



C.M.A. (MD) No. 356 of 2019

WEB COPY

Reserved on : 19.06.2025

Pronounced on : 28.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.356 of 2019

The Branch Manager,
National Insurance Co. Ltd.,
1/1M-404, Masanth Enquire,
Hennur Main Road,
3rd Block, HRBR Layout,
Kalyana Nagar,
Bangalore, Bangalore Urban,
Karnataka-560043,
rep. by its Branch Office,
Ganesh Complex No.1754/1756,
Manojiappa Street, South Main Street,
Thanjavur.

... Appellant/
2nd Respondent

Vs.

1.Backiyaraj

... 1st Respondent/
Petitioner

2.S.Arunpeter

... 2nd Respondent/
1st Respondent



C.M.A. (MD) No. 356 of 2019

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this appeal and set aside the judgment and decree order passed in M.C.O.P.No.683 of 2016 dated 30.06.2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Thanjavur.

For Appellant : Mr.A.S.Mathialagan

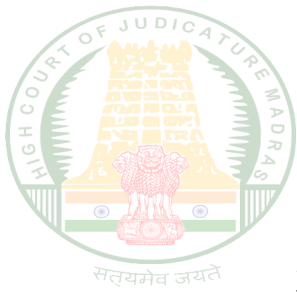
For Respondents : Mr.S.Gokulraj for R1

No appearance for R2

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.683 of 2016 dated 30.06.2017 on the file of the Motor Accident Claims Tribunal / Special District Court for MCOP cases, Thanjavur.

2. The appellant / Insurance Company, who was mulcted with liability to pay compensation of Rs.13,77,299/- (with interest at the rate of 7.5% per annum for Rs.11,77,299/-) to the first respondent / claimant, for the disability sustained by him, consequent to an accident occurred on 10.06.2015, challenged the liability fastened on it and also the quantum of compensation awarded at, by the Tribunal.



C.M.A. (MD) No. 356 of 2019

WEB COPY

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

4. The claimant's case is that on 10.06.2015 at around 09:15 a.m., while riding his two-wheeler (TN-49-BC-4639) on the Nagai-Trichy road near Vettikadu Pirivu, a Santro car (KA-01-MB-3546) coming from west to east in a rash and negligent manner dashed against him. The accident occurred after the claimant had crossed 80% of the highway and was taking a U-turn past Puthu Athupallam. As a result, the claimant sustained serious injuries and was immediately taken to Thanjavur Medical College Hospital via 108 ambulance. He received inpatient treatment from 10.06.2015 to 14.06.2015 and was later admitted to Thanjavur Rohini Hospital and Anu Hospital for further treatment.

5. It is the further case of the claimant that after the accident, he became unconscious, that the car driver taking advantage of the same and using his influence lodged a false complaint before the concerned police, as if, the claimant was responsible for the accident and on that basis, FIR came to be registered in Crime No.253 of 2015 on the file of the

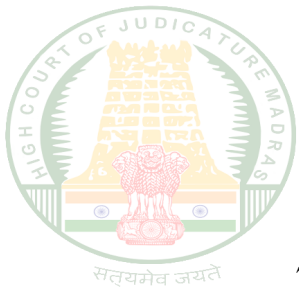


C.M.A. (MD) No. 356 of 2019

WEB COPY

Thanjavur Taluk Police Station under Sections 279 and 337 IPC and that the claimant, after coming to know about the registration of the case, lodged a complaint before the Thanjavur Taluk Police Station Inspector, Thanjavur Melavasthasavadi Deputy Superintendent of Police, Thanjavur Superintendent of Police and also to Tamil Nadu Human Rights Commission, which in turn directed the Thanjavur Superintendent of Police to take necessary action.

6. The defence of the second respondent is that the claimant alone is responsible for the accident and the first respondent's driver is not at fault. The claimant has falsely stated that the accident occurred when he was taking U-turn but the accident sketch reveals that there is no U-turn at the accident spot. The claimant in order to cross the road, drove his two wheeler on the wrong side of the road in a rash and negligent manner and dashed against the first respondent's vehicle. The claimant does not possess a valid driving licence to drive the two wheeler at the time of accident and he paid fine admitting the offences. Since the first respondent's driver is not responsible for the accident, the second respondent is not liable for the claim and therefore, the claim petition is liable to be dismissed as against the second respondent.



