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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.Nos.2310 & 2471 of 2017

and

C.M.P.No.12368 of 2017

In C.M.A.No.2310 of 2017

M/s.Bajaj Allianz General
Insurance Company Limited,
No.42-A, S.A.R.Complex, I Floor,
Sathy Road, Erode – 638 003.

.. Appellant

Vs.

1.Dinesh

2.Najubudeen

...Respondents

C.M.A.No. 2471 of 2017

Dinesh

...Appellant

Vs.

1.K.Najubudeen

2.M/s.Bajaj Allianz General
Insurance Company Limited,
No.42-A, S.A.R.Complex, I Floor,
Sathy Road, Erode – 638 003.

...Respondents



Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2016 made in M.C.O.P.No.490 of 2012 on the file of Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

For Appellant in : Mr.J.Michael Visuvasam
C.M.A.No.2310 of 2017
For Respondents in : Mr.Ma.Pa.Thangavel for R1
C.M.A.No.2310 of 2017

For Appellant in : Mr.Ma.P.Thangavel
CMA.No.2471 of 2017

For Respondents in : Mr.J.Michael Visuvasam for R2
CMA.No.2471 of 2017

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award dated 30.11.2016 made in M.C.O.P.No.490 of 2012 on the file of Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

2. The appellant in CMA.No.2310 of 2017 is the second respondent in M.C.O.P.No.490 of 2012 on the file of Motor Accidents Claims Tribunal, Additional District Court, Namakkal. The first respondent filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.05.2012.



WEB COPY 3. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent driving of both the vehicles and thus fixed contributory negligence of 70% : 30% on the rider of the two wheeler and driver of the auto respectively. Since the two wheeler is owned by the second respondent, which is insured with the appellant-Insurance Company, the appellant/Insurance Company is directed to pay 70% of the compensation amount which works out to Rs.10,43,700/- as compensation to the first respondent/claimant.

4. Challenging the said award dated 30.11.2016 made in M.C.O.P.No.490 of 2012, the appellant/Insurance Company and the claimant have come out with the present appeals.

5. The learned counsel for the appellant/Insurance Company contended that the Tribunal had overlooked the fact that the alleged road traffic accident is a case of 'hit and run' and as such the claim ought to have been made only under Section 161 of the MV Act, 1988 and not under Section 166 of the said Act. He further submitted that the first respondent had relied on



Ex.P1/FIR for proving the occurrence but had given a different version with regard to the manner of occurrence, from what is narrated in the FIR, in order to lay a claim as against the appellant/Insurance Company only for the purpose of claiming a fanciful sum as compensation. It failed to appreciate the evidence of RW1 that the said accident had occurred only due to the rash and negligent act of the driver of the unknown Mino Auto, which was in consonance with Ex.P1 FIR, after obtaining a signed statement from him in the Hospital. The Tribunal was not justified in adopting multiplier method to determine the loss of earning capacity of the first respondent. It overlooked the fact that PW2 had not treated the first respondent/claimant and Ex.P11 / disability certificate showing permanent disablement at 45% was issued only for the purpose of getting a fanciful sum as compensation. It overlooked the fact that PW2 had not filed the radiological report along with Ex.P10 /X-ray to support his assertion of mal union of the right femur supracondylar. The award amount granted under various heads is excessive and unjustified and contrary to the facts and against the law laid down by the Supreme Court of India. It failed to appreciate the evidences in proper perspective resulting in erroneous findings. He further submitted that the Tribunal has failed to consider the fact that the first respondent examined himself as PW3 and has



not complained of any disablement, to an extent of 45%. hence he prayed for setting aside the award passed by the Tribunal.

6. The learned counsel for the claimant has submitted that the judgment and decree of the Tribunal with regard to fixing 30% negligence on the part of mini door auto and fixing 70% negligence alone against the two wheeler is not at all correct and quantum of compensation is very low. It failed to note that though FIR was registered against the offending vehicle namely Mini door auto while the rider of Two wheeler is unconscious state which was clearly proved in RW1 cross examination and therefore no contra evidence let in by insurance company or independent eye witness except insurance official witness, the Tribunal fixing 30% of composite negligence against auto is erroneous. It has wrongly applied the multiplier of 16 instead of proper multiplier of 18 as per rulings of Sarla Verma Case, since the age of the injured is 17. The Tribunal ought to have awarded atleast Rs.2,00,000/- each towards loss of permanent disablement excluding loss of earning capacity awarded as per Apex Court ruling in Kothandapani case instead of that no amount is awarded. Hence he prayed for enhancement of the appeal.



7. Heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel for the first respondent/claimant and perused the materials available on record.

8. From the materials available on record, it is seen that during cross examination, RW1/Najubudeen, has deposed that due to the accident, he was admitted in M.M.Hospital for treatment on 01.05.2012 from 01.05.2012 to 03.05.2012 a.m., he was in unconscious stage. His mother gave a complaint to the police about the accident. But FIR was registered on 02.05.2012. Hence the contention of the appellant with regard to negligence aspect is not acceptable. As far as quantum of compensation is concerned, the contention of the learned counsel for the appellant that the Tribunal in the absence of material evidence produced by the claimant, has granted excess compensation, is without merits. The accident took place on 01.05.2012. The appellant/Insurance company has contended that he was a student aged about 17 years. The Tribunal after perusing the depositions of PW1 to PW3 and examining the Ex.P1/FIR, Ex.P3/Copy of Insurance Policy, Ex.P4/Report of MV Inspection, Ex.P5/Bonafide certificate, Ex.P9/ Identity card of the claimant, Ex.P11/Disability certificate has rightly and reasonably granted a



sum of Rs.10,43,700/- to the claimant payable by the appellant with interest

and costs. The appellant did not let in any evidence to prove his contentions.

Therefore, this court do not find any error in the award passed by the Tribunal warranting interference by this Court.

9.In the result, this Civil Miscellaneous Appeals are dismissed and the award passed by the Tribunal is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount of Rs.10,43,700/- 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. On such deposit, the Tribunal is directed to transfer the award amount to the bank account of the claimant along with accrued interest through RTGS within a period of two weeks thereafter. Consequently, the connected miscellaneous petition is closed. No costs.

28.03.2023

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Index : Yes
Internet : Yes



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A.A.NAKKIRAN.,J

gv

To

1.The Chief Judicial Magistrate,
Additional District Court,
Namakkal.

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

C.M.A.Nos.2310 & 2471 of 2017
and
C.M.P.No.12368 of 2017

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