



CMA.(MD)Nos.1162 and 1163 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	29/10/2025
Date of Pronounced	20/11/2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)Nos.1162 and 1163 of 2013

and

MP(MD)Nos.1 and 1 of 2013

(1)CMA(MD)No.1162 of 2013:-

National Insurance Company Limited,

Post Box No.112, North Car Street,

Nagercoil through its Branch Manager : Appellant/2nd Respondent

Vs.

1.Pauldurai

: 1st Respondent/Petitioner

2.Sakthivel

: 2nd Respondent/R1

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the awarded made in MCOP No. 1083 of 2006, dated 24/09/2009 on the file of the Motor Accidents Claims Tribunal/Additional District Court/Fast Track Court No.2, Tirunelveli.



CMA.(MD)Nos.1162 and 1163 of 2013

(2)CMA(MD)No.1163 of 2013:-

National Insurance Company Limited,
Post Box No.112, North Car Street,
Nagercoil through its Branch Manager : Appellant/2nd Respondent

Vs.

1.Jothy : 1st Respondent/Petitioner
2.Sakthivel : 2nd Respondent/R1

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the awarded made in MCOP No. 1084 of 2006, dated 24/09/2009 on the file of the Motor Accidents Claims Tribunal/Additional District Court/Fast Track Court No.2, Tirunelveli.

In both petitions

For Appellant : Mr.D.Sivaraman

For 1st Respondent : No appearance

For 2nd Respondent : Mr.S.Murugesan
(No appearance)

COMMON JUDGMENT

These Civil Miscellaneous Appeals arise out of the common award passed in MCOP Nos.1083 and 1084 of 2006, dated 24/07/2009 by the



Motor Accident Claims Tribunal/Additional District Court, (FTC No.2),
Tirunelveli.

2.The brief case is as follows:-

(i) On 20/01/2006 at about 10.30 pm, one Jothi was riding his Bajaj M80 TN-76-Z-0843 along with his friend Pauldurai as pillion rider on the Surandai to Senthamaram road by south-north direction. When they were nearing Natarajan Kalyanamandabam Pillaiyar Kovil, a load auto rickshaw not bearing registration number mark, which was driven by the 1st respondent from the opposite direction in a rash and negligent manner and dashed against the motor cycle. In that process, both the rider and the pillion rider of the motor cycle fell down and sustained injuries. They were immediately taken to the Tirunelveli Medical College Hospital, Palayamkottai, for treatment and thereafter, admitted in the private hospital for further treatment.

(ii) Over the occurrence, a case in Crime No.21 of 2006 was registered by the Surandai Police Station, against the 1st respondent for the offences under Sections 279, 337 and 338IPC.

(iii) Claiming compensation for the injuries sustained in the accident, the both the claimants filed claim petitions separately as mentioned in the claim petitions.



3.The 1st respondent and second respondent filed their counter statement denying the entire allegations made in the claim petitions and contended that the accident occurred solely due to the negligence on the part of the rider of the two wheeler. At the time of accident, three persons were travelling on the motor cycle; and the rider did not possess a valid driving licence. Furthermore the two wheeler was also not insured with any of the Insurance Company.

4. It is further contended that the 1st respondent, the owner of the load auto, drove the vehicle without registration and without obtaining fitness certificate from the competent authority at the time of the accident, thereby, violating the policy conditions as contemplated under the Motor Vehicles Act.

5.Before the Tribunal, on the side of the claimants, 3 witnesses were examined as PW1 to PW3 and 15 documents were marked as Exs.P1 to P15. On the side of the 2nd respondent Insurance Company, 3 witnesses were examined as RW1 to RW3 and 3 documents were marked as Exs.R1 to R3.



6. After considering the material evidence and records, the Tribunal has awarded compensation of Rs.3,95,000/- in respect of MCOP No.1083 of 2006 and Rs.3,24,000/- in respect of MCOP No.1064 together with interest at the rate of 7.5% per annum and directed the respondents 1 and 2 to pay the said award amount jointly and severally.

7. Aggrieved over the common order of the Tribunal, these Civil Miscellaneous Appeals have been preferred by the Insurance Company, disputing their liability and negligence to pay the compensation.

8. This court considered the rival submission of the learned counsel appearing on either side and perused the materials available on record.

9. Now, this Court has to decide the following points for considerations:

(1) Whether the order of the Tribunal is proper or liable to be set aside ?

10. Point No.1

As per the averments contained in the petition, the auto which was insured with the appellant hit the two wheeler and three persons were



injured. However, only two persons alone come forward and filed petitions seeking compensation while the third person has not come forward with any claim. This fact is also supported by FIR which is marked as Ex.P1, wherein it is clearly recorded that three persons were travelled with beedi bags. The petitioners' has also contributed to the accident and therefore, the Tribunal ought to have fixed 50% contributory negligence on the part of the petitioners. However, the Tribunal failed to appreciate the above facts and rejected the appellant's contention by merely stating that the appellant had not proved that the accident occurred due to the negligence of the claimants which is improper and unsustainable.

