WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2026

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

CMA No. 3107 of 2024

CNR: {HCMA011495882023}

Elangovan

..Appellant(s)

Vs

1. Rajendiran

2. Pachaiyammal

3. The Manager
   The Oriental Insurance Company Ltd,
   No.32/312, Vijayalakshmi Complex,
   13th Street, Sathuvacheri, Vellore 9.

4. The Manager
   TATA AIG General Insurance Company Ltd,
   No.1, Ethiraj Salai, Egmore, Chennai 8.

..Respondent(s)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying to enhance the compensation amount awarded in the Judgment and Decree dated 25.07.2022 made in MCOP.No.641 of 2017 on the file of the Motor Accident Claims Tribunal Judge/the Special Sub Judge(MCOP), Tiruvannamalai, by allowing this Civil Miscellaneous Appeal.

For Appellant(s): Mr.S.Panneer Selvam

For Respondent(s): R1 and R2 – No appearance

Mr. M. Krishnamoorthy (For R3)

Mr.K.Vinod (For R4)

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

For the sake of convenience, the parties are referred to herein by their respective ranks before the Tribunal.

2. Unsuccessful claimant has preferred the present appeal seeking enhancement of compensation.

3. The claim petition has been filed under Section 166 of the Motor Vehicles Act [hereinafter referred to as 'the MV Act'], seeking compensation for the injuries sustained by the claimant in a road accident. According to the claimant, on 06.06.2017, at about 1.45 p.m., he was riding the 2nd respondent's auto bearing Registration No.TN 32 AK 8031 from Villupuram to Tirukoilur on the extreme left side of the road, in soil path on Villupuram–Tirukoilur Road. While he was going near the bus stop of Kadaganur Village, at that time, the driver of a Tata Ace bearing Registration No.TN 25 AA 1150, drove the said Tata Ace from opposite direction in a rash and negligent manner, dashed against the claimant's auto and caused the accident. Due to the accident, the claimant sustained multiple fractures in his right thigh, right knee and injuries in his face, right hand, right leg, head and injuries all over his body.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. According to the claimant, the offending vehicle involved in the accident belonged to the first respondent and the same was insured with the third respondent. The auto, which was driven by the claimant belonged to the second respondent and was insured with the fourth respondent at the time of the accident.

5. The first and second respondents appeared through counsel but did not file their counter statements. Hence, they were called absent and set *ex parte* before the Tribunal.

6. The third respondent / Insurance Company has filed a counter statement, denying the manner of the accident. As per the FIR, the accident took place only due to the rash and negligent driving of the 2nd respondent's vehicle namely auto by the claimant himself. Hence, the fourth respondent was liable to pay compensation to the claimant and not the third respondent. It was further contended that the driver of the Auto belongs to 2nd respondent, did not possess a valid and effective driving licence and badge to drive the auto at the time of the accident.

7. The fourth respondent also filed a counter statement, wherein it has been stated that the accident was occurred due to the rash and negligent driving of the driver of the first respondent's vehicle bearing Registration No.TN 25 AA

https://www.mhc.tn.gov.in/judis

WEB COPY

1150. It was further contended that, if any compensation found payable, it is to be awarded only as against the first respondent.

8. Before the Tribunal, on behalf of the claimant, the claimant himself examined as P.W.1 and Exs.P1 to P8 were marked. The Disability Certificate issued by the Medical Board was marked as Ex.C1. On behalf of the third respondent, R.W.1 was examined and Ex.R1 was marked.

9. Upon appreciation of the evidence adduced on either side, the Tribunal held that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle. However, it also found that, at the time of accident, the claimant did not possess a valid and effective driving licence and fixed 50% contributory negligence on the part of the claimant and 50% negligence on the part of the driver of the first respondent's vehicle.

10. The Tribunal further found that the claimant had sustained “Fracture right femur with internal fixator fracture right patella inferior angle” and the same is mentioned in Ex.C1 / Disability Certificate and that the Medical Board had assessed his permanent disability at 40%. By applying the ratio laid down by the this Court in the case of ***M.Chinnathambi Vs. S.Deepa and another reported in 2020 (1) TN MAC 617***, the Tribunal adopted the rate of Rs.5,000/- per percentage of disability and awarded Rs.2,00,000/- (Rs.5,000/- × 40) under

https://www.mhc.tn.gov.in/judis

WEB COPY

the head of permanent disability. The Tribunal has also awarded compensation under various other heads and the same is extracted hereunder:

Sl.No.	Heads	Amount granted by the Tribunal (Rs.)
1	Disability (40%)	Rs.2,00,000/-
2	Pain and Sufferings	Rs.50,000/-
3	Extra Nourishment	Rs.10,000/-
4	Medical Expenses	Rs.43,277/-
5	Attender Charges	Rs.10,000/-
6	Transportation Expenses	Rs.10,000/-
7	Loss of Amenities	Rs.50,000/-
8	Loss of Income during the treatment Period	Rs.36,000/-
	Total	**Rs.4,09,277/-**

11. Aggrieved over the same, the claimant has preferred the present appeal, seeking enhancement of compensation and also challenging the fixation of 50% contributory negligence on his part.

