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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

CMA No. 3549 of 2024

CNR: {HCMA012014072024}

P.Devadoss

Case QR

..Appellant(s)

Vs

1. S. Rajkumar

2. Reliance General Insurance Company Ltd.,
   No.6, Haddows Road, 6th Floor,
   Nungambakkam, Chennai-600 034.
   Now present address
   Reliance General Insurance Company Ltd.,
   Building Nos.10 and 11, Chennai City Centre,
   No.13, 5th Floor, Dr.Radhakrishnan Salai,
   Mylapore, Chennai-600 004.

..Respondent(s)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 01.03.2024 made in M.C.O.P.No.162 of 2021 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Poonamallee, Thiruvallur District.

For Appellant(s): Mr.M.Sivakumar

For Respondent(s): No appearance for R1
Mr.P.Suresh Srinivasan for R2

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JUDGMENT

The unsuccessful claimant/appellant has filed this Civil Miscellaneous Appeal challenging 20% of negligence fixed on him and seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Subordinate Judge, Poonamallee, Thiruvallur District, in M.C.O.P.No.162 of 2021, vide award dated 01.03.2024.

2. The claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988, by the appellant/claimant seeking compensation for the injuries sustained by him in the road accident on 21.04.2021.

3. On 21.04.2021 at about 08.30 p.m., when the claimant was riding a motorcycle bearing Reg.No.TN 20 BJ 9367 cautiously in Poonamallee to Avadi road from south to north, near Selvi Mahal, Kaduvetti, a Tata Ace van bearing Reg.No.TN 05 BK 6342 was driven by the first respondent in a rash and negligent manner and hit against the claimant's motorcycle, due to which, the claimant sustained multiple grievous injuries and was immediately taken to the Government Hospital, Poonamalle. The first respondent is the owner-cum-driver of the offending vehicle and the second respondent is the insurer of the offending vehicle.

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4. The first respondent was called absent and was set *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company has filed a counter statement denying the manner of accident and it has also been stated that the claimant had driven the motorcycle in a rash and negligent manner without having valid driving licene and without wearing helmet and applied the sudden break behind the first respondent's van under the influence of alcohol. Therefore, the second respondent is not liable to pay compensation to the claimant.

6. Before the Tribunal, on behalf of the claimant, the claimant himself was examined as P.W.1 and Ex.P1 to Ex.P11 were marked and on the side of the respondents, no witness was examined and Ex.R1 was marked. Disability Certificate was marked as Ex.C1.

7. Upon appreciation of evidence adduced on either side, the Tribunal found that the claimant has failed to produce the valid driving licence and concluded that though the offending vehicle hit the motorcycle from behind, the claimant had also contributed to the negligence on the ground of non-possession of valid driving licence and fixed 20% of contributory negligence on the part of the claimant. With regard to the quantum of compensation, considering the fact

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that the claimant has sustained 30% of disability as per Ex.C1/Disability Certificate and in the absence of proof of loss of earning capacity, the Tribunal adopted the percentage method and fixed a sum of Rs.5,000/- for each percentage of disability and awarded a sum of Rs.1,50,000/- under the head of disability and also the following compensation was awarded under various heads:-

Sl.Nos.	Heads	Amount
1	Compensation for disability at 30%	Rs.1,50,000/-
2	Transport to Hospital	Rs.5,000/-
3	Medical expenses	Rs.31,847/-
4	Extra-nourishment	Rs.5,000/-
5	Mental Agony and shock	Rs.10,000/-
6	Pain and suffering	Rs.30,000/-
	Total	Rs.2,31,847/-
	20% of contributory negligence	Rs.46,369/-
	Compensation Payable	Rs.1,85,478/-

8. Aggrieved over the fixation of 20% of contributory negligence and seeking enhancement of compensation awarded by the Tribunal, the claimant has preferred this Civil Miscellaneous Appeal.

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9. The learned counsel appearing for the appellant/claimant would submit that the Tribunal erred in fixing the contributory negligence on the part of the appellant/claimant despite the fact that a criminal case has been registered against the first respondent and the first respondent alone invited the accident due to his rash and negligent act and therefore, fixation of 20% of contributory negligence on the part of the appellant/claimant is unsustainable in law. He would further submit that the Tribunal ought to have considered that the capacity and effectiveness of driving cannot be assessed due to non-possessive of driving licence by the rider of the two wheeler as the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The Tribunal has not awarded any compensation under the heads of attender charges and loss of income during treatment period.

10. Per contra, the learned counsel appearing for the second respondent/Insurance Company would submit that upon appreciation of evidence adduced on either side, the Tribunal has rightly come to a conclusion that the appellant/claimant has also contributed to the accident, and fixed 20% of negligence on the part of the appellant/claimant, since the appellant/claimant has not possessed the valid driving licence at the time of accident which does not require any interference by this Court. The compensation awarded under the other heads also appears to be just and proper and does not require any interference by this Court.