11. In support of his contention, he rely upon the following judgments :

1) 2004(2) TNMAC 59 (DB) (Managing Director, TNSTC Ltd., Coimbatore Vs. Abdul Salam and Others)

2) 2009 (1) TNMAC 407 (SC) (Sudhir Kumar Rana Vs. Surinder Singh Others)

3) 2020 (3) SCC – 57 (Mohammed Siddique and another Vs. National Insurance Company Ltd., and others)



12. Though the appellant specifically contended that the auto involved in the accident was not duly registered at the time of occurrence and was only covered under a temporary registration. The Tribunal failed to consider the statutory violation as per Section 42 of the Motor Vehicles Act, the owner is prohibited from using the vehicle and a public road without valid registration and a temporary registration was valid only 30 days, in spite of this clear statutory mandate the Tribunal erroneously shifted the liability and passed award against the insurance company which is not proper and liable to be set aside.

13. However, during the course of argument, upon perusal of Ex.R2 the counsel fairly conceded that on the date of accident, the temporary registration certificate was in-force and valid. Accordingly, he agreed to withdraw his earlier contention regarding the absence of valid registration.

14. Ex.P1, the first information report registered in crime No.21/2006 dated 21.1.2006 by the Tirunelveli Police Station against the driver of auto Sakthivel. The claimant in his complaint categorically alleged that the first respondent drove the auto in a rash and negligent manner and dashed against their vehicle. No Complaint was lodged by



CMA.(MD)Nos.1162 and 1163 of 2013

the auto driver alleging that the claimant who was riding the two wheeler, was solely responsible for the accident. Ex.P7 is the final report filed by the Inspector of Police, Surandai Police Station against the first respondent / auto driver for the offences punishable under Sections 279, 337, 338 IPC. Since the first respondent driver has not filed any complaint or petition, alleging negligence on the part of the claimants, upon considering the materials on record and evidence adduced by the claimants, the Tribunal rightly held that the accident occurred due to the negligence act of the first respondent's driver, for which reason this Court is of the view that the finding of the Tribunal as does not warrant any interference.

15. As far as the second ground urged by the appellant is concerned, it relates to the allegation that the rider of the two wheeler was travelling along with two other passengers and carrying heavy, beedi bag which is illegal and unauthorised and therefore, is said to have contributed to the accident warranting the fixation of contributory negligence his part.

16. However, it is nowhere proved that the accident occurred due to the negligence act of the rider of the two wheeler, in this connection,



this Court rely upon the judgment reported in **2009 (1) TNMAC 407 (SC) (Sudhir Kumar Rana vs. Surinder Singh and Others)** para 6,7,8

which is extracted as under :

“6. A contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent.

7. The question is, negligence for what? If the complainant must be guilty of an act or omission which materially contributed to the accident and resulted in injury and damage, the concept of contributory negligence would apply. (See New India Assurance Co. Ltd. v. Avinash [1988 ACJ 322 (Raj)] .)

In T.O. Anthony v. Karvarnan [(2008) 3 SCC 748] it was held : (SCC pp. 750-51, paras 6-7)

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of



WEB COPY



CMA.(MD)Nos.1162 and 1163 of 2013

responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50 : 50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has



WEB COPY



CMA.(MD)Nos.1162 and 1163 of 2013

failed to correct the said error.

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 who was driving 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.”

In the above judgement, the guidelines for fixing contributory negligence on the part of rider, who claims compensation have been clearly laid down.

17. The Tribunal rightly observed in its judgement that the insurance company had failed to establish that the claimant in MCOP. No.1083 of 2006 who was the rider of the two wheeler had also contributed to the accident and refused to hold that the claimant was liable for contributory negligence. This Court is of the view that the said finding is proper and does not warrant interference. Therefore, these



CMA.(MD)Nos.1162 and 1163 of 2013

Civil Miscellaneous Appeals deserve no merit and liable to be dismissed.

Point No.1 is answered accordingly.

18. In the result, these Civil Miscellaneous Appeals are dismissed, and the common order dated 24/09/2009 passed in MCOP Nos.1083 & 1084 of 2006, on the file of the Motor Accidents Claims Tribunal/Additional District Court/Fast Track Court No.2, Tirunelveli, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

20/11/2025

Index :Yes/No

Internet :Yes/No

er/rm



CMA.(MD)Nos.1162 and 1163 of 2013

To

WEB COPY

1.The Motor Accident Claims Tribunal/
Additional District Court/FTC No.2,
Tirunelveli District.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA.(MD)Nos.1162 and 1163 of 2013

R.POORNIMA, J

rm

CMA(MD)Nos.1162 and 1163 of 2013

20/11/2025