12. The learned counsel appearing for the appellant/claimant would submit that the Tribunal erred in fixing 50% contributory negligence on the part of the claimant on the ground that he did not possess a valid and effective driving licence to drive the vehicle at the time of the accident. The learned counsel would further submit that, in similar circumstances, the Hon'ble Supreme Court and this Court have fixed contributory negligence at 10% only.

13. The learned counsel would further submit that the Tribunal erred in fixing Rs.5,000/- per percentage of disability without considering that the

https://www.mhc.tn.gov.in/judis

WEB COPY

accident took place in the year 2017. Therefore, the Tribunal ought not to have fixed Rs.5,000/- per percentage of disability. It is further contended that, at the time of the accident, the claimant was aged about 38 years and was working as a driver. However, without considering the same, the Tribunal fixed his monthly notional income at Rs.9,000/-, which is meagre and the same is to be enhanced. The learned counsel would also contend that the compensation awarded under the other heads also has to be enhanced.

14. Per contra, the learned counsel appearing for the respondent / Insurance Company would submit that a criminal case was registered against the claimant and that, at the time of the accident, the claimant did not possess a valid and effective driving licence to drive the vehicle. It was further submitted that the claimant himself was a tortfeasor. An official from the Regional Transport Office, Villupuram, was examined as R.W.1, and through his evidence, it was established that there was no driving licence issued to the claimant from their office. In such circumstances, the learned counsel would submit that the Tribunal rightly fixed 50% contributory negligence on the part of the claimant on the ground that he did not possess a valid and effective driving licence. The compensation awarded by the Tribunal under the various heads appears to be reasonable and proper and does not warrant any interference by this Court.

https://www.mhc.tn.gov.in/judis

WEB COPY

15. This Court has considered the submissions made by the learned counsel appearing on either side and perused the records carefully.

16. According to the claimant, on 06.06.2017, at about 1.45 p.m., he was riding the 2nd respondent's Auto from Villupuram towards Tirukoilur in a soil path on Villupuram–Tirukoilur Road. While he was going near the bus stop of Kadaganur Village, the driver of the Tata Ace, coming from the opposite direction, drove the vehicle in a rash and negligent manner, dashed against the claimant's auto and caused the accident.

17. In order to prove the above said facts, the claimant examined himself as P.W.1 and narrated the manner of the accident.

18. According to the third respondent / Insurance Company, the claimant did not possess a valid and effective driving licence to drive the vehicle at the time of the accident. In order to prove the said contention, the third respondent has examined an official from the Regional Transport Office, Villupuram, as R.W.1. A perusal of the evidence of R.W.1 reveals that no driving licence had been issued to the claimant from their office. It is relevant to note that the claimant has not produced his driving licence before the Tribunal to substantiate that he was qualified to drive the auto on the date of the accident.

https://www.mhc.tn.gov.in/judis

WEB COPY

19. It is also relevant to note that, in order to substantiate the alleged negligence on the part of the claimant, the third respondent has not examined either the driver of the Tata Ace or any independent witness. Ex.R1 is the letter issued by the Regional Transport Office regarding the driving licence details of the claimant. As per evidence of R.W.1 and Ex.R1, reveals that at the time of accident, the claimant did not possess a driving licence issued by the said office.

20. It is to be noted that when a person, driving the vehicle without a valid driving licence amounts to a violation of the applicable traffic regulations. A perusal of Ex.P1 / FIR reveals that a criminal case was registered against the claimant on the basis of the complaint lodged by the driver of the Tata Ace on 07.06.2017.

21. It is relevant to note that the accident took place on 06.06.2017. A perusal of Ex.P7, the complaint given by the claimant to the District Superintendent of Police, Villupuram, reveals that the same was dated 22.06.2017. It is to be noted that the accident took place on 06.06.2017. However, the claimant has chosen to address a complaint to the District Superintendent of Police, Villupuram on 22.06.2017, only after the a lapse of 15 days.

https://www.mhc.tn.gov.in/judis

WEB COPY

22. Considering the above facts and circumstances, particularly the evidence regarding the absence of a driving licence and the absence of direct evidence from the driver of the Tata Ace or any independent witness, this Court is of the considered opinion that the fixation of 50% contributory negligence on the part of the claimant by the Tribunal requires reconsideration. Hence, this Court is inclined to fix 10% contributory negligence on the part of the claimant. Accordingly, the finding of the Tribunal, fixing 50% contributory negligence on the part of the claimant is set aside, and this Court fixes the contributory negligence of the claimant at 10%.

