

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
Dated:01.09.2020  
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2074 of 2016

Dhaneshkumar

.. Appellant/Petitioner

/versus/

1.Nishok

2.United India Insurance Company Ltd.,

Rep.by Branch Manager,

No.235, Gandhi Market Road,

Arni.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.144 of 2008 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Arni, dated 01.11.2012.

For Appellant :Mr.P.Satheesh Kumar

For R2 :Mr.M.Krishnamoorthy

For R1 :No appearance

J U D G M E N T

(Heard through Video Conference)

The appellant herein, when he was minor had met with a motor accident while driving his two wheeler without license and not covered under any insurance. His two wheeler was hit from behind by Indico car bearing Reg.No.TN 23 AB 5472 owned by the 1<sup>st</sup> respondent and insured under the 2<sup>nd</sup> respondent. A claim petition has been filed seeking compensation of Rs.2,00,000/- for the injury sustained. The claim was contested by the insurance company on two grounds: firstly, the negligence was not on the part of the insured vehicle, but on the part of the claimant who without driving license riding an uninsured two wheeler No.TVS 50 XL and secondly, the injuries alleged to have been sustained by him are very minor in nature. Further, it was also contended that the owner of the TVS 50XL not impleaded as a party.

2.The Tribunal after considering the material evidence

placed before it has found that the claimant has contributed for the accident by not possessing driving license and therefore, deducted 50% towards contributory negligence from out of Rs.73,000/- fixed towards compensation as below:-

|                                |                |
|--------------------------------|----------------|
| Disability 30%<br>(Rs.2000x30) | = Rs.60,000-00 |
| Pain and suffering             | = Rs.10,000-00 |
| Transportation                 | = Rs. 2,000-00 |
| Loss of belonging              | = Rs. 1,000-00 |
|                                | -----          |
|                                | = Rs.73,000-00 |
|                                | -----          |

After deducting 50%, a sum of Rs.36,500/- awarded.

3. The learned counsel for the appellant would submit that want of driving license cannot be a reason for negligence and deduction of 50% towards contributory negligence is very high. Furthermore, the learned counsel would also submit that the compensation given under the other heads is very low comparing the nature of the injury sustained by the claimant. The learned counsel for the appellant pointing out the wound certificate Ex.P2 and disability certificate Ex.P4 would plead that in the accident, the claimant sustained a fracture in his spine and it has mis-joined after treatment. The said injury is permanent in nature which has caused 30% disability to the claimant.

4.The learned counsel for the respondent/insurance company, per contra would contend that the finding of the Tribunal is sustainable on all grounds including the assessment of disability since the said injury does not fall under the Schedule 'injury' and the claimant has recovered from the fracture. For the assessed disability, the Tribunal has awarded Rs.2,000/- per percentage of disability.

5.On considering the submissions and perusal of records, this Court finds no error in the assessment of compensation by the Tribunal. As far as the fixation of 50% contribution on the claimant, this Court is of the view that it has to be reduced to 25% (Rs.18,250/-). Except that modification the award of the Tribunal is confirmed. The modified award amount shall be Rs.54,750/- (Rs.36,500/- +18,250/-)

6.The second respondent/insurance company is directed to deposit the award amount Rs.54,750/- with interest at the rate of 7.5.% p.a from the date of petition till the date of deposit, within a period of 8 weeks from the date of receipt of a copy of

this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount.

7.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

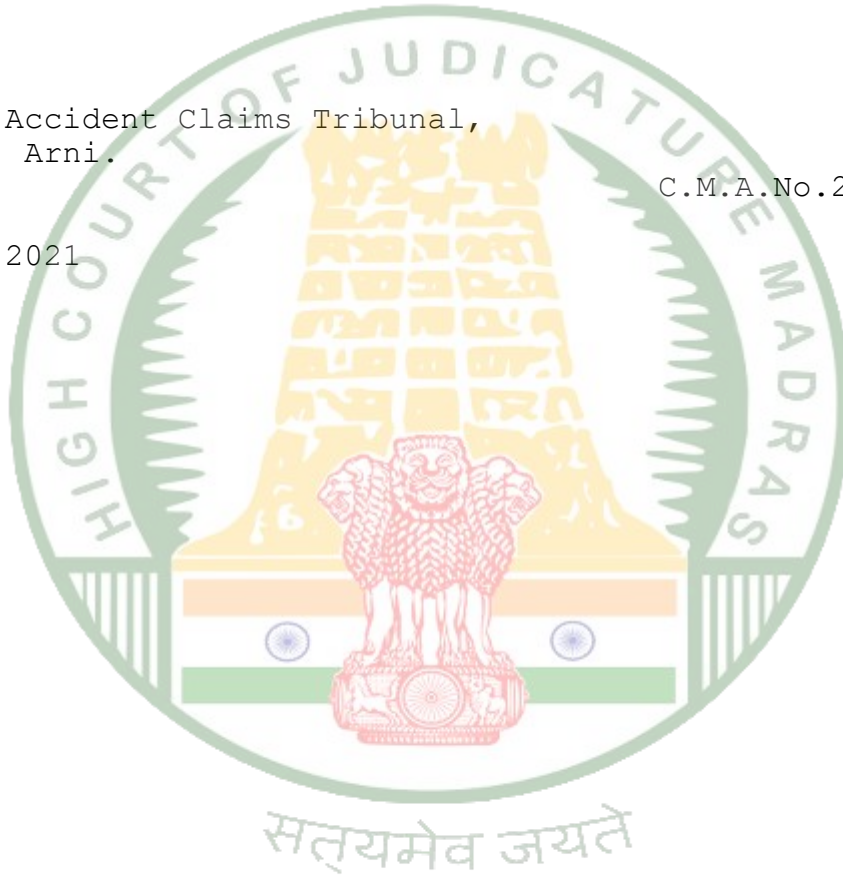
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To

The Motor Accident Claims Tribunal,  
Sub Court, Arni.

C.M.A.No.2074 of 2016

BS(CO)  
CSR 21.04.2021



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