C.M.A. (MD) No. 356 of 2019

WEB COPY

7. During enquiry, the claimant examined himself as P.W.1 and one Doctor Aravinth as P.W.2 and exhibited 34 documents as Ex.P.1 to Ex.P.34. The first respondent had remained *ex-parte*. The second respondent examined their official as R.W.1 and exhibited 6 documents as Ex.R.1 to Ex.R.6.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned award dated 30.06.2017 holding that the first respondent's driver was responsible for the accident and also by holding that the claimant was not possessing valid driving licence at the time of accident, fixed the contributory negligence at 10% and directed the second respondent to pay compensation of Rs.11,77,299/- with interest and costs. Aggrieved by the impugned award, the insurer has preferred the present appeal.

9. The points for consideration are:-

1. *Whether the Tribunal erred in holding that the first respondent's driver alone was responsible for the accident,*



WEB COPY



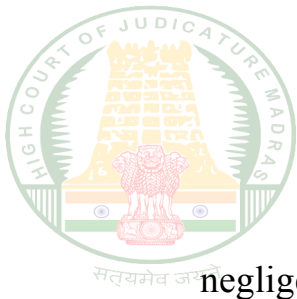
C.M.A.(MD)No.356 of 2019

despite showing that the claimant alone has proceeded in a wrong side of the road that too in a rash and negligent manner and caused the accident?

2. Whether the compensation awarded at by the Tribunal is just and reasonable and is in accordance with law?

10. It is pertinent to note that the accident and the involvement of the two wheeler bearing Registration No.TN-49-BC-4639 and the Santro car bearing Registration No.KA-01-MB-3546 are not in dispute.

11. According to the claimant, the first respondent's car driver alone is responsible for the accident, whereas, according to the second respondent, the claimant alone is responsible for the accident. No doubt, as rightly pointed out by the learned counsel appearing for the second respondent, on the basis of the complaint given by the car driver, FIR was registered against the claimant and the jurisdictional police after investigation laid the final report against the claimant. It is settled law that the police records, the final opinion of the investigating officer and criminal Court judgment do not bind the Tribunal in determining the



C.M.A. (MD) No. 356 of 2019

WEB COPY

negligence. The Tribunal must independently assess the evidence presented and decide who is responsible for the accident.

12. In the present case, the claimant (P.W.1) reiterated his version of the accident in his evidence, stating that while crossing 80% of the highway to take a U-turn after Puthu Athupallam on the Nagai-Trichy road near Vettikadu Pirivu, a rashly driven Santro car coming from west to east collided with his two-wheeler, causing injuries. During cross-examination, the second respondent suggested that the claimant was on the wrong side of the road, there was no U-turn at the spot, and the claimant's negligence caused the accident. P.W.1 denied these suggestions. Notably, the second respondent failed to elicit any favorable evidence during P.W.1's cross-examination.

13. Although both parties produced the FIR and the second respondent submitted the rough sketch and charge sheet, the second respondent only examined their official and did not call the car driver or any eyewitness. Despite relying on police records and the charge sheet filed against the claimant, the second respondent did not examine the



C.M.A. (MD) No. 356 of 2019

WEB COPY

investigating officer. As rightly contended by the learned counsel appearing for the claimant, the second respondent failed to present any contrary evidence regarding negligence. Based on the available evidence, the learned trial Judge correctly concluded that the accident resulted from the first respondent's driver's rash and negligent driving.

14. P.W.1-claimant himself would admit that he was not having valid driving licence at the time of accident. The second respondent has produced the copy of the cash receipt for spot fine issued by the Inspector of Police, Taluk Circle, Thanjavur under Ex.R.3. The claimant would also admit that he paid fine for riding the vehicle without driving licence. Considering the above, the Tribunal has rightly attributed contributory negligence to the claimant at 10%.

15. Regarding compensation, the records show the claimant's multiple hospital admissions: Thanjavur Medical College Hospital (10.06.2015-14.06.2015), Rohini Hospital (27.06.2015-03.07.2015), Anu Hospital (22.08.2015-25.08.2015 and 04.09.2016-07.09.2016), Kalpana Hospital (06.10.2016-13.10.2016), and again Thanjavur Medical College



C.M.A. (MD) No. 356 of 2019

WEB COPY

Hospital (11.03.2017-24.03.2017). The medical records confirm the claimant sustained bone injuries to his right leg, which ultimately led to amputation below the knee due to unsuccessful treatment. The claimant examined P.W.2, Dr. Aravinth, who treated him and issued a disability certificate (Ex.P.27) assessing 70% disability for the amputated leg and 10% for hip and thigh wasting.