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11. This Court considered the submissions made on either side and perused the materials available on record.

12. According to the appellant/claimant, on 21.04.2021 at about 08.30 p.m., when the claimant was riding his motorcycle in Poonamallee to Avadi road from south to north, near Selvi Mahal, Kaduvetti, a Tata Ace van was driven by the first respondent in a rash and negligent manner and hit against the claimant's motorcycle, due to which, the appellant/claimant sustained multiple grievous injuries. In order to prove the aforesaid facts, the claimant examined himself as P.W.1 and deposed about the manner of accident. During the course of cross-examination of P.W.1, nothing has been elicited against the manner of accident as deposed by the claimant. P.W.1 in his cross-examination admitted that his brother, namely, Srinivasan, has lodged a complaint before the Police, however, his brother did not witness the accident. P.W.1 has also stated that the driving licence was misplaced. It is relevant to note that in order to fix the negligence on the part of the claimant, either the driver of the offending vehicle or any other independent witness has not been examined by the second respondent/Insurance Company. In the absence of proof for any contra evidence to the evidence of P.W.1, negligence cannot be fixed on the part of the claimant. Whereas, as per the evidence of P.W.1, at the time of accident, the appellant/claimant was not having valid driving licence to drive the vehicle. In

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such circumstances, this Court is of the opinion that fixation of 20% of negligence on the part of the appellant/claimant on the ground that the appellant did not have valid driving licence at the time of accident, is not proper and hence, this Court is inclined to fix 5% of contributory negligence on the part of the appellant/claimant for non-possession of driving licence.

13. Insofar as the quantum of compensation is concerned, as per the Disability Certificate/Ex.C1, it shows that the appellant has suffered with 30% of disability. In the absence of proof of evidence with regard to the fact that the appellant has suffered with functional disability and in the absence of proof of loss of earning capacity, the Tribunal has rightly adopted the percentage method for awarding compensation under the head of disability. A sum of Rs.5,000/- fixed for each percentage of disability appears to be meager and considering the fact that the accident took place on 21.04.2021 and that at the time of accident, the age of the appellant/claimant was 34 years, this Court is inclined to fix a sum of Rs.9,000/- for each percentage of disability and accordingly, a sum of Rs.2,70,000/- (Rs.9,000/- * 30%) is awarded under the head of disability.

14. A perusal of Ex.P5/Discharge summary shows that the appellant/claimant has taken treatment as in-patient for about 8 days. While so, the Tribunal has not awarded any compensation under the heads of attender charges and loss of income during the treatment period. According to the

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appellant, he was working as Tailor in Tekstures International and earning a sum of Rs.15,000/-. Though no proof was produced by the appellant/claimant, considering the date of accident, this Court is inclined to fix a sum of Rs.15,000/- as monthly income of the appellant/claimant and grant two months salary for a sum of Rs.30,000/- (Rs.15,000/- * 2) under the head of loss of income during the treatment period. Considering the number of days the appellant has taken treatment as in-patient, a sum of Rs.5,000/- is awarded under the head of attender charges and considering the nature of injuries sustained by the appellant/claimant, a sum of Rs.5,000/- awarded under the head of extra-nourishment is enhanced to Rs.15,000/-. The compensation awarded by the Tribunal under other heads, namely, transport to hospital, medical expenses, mental agony and shock and pain and suffering, appears to be just and proper and does not require any interference by this Court and accordingly, the compensation awarded by the Tribunal is modified as hereunder:-

S.No	***Head of Compensation***	***Amount awarded by this Court (Rs)***
1.	Disability	**Rs.2,70,000/-**
2.	Transport to hospital	Rs.5,000/-
3.	Medical expenses	Rs.31,847/-
4.	Extra-nourishment	**Rs.15,000/-**
5.	Mental agony and shock	Rs.10,000/-

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6.	Pain and suffering	Rs.30,000/-
7.	Attender charges	**Rs.5,000/-**
8.	Loss of income during the treatment period	**Rs.30,000/-**
	Total	**Rs.3,96,847/-**
	5% of contributory negligence	**Rs.19,842/-**
		Rs.3,77,005/-

15. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.1,85,478/- is hereby enhanced to **Rs.3,77,005/-** together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second 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 weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.162 of 2021 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee, Thiruvallur District. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, by making proper application before the Tribunal. The appellant is directed to pay the necessary Court fee, if any, on the enhanced compensation. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. The manner and mode of

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disbursement of compensation shall be as per the order of the Tribunal. There shall be no order as to costs.

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

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To

1. The Motor Accident Claims Tribunal, Subordinate Court,
Poonamallee, Thiruvallur District.

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

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M.JOTHIRAMAN, J.

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