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C.M.A.No.845 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.12.2025
Pronounced on	02.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No. 845 of 2023

Vinoth @ Vinoth Kumar

...Appellant

Vs.

1. Raghupathi

2. The Oriental Insurance Company Limited,

By its Divisional Manager,

No.7, Rosy Towers, 2nd Floor,

Nungambakkam High Road,

Nungambakkam 600 034

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, praying for enhancement of the Award amount in MCOP No.349/2019, dated 07.12.2022, on the file of the Principal District Court, Motor Accident Claims Tribunal, Perambalur.

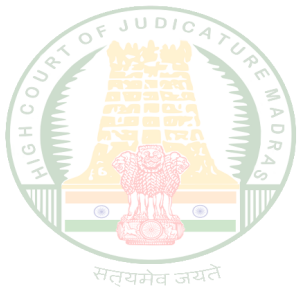
For Appellant

: Mr. C. Vidhusan

For Respondents

: Ms.G.Sukumari for R2

R1 – served – No appearance.



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JUDGMENT

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By means of this appeal, the appellant challenges the judgment and Award dated 07.12.2022, passed by Motor Accident Claims Tribunal (Principal District Judge), Perambalur, in MCOP No.349/2019.

2. The injured had felt aggrieved as the Tribunal reduced the total compensation award by 50% for contributory negligence, which is contrary to law, weight of evidence and against all probabilities of the case.

3. The Insurance Company nor the owner have challenged the judgment. The only issue required to be decided as to whether apportioning 50% for contributory negligence by the Tribunal is sustainable.

4. Mr. C. Vidhusan, the learned counsel appearing for the appellant / injured would submit that, the learned Tribunal failed to appreciate the evidence on record and erroneously concluded that the rider of the two wheeler was also negligent in turning his vehicle from north towards west and thereby contributed to the accident and fixed 50% contributory negligence without any basis. He would submit that “Negligence” means failure to



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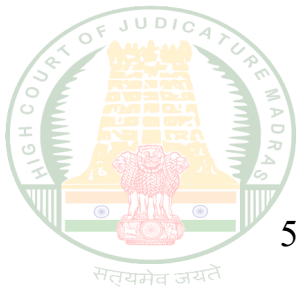
exercise required degree of care and caution expected of a prudent driver.

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Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an inference to be drawn from proved facts. Where there is no duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen likely to cause physical injury to a person. On these broad principles, the negligence of drivers is required to be assessed. To support his contention he has relied upon the following judgments:

1. Judgment dated 31.08.2021 of the Hon'ble High Court of Allahabad in First Appeal from Order No.2651 of 2017 in the case of Smt. Shashibala and 4 others and Jogindra Singh and 2 others.

2. Judgment dated 05.02.2019 of the Hon'ble High Court of Allahabad in First Appeal from Order No.20 of 1996 in the case of Leela and another vs. Wahid Islam and another.



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5. In the present case, the driver of the offending vehicle was alone negligent and the same was established by tangible evidence. However, the Tribunal failed to consider the oral and documentary evidence adduced by the appellant / injured, which warrants interference by this Court.

6. On the other hand, the learned counsel appearing for the 2nd respondent Insurance Company would submit that, the appellant / injured was riding the two wheeler in a rash and negligent manner and dashed against the insured vehicle. Considering the oral and documentary evidence, the Tribunal rightly held, the appellant / injured also contributed to the accident and rightly fixed 50% contributory negligence on the part of appellant / injured and no interference is warranted.

7. Heard on both sides. Records perused.

8. According to the petitioner, the accident took place on 17.10.2018 at about 9.50 p.m., when the petitioner was travelling as a pillion rider in his brother's motorcycle at Palakarai, Perambalur District, from east to west and at the time, the lorry belonging to the 1st respondent, insured with the 2nd



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respondent was coming behind them in the same direction, driven by its driver

in a rash and negligent manner with high speed and dashed on the injured petitioner, who sustained multiple grievous injuries. It is not in dispute that the FIR was registered against the driver of the lorry. The complainant is the rider of the two wheeler. The injured was examined as P.W.1. In his cross examination he has stated that the front side of the lorry did not hit the back side of the two wheeler and only when the two wheeler rider was riding his vehicle from south to north and turned towards west in the east-west road, the lorry which was coming from east-west dashed against the two wheeler. Hence, the Tribunal held that the rider of the two wheeler also contributed to the accident and fixed 50% contributory negligence on part of the two wheeler rider.

9. The principle of contributory negligence has been discussed time and again. A person who either contributes or is author of the accident would be liable for his contribution to the accident having taken place. Therefore, when two vehicles are involved in an accident, and one of the drivers alleges negligence and the other denies negligence, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was



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solely or partly responsible for the accident and the extent of his responsibility,

that is, his contributory negligence. The burden of proof for contributory negligence on the part of the injured has to be discharged by the opponents. It is the duty of the driver of the offending vehicle to explain the accident. It is well settled law that at intersection where two roads cross each other, it is the duty of a fast moving vehicle to slow down and if the driver did not slow down at intersection, but continue to proceed at high speed without caring to notice that another vehicle was crossing, then the conduct of the driver necessarily leads to a conclusion that vehicle was being driven by him rashly as well as negligently. Nothing is brought on record that the driver of the lorry had taken all kinds of caution and slowed down the vehicle while the rider of the vehicle was turning towards west. In view of the aforesaid discussions, 50% contributory negligence fixed on the part of the appellant/petitioner by the Tribunal, is unsustainable.

10. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. 50% Contributory negligence fixed on the part of the appellant/claimant by the Tribunal is set aside.



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iii. The 2nd respondent / Insurance Company is directed to deposit the entire

WEB COPY compensation award amount of Rs.1,41,160/- (less the amount already deposited) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order, to the credit of MCOP No.349/2019, on the file of the Principal District Court, Motor Accident Claims Tribunal, Perambalur.

iv. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.

v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same with costs and interest, after filing a proper petition for withdrawal. Interest for default period, if any, is waived.

02.02.2026

bga

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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To

1. The Principal District Judge, Motor Accident Claims Tribunal, Perambalur.

2. The Oriental Insurance Company Limited,

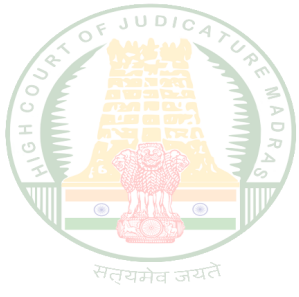
By its Divisional Manager,

No.7, Rosy Towers, 2nd Floor,

Nungambakkam High Road,

Nungambakkam 600 034.

3. The Section Officer, VR Section, High Court, Madras



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre delivery Judgment in

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