

2. The case of the claimant in nutshell is as follows:
On 18.12.1999, the claimant was riding his TVS 50 motorcycle bearing Registration No.TN 23 Y 3888 on Tirupattur - Vaniyambadi road. When he was nearing New town, Four Junction Road, a speeding lorry bearing Registration No. KA 29 4731 belonging to the first respondent and insured with the second respondent hit the motorcycle, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and

negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the National Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the lorry remained absent before the Tribunal and therefore he was set *ex parte*. The second respondent / National Insurance Company contested the claim petition on all the grounds available to the insured. The learned Motor Accident Claims Tribunal / Subordinate Judge, Tirupattur, Vellore District after analysing the evidence on record, awarded a compensation of Rs.60,885/- together with interest at the rate of 7.5% per annum to the claimant and fixed contributory negligence on the part of the claimant to the extent 50%. Thus the owner of the offending vehicle and the Insurance Company were jointly and severally made liable to pay 50% of the award amount i.e., Rs.30,442.50/- with interest at the rate of 7.5% per annum. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.F.Terry Chellaraja, learned counsel appearing for the appellant / claimant contended that the Tribunal fixed the negligence on the part of the driver of the lorry and the rider of the motorcycle in the ratio 50:50, though no evidence was adduced on the side of the respondents to show that the rider of the motorcycle was also rash and negligent in riding his vehicle. He also drew the attention of this Court to a copy of the FIR (Ex.P1), which was registered against the driver of the lorry and contended that the driver of the lorry was alone responsible for the accident. He also relied on the decisions in (i) Sudhir Kumar Rana vs. Surinder Singh & Others reported in 2009 (1) TN MAC 407 (SC) (ii) Dinesh kumar, J. @ Dinesh, J. vs. National Insurance Company Limited reported in 2018 (1) TN MAC 34 (SC) and contended that the Tribunal cannot fasten contributory negligence merely on the basis that the rider of the motorcycle was not in possession of a valid driving licence on the date of the accident.

5. Per contra, Mrs.K.Saraswathy, learned counsel appearing for the National Insurance Company contended that the Tribunal based on the evidence on record, had rightly concluded that the rider of the motorcycle was also responsible for the accident and fixed the contributory negligence to the extent of 50% on the rider of the motorcycle. She therefore prayed for dismissal of the appeal.

6. No appearance on behalf of the first respondent.

7. A perusal of the orders passed by the Tribunal shows that the Tribunal had fixed the contributory negligence on the part of the rider of the motorcycle to the extent of 50%, only on the basis that the claimant was not in possession of a valid driving licence on the date of the accident. In the decision in Dinesh kumar, J. @ Dinesh, J. vs. National Insurance Company Limited (cited supra), it has been held that, mere failure to produce driving licence is not sufficient to draw adverse inference in respect of contributory negligence. It is also pertinent to point out that the FIR was registered against the driver of the lorry and the claimant has also clearly spoken to about the rash and negligent driving of the driver of the lorry.

8. In the decision in Sudhir Kumar Rana vs. Surinder Singh & Others (cited supra), it has been held that,

"7.where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examine the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.

8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident....."

9. In the instant case, the respondents did not adduce any acceptable evidence to show that the claimant was also rash and negligent in riding his motorcycle. Moreover, the driver of the lorry was not examined on the side of the second respondent. As already observed, the eyewitness account is clear on the aspect of negligence on the part of the driver of the lorry and therefore, the order of the Tribunal fixing 50% contributory negligence on the part of the claimant cannot be sustained and the same is liable to be set aside.

10. As far as the quantum of compensation is concerned, the Tribunal has awarded a just and reasonable

compensation after considering all the aspects of the case and therefore, the same is upheld.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld. The contributory negligence fixed on the part of the appellant / claimant is set aside.

(iii) The second respondent / National Insurance Company is directed to deposit a sum of i.e., Rs.60,885/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.246 of 2000 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Tirupattur, Vellore District within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

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To

1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tirupattur,
Vellore District.

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

+1cc to Ms.M.Malar, Advocate, S.R.No.91647

+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.90975

CMA.No.2671 of 2009
and
CMP.No.22728 of 2018

SV(CO)
CB(27/08/2020)