



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.119 & 125 of 2015

Tamilselvan ... Appellant in
C.M.A. (MD).No.119 of 2015

Thirunavukkarasu ... Appellant in
C.M.A. (MD).No.125 of 2015

Vs.

1.Vijayan

2.Panneer

3. The Branch Manager,
The United India Insurance Company Limited,
Pradeep Tower,
Chinniah Street, Pattukottai,
Thanjavur District. ... Respondents in
both appeals

(R1 & R2 were set exparte before the
Tribunal. Hence, notice may be given
up against R1 & R2)

Prayer: Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the portion of the judgment which fixed contributory negligence on the part of claimant and fix the complete negligence on the part of the driver of the 1st respondent and consequently direct the 3rd respondent to pay entire compensation as fixed by the Tribunal in M.C.O.P.No.290 & 289 of 2009 by the judgment dated 15.02.2011 by the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court-II), Pattukottai.

In both appeals

For Appellant : Mr.S.Deenadhayalan

For Respondents : R1 & R2-remained exparte
Mr.A.Elango for R3

COMMON JUDGMENT

The appellant in C.M.A.(MD).No.119 of 2015 was the pillion rider, while the appellant in C.M.A.(MD).No.125 of 2015 rode the two wheeler. It was involved in collision with another two-wheeler on 22.06.2009. Since it was a case of head on collision and the rider did not prove that he was possessing a valid driving license, the Tribunal fixed the contributory negligence at 50%. As a result, the compensation awarded to the rider as well as the pillion rider fixed at 50%. Questioning such deduction on the ground of fixation of contributory negligence both the appeals have been filed.

2.Heard the learned counsel on either side.

3.These appeals have to be allowed on a short ground. The onus to establish contributory negligence lies on the party who pleads it. In the present case, before the Tribunal there was absolutely no evidence adduced to establish the contributory negligence on the part of the claimants. In any case possession or non possession of driving license is not sufficient to infer negligence. In the present case, the Tribunal fastened 50% negligence on the rider only on the ground that he did not establish that he was having a valid driving licence. In any event, the pillion rider cannot be made to suffer for fixation of negligence on the rider. Thus looked at from any angle the impugned award passed by the Tribunal will have to be modified. The Tribunal erred in fixing 50% negligence on the rider and reducing compensation on that basis. This Court modifies the award dated 15.02.2011 made in M.C.O.P.Nos.289 and 290 of 2009 by the judgment dated 15.02.2011 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court-II), Pattukottai.

4.The appellant in C.M.A.(MD) No.119 of 2015 is entitled to a sum of Rs.6,24,028/- as compensation and the appellant in C.M.A.(MD) No.125 of 2015 is entitled to a sum of Rs.2,61,250/-. The respondents 1 and 3 are jointly and severally directed to pay the entire compensation in both appeals with interest at 7.5% per annum and costs from the date of petition till the date of realization, within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited if any. The claimants are permitted to withdraw the entire amount, less the amount already withdrawn by them, if any. These Civil Miscellaneous Appeals stands allowed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The Judge, Motor Accident Claims Tribunal
(Additional District Judge/Fast Track Court-II),
Pattukottai.

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Copy to

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Deenadhayalan, Advocate Sr.No.84645

TSG

VB/GT/SAR3/29/12/2017/3P/4C

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