, mainly on the ground that only due to the negligence on the part of the driving of the driver of the two wheeler in which the claimant was travelling, the accident had occurred.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the two wheeler belonging to the first respondent and insured with the second respondent. However, the Tribunal fixed 20% contributory negligence on the part of the driver of the two wheeler, in which the claimant travelled as a pillion rider, mainly on the ground that he did not possess valid driving licence and quantified the compensation payable to the claimant at Rs.96,784/-, after deducting 20% of the compensation amount towards contributory negligence. Aggrieved by the fixation of contributory negligence as well as seeking enhancement of compensation awarded by the Tribunal, the claimant has come before this court.

5. The learned counsel for the appellant would submit that the



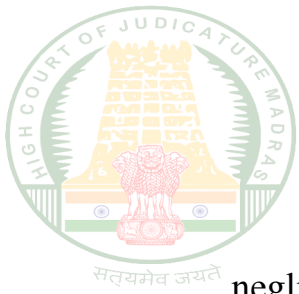
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Tribunal committed an error in fixing 20% contributory negligence on the part of the driver of the two wheeler, in which the appellant travelled as pillion rider, for his failure to produce driving licence. Learned counsel further submits that the amount awarded by the Tribunal under the heads loss of income during treatment period, pain and sufferings and transportation expenses are very meager and hence, the same need enhancement.

6. The learned counsel for the 2nd respondent would submit that the driver of the two wheeler, in which the claimant travelled had failed to produce driving licence and hence, the Tribunal was justified in fixing contributory negligence at 20% on him. He further submits that the amount awarded under the various heads are fair and reasonable and hence, the same require no interference by this court.

7. The Apex Court in ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436*** categorically held that mere failure to hold valid driving license is not a ground to fix contributory negligence, unless there is a positive evidence to suggest that the



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negligent driving of the victim, contributed to the accident. In the case on hand, the First Information Report marked as Ex.P1 was registered against the driver of the two wheeler belonging to the first respondent and insured with the second respondent and subsequently, final report, which was marked as Ex.P3 was also filed against him before the concerned court. Ex.P4 is the judgment passed by the Judicial Magistrate, Kangeyam in the above said criminal case, wherein, the driver of the vehicle, insured with the second respondent pleaded guilty and paid fine amount

8. The Tribunal, based on the evidence of claimant as PW1, and the documentary evidence Ex.P1, Ex.P3 and Ex.P4, rightly came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the vehicle, insured with the second respondent and there is no positive evidence to suggest that the driver of the two wheeler, in which the claimant travelled as pillion rider also contributed to the accident. Therefore, as per the law laid down by the Apex Court in ***Sudhir Kumar Case***, the finding of the Tribunal fixing 20% contributory negligence on the part of the two wheeler, in whcih the



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claimant travelled is set aside.

9. Ex.P6, discharge summary issued by the Deepa hospital, Avinashi Road, Tirupur would suggest that the claimant was in hospital as inpatient for 5 days and due to the accident, she suffered fracture in both bones in his forearm. In the said discharge summary, it is clearly mentioned that the claimant suffered fracture in Ulna and Tenderness over right elbow bones and she had undergone surgery and treated with implant fixation. Taking into consideration the nature of injury suffered by the claimant, this court feels that the claimant is entitled to the compensation towards loss of income for a period of three months.

10. The accident had occurred in the year 2016. It was claimed by the claimant that she was a tailor in a Banian Company at Tiruppur. In the claim petition, the income of the claimant was mentioned as Rs.10,000/- per month. Taking into consideration the date of accident and the plea made in the claim petition, this court is inclined to award a sum of Rs.30,000/- (10,000 x 3 ) towards loss of income during treatment period. Further, the compensation of Rs.3,000/- awarded by



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the Tribunal towards transportation expenses is enhanced to Rs.5,000/-.

Likewise the amount of Rs.15,000/- awarded under the head pain and sufferings and mental agony is enhanced to Rs.30,000/-.

11. Taking into consideration that the claimant suffered fracture in both bones in forearm and she had undergone surgery for internal plate fixation, a sum of Rs.20,000/- is awarded towards loss of amenities.

12. It is brought to the notice of this court that the Tribunal ordered pay and recovery on the ground that the driver of the insured did not possess valid driving licence and the said finding is affirmed.

13. Accordingly, the compensation awarded by the Tribunal is revised as under:

| Sl. | Description | Amount | Amount | Award |
|-----|-------------|--------|--------|-------|
|-----|-------------|--------|--------|-------|



| No |                                     | awarded by<br>Tribunal<br>(Rs) | awarded by<br>this Court<br>(Rs) | confirmed or<br>enhanced or<br>granted |
|----|-------------------------------------|--------------------------------|----------------------------------|----------------------------------------|
| 1. | Loss of income                      | 14,000                         | 30,000                           | enhanced                               |
| 2. | Transportation expenses             | 3,000                          | 5,000                            | enhanced                               |
| 3. | Nutritious food                     | 5,000                          | 5,000                            | confirmed                              |
| 4. | Pain and sufferings                 | 15,000                         | 30,000                           | enhanced                               |
| 5. | Loss of amenities                   | --                             | 20,000                           | granted                                |
| 6. | Hospital bills                      | 83,979                         | 83,979                           | confirmed                              |
|    | Total                               | 1,20,979                       | <b>1,73,979</b>                  | enhanced                               |
|    | Less 20% contributory<br>negligence | 24,195                         | --                               | set aside                              |
|    | Compensation                        | 96,784                         | <b>1,73,979</b>                  | enhanced by<br>Rs.77,195/-             |

14. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.96,784/- is hereby enhanced to **Rs.1,73,979/-** together with interest at 7.5% per annum ( **excluding the delay period of 558 days, as per order in CMP No.29969 of 2024 dated 02.04.2025**) from the date of petition till the date of deposit.

15. The **second respondent** is directed to deposit the



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compensation amount now determined by this Court to the credit of MCOP No.485 of 2018 on the file of the Sub Court, MACT, Kangeyam, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment.

16. On such deposit, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. There shall be no order as to costs.

**22.04.2025**

Index : Yes/No  
Speaking order : Yes/No  
Neutral citation : Yes/No  
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**To**

1. The Subordinate Court,  
Motor Accident Claims Tribunal,  
Kangeyam
2. The Section Officer,  
V.R. Section, Madras High Court.



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**S.SOUNTHAR, J.**

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