

C.M.A.(MD).No.889 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD).No.889 of 2024

Malan ... Appellant / Petitioner

VS.

1.Saranya

2.The Divisional Manager,
M/s.New India Assurance Co. Ltd.,
No.248-B, Rega Towers,
Kamarajar Salai, Madurai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Award dated 10.07.2023 made in M.C.O.P.No.639 of 2020 on the file of Motor Accident Claims Tribunal / Special Sub-Court, Madurai.

For Appellant : Mr.D.Senthil

For 2nd Respondent : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimant herein against the Award dated 10.07.2023 made in M.C.O.P.No.639 of 2020 on the file of Motor Accident Claims



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Tribunal / Special Sub-Court, Madurai.

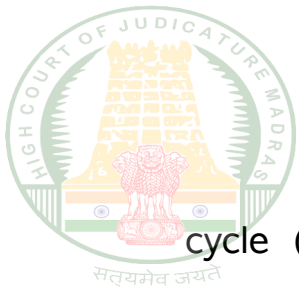
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2. Heard the arguments of the learned counsel for the appellant and the learned counsel for the 2nd respondent/Insurance Company.

3. At trial, the claimant has examined himself as PW1 and seven documents have been marked. Ex.P2 is discharge summary. On the 2nd respondent's side, no oral evidence is let in. Ex.C1 is disability certificate issued by the Madurai District Medical Board.

4. Upon consideration of oral and documentary evidence, after hearing the arguments on either side, the Tribunal has held that as the claimant has also contributed to the accident and for not wearing helmet altogether 40% is fixed as negligence on the part of the appellant. Against this finding, this appeal has been preferred by the claimant herein.

5. It has come on record through the evidence of PW1 that on 31.12.2019 at about 5 p.m., while he was riding his friend's motor



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cycle (Reg.No.TN-59-CD-6906) proceeding from west to eastern direction along Theni – Madurai main road at the point of K.Puliyankulam burial ground, the driver of the Swift car (Reg.No.TN-58-AK-3069) came in a rash and negligent manner, proceeding in the same direction turned to the left side and applied brake. The claimant's two wheeler right side handle bar touched the front right side of the car. Due to the said impact, he fell down and sustained head injury and other injuries all over the body. From the cross-examination of PW1, it is inferable that the accident occurred in the center portion of the road. When a suggestion was posed to him to the effect that while the car turned towards left side (north side) this accident happened, was answered in positive. In the given circumstances, the Tribunal has fixed 30% negligence on the part of the claimant cannot be found fault with. Further more, this Court does not find any good reason to disturb the findings of the Tribunal.

6. As regards the issue that PW1 did not wear helmet, PW1 would depose that he sustained head injury, which proves the fact that he was not wearing helmet. It is not his evidence that he was wearing helmet at the time of accident.



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WEB COPY 7. For the above said commissions and omissions, the finding of the Tribunal to the effect that the claimant has contributed 40% negligence does not suffer from any infirmity or perversity.

8. Based on the aforesaid observations and discussions, this Civil Miscellaneous Appeal stands dismissed and the Award dated 10.07.2023 made in M.C.O.P.No.639 of 2020 on the file of Motor Accident Claims Tribunal / Special Sub-Court, Madurai, is confirmed. No costs.

31.01.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Special Sub-Court, Madurai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI, J.,

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