



C.M.A. (MD)No.725 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.725 of 2025
and
C.M.P.(MD)No.11514 of 2025

M/s.New India Assurance Company Ltd.,
84A Divisional Office,
Trivandam Road,
Palayamkottai Road,
Tirunelveli.
represented by its Manager

... Appellant/
Respondent No.2

Vs.

1.Krishnan

... Respondent No.1/
Claimant

2.Shenbagselvi

... Respondent No.2/
Respondent No.1

Prayer : This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decretal order dated 27.01.2023 made in M.C.O.P.No.77 of 2021 on the file of Motor Vehicles Accident Claims Tribunal, Tenkasi, namely, the Principal Sub Court, Tenkasi.



C.M.A. (MD) No. 725 of 2025

For Appellant : Mr.C.Deepak
For Respondents : Mr.K.Esakkidurai for R1

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 27.01.2023 passed in M.C.O.P.No.77 of 2021 by the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tenkasi.

2. The appellant / Insurance Company, who was mulcted with the liability to pay a compensation of Rs.1,90,000/- (Rupees One Lakh and Ninety Thousand only) with interest at 7.5% per annum to the first respondent / claimant, for the disability sustained by him, consequent to an accident occurred on 26.09.2019, challenged the liability fastened on it and also the quantum of compensation awarded at by the Tribunal.

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



C.M.A. (MD) No. 725 of 2025

WEB COPY

4. The facts of the case are as follows :-

On 26.09.2019 at about 02.30 hours, when the claimant was riding his two wheeler bearing Registration No.TN-76-AD-6468 along Tirunelveli to Tenkasi Main Road near Kankeyankulam Vilakku from East to West on the extreme left side of the road, another two wheeler bearing Registration No.TN-72-BM-5744, came in the opposite direction driven by the first respondent in a rash and negligent manner, from West to East and dashed against the claimant's vehicle and as a result, the claimant sustained grievous injuries all over his body. The claimant was immediately taken to TVMC hospital, Tirunelveli. Then the claim petition was filed by the claimant seeking compensation of Rs.10,00,000/-.

5. The first respondent, owner of the vehicle, remained *ex-parte* before the Tribunal and the claim petition was opposed by the insurer.

6. The defence of the insurer in the claim petition is that the age, income, nature of injuries and the manner of the accident of the claimant are all disputable. The first respondent was not possessing valid driving license and as such, the insurer is not liable to pay any compensation. The



C.M.A. (MD) No. 725 of 2025

claim of compensation is excessive and exorbitant.

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7. The claimant to prove his case examined himself as P.W.1 and marked 4 documents as Ex.P.1 to Ex.P.4. On the side of the insurer, 2 witnesses were examined as R.W.1 and R.W.2 and 3 documents were marked as Ex.R.1 to Ex.R.3.

8. The learned trial Judge, after considering the evidence, both oral and documentary, passed the impugned award dated 27.01.2023, holding that the first respondent was responsible for the accident and directed the insurer to pay the award amount of Rs.1,90,000/- with interest at 7.5% per annum to the claimant. Aggrieved by the said award, the insurer has come up with the present appeal.

9. The learned counsel appearing for the insurer would submit that the first respondent did not possess valid driving license at the time of accident and therefore, the Tribunal erred in fixing the liability upon the insurer, that the claimant had driven the motorcycle with two other persons as pillion riders and that the Tribunal erred in fixing compensation



C.M.A. (MD) No. 725 of 2025

towards disability and loss of earning power in absence of any sufficient evidence and the Tribunal has awarded huge compensation, which is unsustainable and the same is liable to be quashed. Hence, the learned counsel prays that this Court may interfere with the award and allow this appeal.

10. The learned counsel appearing for the claimant would contend that mere travelling of three persons on a two wheeler does not amount to any negligence on the part of the claimant, that no other materials or evidence has been adduced by the insurer to prove that travelling of three persons alone had caused the accident, that the claimant being a driver by profession the injuries suffered by him over his right hand forearm will result in total loss of earning power and hence, the learned trial Judge has rightly granted the loss of earning for a period of one year and that the first respondent was possessing valid driving license at the time of accident. Therefore, he seeks to dismiss the appeal.

11. This Court considered the rival submission. Perused the records and also the impugned judgment.



C.M.A. (MD) No. 725 of 2025

WEB COPY

12. Points for determination are:

Whether the Tribunal erred in fastening liability upon the appellant insurance company without properly considering the issue of contributory negligence as trio had travelled on the appellant-insured motorcycle?

13. As rightly contended by the learned counsel appearing for the claimant that triple riding, without evidence to establish loss of control or proximate connection with the accident, will not lead to contributory negligence. It is a settled principle of law that a mere breach of a statutory provision, by itself, is insufficient to fasten contributory negligence, unless there is reliable evidence to establish that such violation had a direct and proximate connection with the occurrence of the accident and whether travel by trio on a two-wheeler had contributed to the negligence in a case has to be decided on the facts of each case. The contributory negligence is a question of fact and must be proved by evidence, and cannot be presumed merely on the basis of statutory violation and also cannot be inferred in the absence of proof of casual contribution to the accident and the same has been fortified by the decision of the Hon'ble Supreme Court



C.M.A. (MD) No. 725 of 2025

reported in the case of ***Sudhir Kumar Rana v. Surinder Singh***, reported in **2008 12 SCC 436** which has held as follows:

9.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.

