



CMA.No.3487 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 05.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.3487 of 2021

S.Thirumugam

... Appellant

Vs.

1.K.Murugan

(Since R1 remained ex-parte before the Tribunal, hence his presence may be dispensed with)

2.National Insurance Company Limited,
No.751, III Floor,
Anna Salai, Chennai – 600 002.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 22.09.2017 passed in MACTOP.No.2806 of 2012 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant :Ms.N.Lavanya
for M/s.M.Malar

For Respondents :M/s.N.B.Surekha
for R2
Notice dispensed with for R1



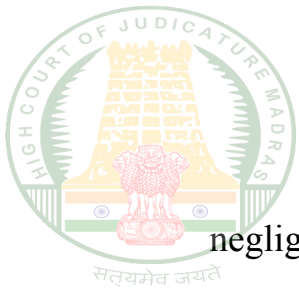
CMA.No.3487 of 2021

WEB COPY

J U D G M E N T

Aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimant has come by way of this appeal.

2. The claimant is the appellant. It is the case of the claimant that he suffered grievous injuries in a road accident that had occurred on 24.06.2012. According to him, on the date of accident, he was proceeding in his motorcycle from South to North direction. At that point of time, the lorry belonging to the first respondent insured with the second respondent came from North to South direction in a rash and negligent manner and dashed against the vehicle of the claimant. Due to the accident, he sustained grievous injuries and hence the petition was filed before the Tribunal seeking compensation of Rs.15,00,000/-. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's lorry. However, the Tribunal fixed 50% of the contributory



CMA.No.3487 of 2021

WEB COPY

negligence on the part of the claimant and quantified the compensation at Rs.28,000/-. Aggrieved by the quantum of compensation, the claimant has come before this Court.

3. The learned counsel appearing for the claimant would submit that the Tribunal fixed 50% contributory negligence on the part of the claimant only on the ground that he had no valid driving licence at the time of accident. The learned counsel further submitted that merely because the claimant has not possessed valid driving licence, contributory negligence cannot be fixed and hence the said finding is liable to be set aside. The learned counsel further submitted that considering the date of accident, the amount of Rs.6,000/- fixed by the Tribunal towards notional income and compensation awarded under the head loss of income for two months period is very much on the lower side.

4. The learned counsel appearing for the second respondent/Insurance Company would submit that the claimant was riding the vehicle without valid driving licence, which is in violation of provisions of Motor Vehicles Act and hence, the Tribunal rightly fixed 50% of



CMA.No.3487 of 2021

contributory negligence on the part of the claimant. The learned counsel further submitted that the amount of Rs.12,000/- awarded by the Tribunal under the head loss of income is very much on the higher side.

5. As far as the contributory negligence is concerned, merely because injured had driven the vehicle without valid driving licence, we cannot presume that there was negligence on his part and he contributed to the accident. In order to fix the contributory negligence on the part of the injured claimant there must be some positive evidence on record. However, in the case on hand, there is no evidence available on record to fix the contributory negligence on the part of the injured claimant. In fact, the respondents have not examined any witness including the driver of the lorry. The Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = (2008) 12 SCC 436***, while considering non-possession of driving license observed as follows:-

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was



WEB COPY



CMA.No.3487 of 2021

being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

6. The above view was affirmed and followed subsequently by a Three Member Bench of Apex Court in ***Dinesh Kumar vs. National Insurance Company Ltd., and others***. Therefore, finding rendered by Tribunal that injured claimant contributed to accident by his mere failure to possess driving licence by placing reliance on ***M.Ramya vs. G.Ekambaram and another*** reported in ***2021 (1) TNMAC 451***, is unsustainable in view of law declared by Apex Court in the above mentioned judgments.

7. In view of the law laid down by the Apex Court in the above mentioned cases the mere failure to possess the valid driving licence *per se* does not amount to contributory negligence and accordingly, the findings of the Tribunal with regard to the contributory negligence is set



8. As far as the quantum of compensation is concerned, in the claim petition, it was averred by the injured claimant that he was working as auto driver and was earning a sum of Rs.8,000/- per month. However, the claimant has not produced any documentary evidence to prove his avocation or income. Taking into consideration, the year of accident, this Court feels it would be appropriate to take the income claimed by the claimants in the claim petition. Though as per guidelines issued by the Division Bench in *Andal and others vs. Avinav Kannan and others* reported in *MANU/TN/6368/2018*, the claimant is entitled to a higher sum, in view of the restricted claim made by the claimant, this Court fixes the notional monthly income at Rs.8,000/- and for two months period a sum of Rs.16,000/- is awarded under the head loss of income during treatment period. The amount awarded by the Tribunal under various other heads, like disability, attender charges, pain and suffering, transportation to hospital, extra nourishment etc., are confirmed. Therefore, the total amount payable to the claimant is enhanced to Rs.59,000/-. Since the finding of the Tribunal regarding the contributory negligence is set aside, the claimant is



CMA.No.3487 of 2021

entitled to a sum of Rs.59,000/- as compensation. The award passed by the

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Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Disability	Rs.21,000/-	Rs.21,000/-
2.	Attender charges	Rs.2,000/-	Rs.2,000/-
3.	Loss of income	Rs.12,000/-	Rs.16,000/-
4.	Pain and suffering	Rs.10,000/-	Rs.10,000/-
5.	Transport to hospital	Rs.5,000/-	Rs.5,000/-
6.	Extra Nourishment	Rs.5,000/-	Rs.5,000/-
	Total	Rs.55,000/-	Rs.59,000/-

9. The Tribunal awarded interest at the rate of 9% per annum.

Taking into consideration, prevailing bank rate and inflation, the interest is reduced at 7.5% from the date of petition to the date of deposit. The second respondent is directed to deposit the amount enhanced by this Court within a period of four weeks from the date of receipt of copy of this judgment and on such deposit the appellant is entitled to withdraw the same.



CMA.No.3487 of 2021

WEB COPY

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

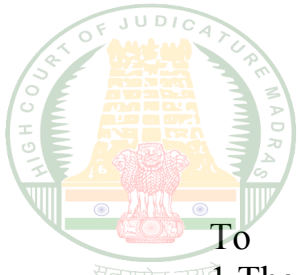
05.03.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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CMA.No.3487 of 2021

To

1.The Motor Accident Claims Tribunal
II Court of Small Causes, Chennai.

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



WEB COPY



CMA.No.3487 of 2021

S.SOUNTHAR, J.

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CMA.No.3487 of 2021

05.03.2025