23. With regard to the quantum of compensation, it is relevant to note that the claimant has appeared before the Medical Board for assessment of his disability. The Medical Board assessed the disability of the claimant and issued Ex.C1/ Disability Certificate. A perusal of Ex.C1 reveals that the claimant has sustained “Fracture right femur with internal fixator fracture right patella inferior angle” and that the Medical Board assessed his permanent disability at 40%.

24. It is relevant to note that, in the absence of proof of functional disability and evidence of loss of earning capacity, the Tribunal rightly adopted the percentage method for assessing compensation under the head of permanent disability.

https://www.mhc.tn.gov.in/judis

WEB COPY

25. The accident took place on 06.06.2017 and at the time of accident, the claimant was aged about 38 years and considering the year of the accident and the nature of the injuries sustained by the claimant, this Court is inclined to fix the compensation at Rs.7,000/- per percentage of disability. Accordingly, the compensation under the head of permanent disability is enhanced to Rs.2,80,000/- (Rs.7,000/- × 40%).

26. It is relevant to note that, according to the claimant, he was working as a driver of the auto and was earning Rs.20,000/- per month at the time of the accident. However, in the absence of proof of his monthly income, the Tribunal fixed his notional monthly income at Rs.9,000/-.

27. Considering fact that the accident took place in the year 2017 and that the claimant was aged about 38 years at the time of the accident, this Court is inclined to fix the notional monthly income of the claimant at Rs.15,000/-.

28. Considering the nature of the injuries sustained by the claimant, this Court is of the view that he would have been unable to resume his work for a minimum period of four months. Hence, the amount of Rs.9,000/- per month fixed by the Tribunal under the head of loss of income during the treatment period appears to be meagre. Accordingly, the compensation under the said

https://www.mhc.tn.gov.in/judis

WEB COPY

head is enhanced to Rs.60,000/- (Rs.15,000/- × 4 months).

29. It is relevant to note that a perusal of Exs.P4 and P5 / Discharge Summary reveals that the claimant underwent treatment at the Government Medical College Hospital, Villupuram as an inpatient from 06.06.2017 to 09.06.2017 for four days. Thereafter, he underwent further treatment at Sriram Hospital, Tirukoilur from 09.06.2017 to 14.06.2017 for six days. The claimant also underwent surgery.

30. Considering the nature of the injuries sustained and the treatment undergone by the claimant, he would have incurred additional expenditure towards extra nourishment. The Tribunal awarded Rs.10,000/- under the head of extra nourishment, which appears to be meagre. Hence, this Court is inclined to enhance the compensation under the said head to Rs.20,000/-.

31. The compensation awarded by the Tribunal under the heads of pain and suffering, medical expenses, attendant charges, transportation expenses and loss of amenities appears to be reasonable and proper and does not warrant any interference by this Court.

32. In the light of the above discussion, the compensation awarded by the Tribunal is modified and enhanced as follows:

https://www.mhc.tn.gov.in/judis

WEB COPY

Sl.No.	Heads	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Disability (40%)	Rs.2,00,000/-	Rs.2,80,000/-
2	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-
3	Extra Nourishment	Rs.10,000/-	Rs.20,000/-
4	Medical Expenses	Rs.43,277/-	Rs.43,277/-
5	Attender Charges	Rs.10,000/-	Rs.10,000/-
6	Transportation Expenses	Rs.10,000/-	Rs.10,000/-
7	Loss of Amenities	Rs.50,000/-	Rs.50,000/-
8	Loss of Income during the treatment Period	Rs.36,000/-	Rs.60,000/-
	Total	**Rs.4,09,277/-**	**Rs.5,23,277/-**

33. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal is enhanced from Rs.4,09,277/- to Rs.5,23,277/-. After deducting 10% contributory negligence, the net compensation is a sum of Rs.4,70,949.30/-, which is Rounded off to **Rs.4,70,949/- (Rupees Four Lakhs Seventy Thousand Nine Hundred and Forty Nine only)** together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The third respondent/ Insurance Company, is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.641 of 2017 on the file of the Hon'ble Motor Accident Claims Tribunal/the Special Sub Judge, Tiruvannamalai. On such deposit, the claimant/appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if

https://www.mhc.tn.gov.in/judis

WEB COPY

any, already withdrawn, by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. The manner and mode of disbursement of compensation shall be as per the order of the Tribunal. However, it is made clear that the claimant is not entitled for interest for the period of delay, if any, as ordered by this Court earlier. The appellant is directed to pay the necessary Court fee, if any, on the enhanced compensation. No costs.

28-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

kak

To

1. The Motor Accident Claims Tribunal Judge
/the Special Sub Judge(MCOP),
Tiruvannamalai.

2. The Section Officer,
V.R.Section, High Court,
Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

M.JOTHIRAMAN, J.

kak

CMA No. 3107 of 2024

28-10-2026

https://www.mhc.tn.gov.in/judis