14.The said principles of the Hon'ble Two Judges Bench has been affirmed by the Hon'ble Three Judges Bench of the Supreme Court in the case of ***Dinesh Kumar vs National Insurance Co Ltd.***, reported in **2018 1 SCC 750**.

15.The Hon'ble Supreme Court and also this Court and various High Courts have ruled that mere riding of two wheeler by three persons, though constituting a violation of the provision of the Motor Vehicle Act,



C.M.A. (MD) No. 725 of 2025

does not per se amount to negligence or contributory negligence and the following case laws are relevant in this aspect:

15.1. In the case of *Fazilka Dabwali Transport Co. v. Madan Lal*, reported in (1977) 2 SCC 434 the Hon'ble Supreme Court has held as follows:

5. It was also contended before the Tribunal that two boys were riding the cycle and therefore there was contributory negligence. The Tribunal rightly repelled that suggestion by stating that the mere fact of double-riding by the boys did not contribute to the accident.

15.2. In the case of *Kattabomman Transport Corpn. Ltd. v. Vellai Duraichi*, reported in (2004) 1 TN MAC 180 (DB) the Hon'ble Division Bench of this Court has held as follows:

8.....merely because there is violation of the provisions of the Act or Rules or the policy conditions, it is not automatic that in every case the principle of contributory negligence is to be applied mechanically. As rightly observed in the other Division Bench decision, namely, M. Anandavalli Amma v. Arvind Eye Hospital, 2002 (3) L.W. 710, unless there is evidence to prove that the accident took place only because of such act that is taking/travelling more persons in a motor cycle which resulted in an accident, the owner of the



C.M.A.(MD)No.725 of 2025

other vehicle and its insurer will be liable to pay compensation. To put it clear, if the appellant-Transport Corporation is able to prove that it is because of the addition of one more (third person in the motor cycle instead of two), the accident occurred, the position would be different. In other words, unless the owner of the vehicle or the Insurance Company is able to prove that the accident took place only because of such act that is taking more persons than the prescribed number, the owner/Insurance Company will be liable to make good the loss/compensation....

15.3. In the case of ***Mohd. Siddique v. National Insurance Co. Ltd.***, reported in ***(2020) 3 SCC 57*** has held as follows:

12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most, it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C, inserted by Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more



C.M.A. (MD) No. 725 of 2025

WEB COPY

person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimised, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High



C.M.A. (MD) No. 725 of 2025

Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance.

13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.

16. In this case this Court finds no evidence of imbalance that due to travelling of three persons, the rider of the two-wheeler lost his control and rammed into the appellant's vehicle. Further, the first respondent has not examined any witness to prove the negligence on the part of the rider of the two-wheeler. It is also not the case of the insurance company that the accident occurred as a result of three persons travelling on a motorcycle and it is also not their case that the accident would not have occurred if three persons were not travelling on the motorcycle.



C.M.A. (MD) No. 725 of 2025

WEB COPY

17. Now turning to the defence of non-possession of driving license, it is evident from the records that the staff attached to the Regional Transport Office (RTO), Sankarankovil, has given evidence that the first respondent was possessing valid driving licence at the time of accident and he has also produced the driving license of the first respondent and the same came to be exhibited as Ex.D.2.

18. Now turning to the quantum of compensation, the Medical Board, after assessing the claimant, has fixed the disability at 6%. Since the disability was assessed at 6%, the Tribunal has rightly applied percentage method and also the fact that the accident occurred in 2019, has rightly awarded Rs.5,000/- per percentage of the disability at Rs. 30,000/-.

19. Though the claimant has alleged that he was working as a driver and was earning Rs.15,000/- per month, he has not produced any evidence to show the occupation and income. Hence, the Tribunal has rightly fixed the notional monthly income at Rs.10,000/-. Considering the occupation of the claimant, granting loss of earning for one year is justifiable.



C.M.A. (MD) No. 725 of 2025

WEB COPY

20. Considering the above, this Court concludes that the appeal is devoid of merits and is liable to be dismissed.

21. In the result, this Civil Miscellaneous Appeal stands dismissed and the award dated 27.01.2023 passed in M.C.O.P.No.77 of 2021 on the file of Motor Accident Claims Tribunal / Principal Subordinate Court, Tenkasi, is confirmed. The appellant is directed to deposit the entire award amount with interest at 7.5% per annum and costs, from the date of petition till the date of payment, excluding the default period, if any, to the credit of M.C.O.P.No.77 of 2021 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Tenkasi, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is permitted to withdraw the amount along with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

01.08.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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C.M.A. (MD) No. 725 of 2025

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To:

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD)No.725 of 2025

K.K.RAMAKRISHNAN,J.

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Judgment made in
C.M.A.(MD)No.725 of 2025
and
C.M.P.(MD)No.11514 of 2025

Dated : 01.08.2025