16. According to the claimant, he was working as a painter and prior to accident, he was earning Rs.45,000/- per month at Singapore through his painting work. The learned trial Judge, by referring to the decisions of the Hon'ble Supreme Court in *R.D.Hattangadi Vs. Pest Control (India) Pvt. Ltd.*, reported in *AIR 1995 SC 755*, *Ashwani Kumar Mishra Vs. P.Muniam Babu* reported in *1999 ACJ 1105 SC*, *C.K.Subramonia Iyer Vs. T.Kunhikuttan Nair* reported in *AIR 1970 SC 376* and *Rajkumar Vs. Ajaykumar* reported in *2011 (1) SCC 343* and by considering the medical evidence available on record, correctly assessed the functional disability at 70%. The Tribunal, in the absence of any evidence to show the monthly income of the claimant, taking note of the avocation, fixed the monthly income at Rs.6,500/- and taking note of the age of the claimant as 29

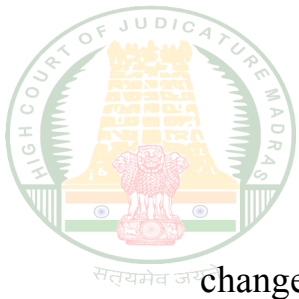


C.M.A. (MD) No. 356 of 2019

years, rightly applied multiplier 17 and arrived at the loss of income at Rs. 9,28,200/-. The second respondent's challenge to the functional disability assessment as excessive is unfounded, given the medical evidence, amputation and the claimant's occupation.

17. The Tribunal, considering the medical bills under Ex.P.7, Ex.P.9, Ex.P.10 and Ex.P.26 rightly awarded Rs.77,132/- towards medical expenses.

18. Considering the nature of injuries, consequent disability sustained, period of treatment and other attending circumstances, awarding of Rs.1,00,000/- for pain and suffering, Rs.25,000/- for extra nourishment, Rs.25,000/- for attendant charges and Rs.25,000/- for transportation charges by the Tribunal are very much reasonable and as such, the same are liable to be confirmed. Considering the amputation of portion of the right leg and the age of the claimant, awarding of Rs.50,000/- for loss of amenities and Rs.1,00,000/- for loss of marital pleasure, cannot said to be excessive. P.W.2 would say that artificial limb would cost between Rs.25,000/- and Rs.2,50,000/- and limb casting at Rs.25,000/- is to be



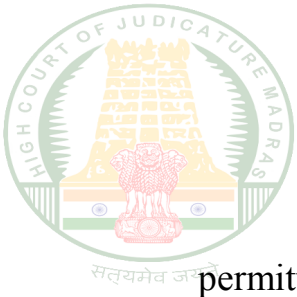
C.M.A. (MD) No. 356 of 2019

WEB COPY

changed once in three years. Considering the above, the Tribunal has rightly awarded Rs.2,00,000/- for future medical expenses. Hence, total compensation arrived at Rs.15,30,332/- is just and reasonable and there is nothing to interfere with the same. The Tribunal, after deducting 10% of the said compensation towards contributory negligence, awarded Rs.13,77,299/-. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

19. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs.

20. In the result, this Civil Miscellaneous Appeal stands dismissed. The appellant is directed to deposit the award amount of Rs.13,77,299/- (with interest at the rate of 7.5% per annum for Rs.11,77,299/-) from the date of petition till the date of realization to the credit of M.C.O.P.No.683 of 2016 on the file of the Motor Accident Claims Tribunal / Special District Judge, Thanjavur, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is



C.M.A. (MD) No. 356 of 2019

WEB COPY

permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal.

Parties are directed to bear their own costs.

28.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A. (MD) No. 356 of 2019



WEB COPY



C.M.A. (MD)No.356 of 2019

K.MURALI SHANKAR,J.

csn

**Pre-Delivery Judgment made in
C.M.A.(MD)No.356 of 2019**

Dated : 28.08.2025