



C.M.A.(MD)No.56 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.56 of 2018

and

C.M.P.(MD)No.833 of 2018

Oriental Insurance Co. Ltd.,
By its branch Manager,
South Main Street,
Thanjavur Town,
Thanjavur.

... 2nd Respondent / Appellant

Vs.

1.Senthil Kumar @ Kumar

... Petitioner / 1st Respondent

2.Sekar

... 1st Respondent / 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 ® of CPC, 1908, against the award and decretal award dated 02.02.2005 made in M.C.O.P.No.840 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thanjavur.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.K.R.Manimaran



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JUDGMENT

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This Civil Miscellaneous Appeal has been preferred against the award and decreetal award dated 02.02.2005 made in M.C.O.P.No.840 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thanjavur.

2.For the sake of convenience, the parties herein are referred as per their ranking before the Trial Court.

3.The case is one of injury. The second respondent insurance company is the appellant herein. The first respondent is the owner of the car involved in the accident. On 04.08.2002, the petitioner claimant, along with his friends Elangovan and Raghukumar, was travelling in a TVS-50 bearing registration registration No.TN.49.D.8714 across the Saliangalam, Thanjavur road. While they were near the Mariamman Koil by-pass road, the 1st respondent Maruthi Car bearing registration No.TN.45.N.6399 was driven by its driver in a rash and negligent manner. As a result of which, one of the pillion riders, namely, Elangovan, jumped out of the two Wheeler. As a result of which, the TVS-50 and the car collided against each other. The petitioner



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sustained several injuries in his left and right legs, right shoulder and right elbow. Following which, he was admitted to the Medical College at Thanjavur as an inpatient and took treatment for 70 days. At the time of the accident, he was earning Rs.4500/- (Rupees Four Thousand and Five Hundred only) per month and was aged 25 years old. He sought compensation before the Motor Accident Claims Tribunal.

4.The learned Tribunal examined three witnesses on the side of the petitioner / claimant and marked Ex.P1 to P10. No witnesses were examined on the side of the respondents, and the documents were also not marked on the side of the respondents. On the basis of the arguments put forth by the respective parties, and on the basis of the evidence deposed and the materials available on record, the learned Tribunal passed an award of Rs.1,23,000/- (Rupees One Lakh and Twenty Three Thousand only). Challenging the same, the second respondent / insurance company has preferred this CMA.

5.The learned counsel for the appellant, Mr.Jawahar Ravindran, submitted that this is a clear case of contributory negligence which was not at all duly considered by the learned Tribunal. At the time of the



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accident, the injured travelled along with two others on a two wheeler, that is, a TVS-50, as mentioned supra, and it is only because one of the pillion riders jumped out of the two wheeler on seeing a Maruti car coming from the opposite direction that the accident had happened. However, the learned Tribunal failed to appreciate this aspect, by not fixing a contributory negligence on both the parties. Similar grounds have already been tested before this court in the case of **Branch manager, New India Assurance Company Limited vs. Murugesan and another reported in 2021 (2) TN MAC 503**, in which this Court was pleased to fix the contributory negligence on the respective parties, and on that basis, insisted on fixing the contributory negligence of at least 20% on the injured.

6.Per contra, the learned counsel appearing for the injured / claimant / 1st respondent, Mr.Manimaran categorically submitted that this civil miscellaneous appeal ought not to have been numbered at all for the sole reason that this is a matter of the year 2005; after a period of 13 years, they have preferred this Civil Miscellaneous Appeal and the total award is a meager amount of Rs.1,23,000/- (Rupees One Lakh and Twenty Three Thousand only) which was a meager award in terms of the injuries sustained by the injured and pressed for dismissal of the

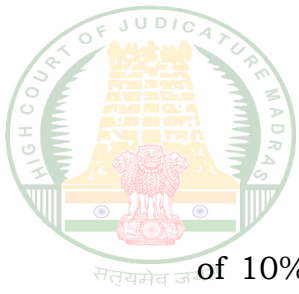


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7.Heard the learned counsels on either sides and carefully perused the materials available on record.

8.No doubt, the injured ought not to have travelled as a first pillion rider on a two wheeler where the rider made up his mind to travel along with two pillion riders. Though the learned counsel for the injured submitted that negligence cannot be fixed on him because it is only because of the second pillion rider, who jumped out of the vehicle, the accident had happened. I am of the considered view that the injured ought not to have travelled as one among the three persons in a two wheeler and it is an admitted fact that three persons actually travelled in the said two wheeler.

9.This Court is of the considered view that a compensation of Rs.1,23,000/- (Rupees One Lakh and Twenty Three Thousand only) has been awarded by the learned Tribunal as early as in the year 2005 without fixing the contributing negligence on the part of the injured / claimant. It would be just and equitable to fix a contributory negligence

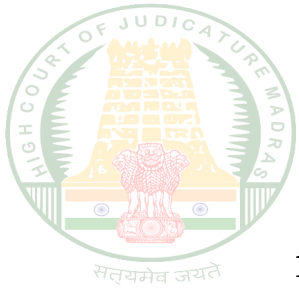


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of 10% on the part of the injured claimant who opted to travel as the first pillion rider, following the judgment of this Court reported in 2021 (2) TN MAC 627. Accordingly the compensation amount is modified from Rs.1,23,000/- (Rupees One Lakh Twenty Three Thousand only) to Rs. 1,10,700/- (Rupees One Lakh Ten Thousand and Seven Hundred only) (since 10 % contributory negligence arrive at Rs.12,300/-) (Rs. 1,23,000/- - Rs.12,300/- = 1,10,700/-)

10.The learned counsel appearing for the appellant insurance company submitted that the entire amount of the award is already deposited before M.C.O.P.No.840 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thanjavur.

11.The appellant / Insurance Company is permitted to withdraw the amount to which they are entitled to. The claimant is permitted to withdraw the modified award amount, that is, Rs.1,10,700/- (Rupees One Lakh Ten Thousand and Seven Hundred only), less the amount, if any already withdrawn, by making necessary application before the Tribunal.



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12. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Thanjavur.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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