

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2548 of 2019

M.Ramalingam

.. Appellant/Claimant

vs.

1.Sudhakar

2.M/s.The New India Assurance Company Ltd.,
Divisional Office, Jerome Buildings
Rep. by its Divisional Manager
Fort Station Road
Trichy-620 002.

.. Respondents /Respondents

(1st Respondent remained set exparte
before the Tribunal)

The Civil Miscellaneous Appeal is preferred under
Section 173 of the Motor Vehicles Act, 1988, against the
judgement and decree dated 12.03.2019 passed in MCOP.No.457 of
2016 on the file of the Motor Accident Claims Tribunal/Chief
Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondents : Mr.M.Krishnamoorthy for R2

R1 - Exparte

J U D G M E N T

The judgment and decree dated 12.03.2019 passed in MCOP
No.457 of 2016 by the Motor Accident Claims Tribunal/Chief
Judicial Magistrate, Perambalur. is under challenge in the
present Civil Miscellaneous Appeal.

2. The claimant is the appellant, who filed this appeal
questioning the contributory negligence of 50% fixed by the
Tribunal.

3. The learned counsel appearing on behalf of the appellant
mainly contended that fixing the contributory negligence against

the appellant and restricting the benefit of compensation is not in accordance with the principles laid down by this Court. There is no evidence to establish the contributory negligence and more specifically, the respondent/Insurance Company has not produced any proof to establish the negligence. Thus, the Tribunal has committed an error in fixing 50% contributory negligence and restricting the award amount.

4. The learned counsel appearing on behalf of the second respondent/Insurance Company disputed the contention by stating that the Tribunal has rightly fixed the contributory negligence at 50%. The Tribunal has considered the nature of the accident occurred and the negligence committed by the appellant/claimant. The appellant/claimant was solely responsible for the cause of the accident. This apart, at the time of driving the two wheeler, he met with an accident and the appellant/claimant was not possessing the driving license and there is no insurance policy for the vehicle. Considering all these factors, the Tribunal has rightly fixed the contributory negligence at 50% to the appellant. Thus, the appeal fails and is liable to be dismissed.

5. The accident occurred on 05.10.2015 at about 10.30 a.m, at Tiruchy-Chennai NH 45, near Karai Pirivu Road. The Padalur Police Station registered a case in Crime No.392 of 2015 under Sections 279 and 337 IPC. The appellant/claimant was riding his TVS super XL super moped bearing Registration No.TN 46 P 2638. The appellant/claimant sustained injuries in the accident. Thereafter, the claim petition was filed. The Tribunal has adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

6. According to the appellant/claimant, on 05.10.2015 at about 10.30 a.m, the appellant/claimant was riding his TVS super XL super moped bearing Registration No.TN 46 P 2638 and proceeded on Tiruchy-Chennai NH 45 Road from west to east direction and when he was coming near Karai Pirivu Road, a Maruti Alto LXI LMV Car bearing Registration No.TN 72 AM 1158 belonging to the first respondent, came from south to north on Tiruchy-Chennai NH 45 Road, which was driven by the first respondent in a rash and negligent manner and dashed against the appellant/claimant and caused the accident. Ex.P1 is the copy of the FIR. As per the counter affidavit of the Insurance Company, the first respondent drove the car in a cautious manner from south to north direction on Tiruchy-Chennai NH 45 Road. The appellant/claimant without minding the same, attempted to cross the branch road and when the first respondent was coming near the Karai branch road, the appellant/claimant came to half of the road and the first respondent applied the break and stopped the car and despite that, the appellant/claimant came in

a rash and negligent manner and took a sharp turn and dashed in the stopped car and fell down from the two wheeler and sustained injuries. It is stated that the first respondent did not dash against the appellant/claimant. The Tribunal has considered the facts and circumstances as narrated by the respective parties. PW1 during the cross examination has stated that the accident was happened while he was crossing the highways from west to east and it was also admitted by the appellant/claimant that the FIR was registered against him stating that the accident was happened due to his negligence and he did not initiate any legal proceedings in respect of the FIR registered against him. It is also not explained by him whether he was crossing the highways in the way provided for crossing the road. The Tribunal has rightly considered the facts with reference to the materials available on record. The FIR was registered against the appellant/claimant. Even before the Criminal Court, he pleaded guilty and paid fine amount. There is no defect. This apart, the appellant/claimant has not initiated any legal proceedings in respect of the FIR and under those circumstances, the Tribunal has arrived a conclusion that the appellant/claimant has also contributed and accordingly, the contributory negligence is equally fixed as 50% and accordingly, the compensation was awarded. The 50% negligence fixed on the part of the appellant/claimant is based on the criminal proceedings initiated against the appellant/claimant. This apart, the appellant/claimant pleaded guilty before the Criminal Court and paid the fine amount. Under those circumstances, the Tribunal has not committed any error or perversity and 50% contributory negligence fixed on the appellant/claimant is proper and based on the evidences produced before the Tribunal.

7. As far as the quantum of compensation is concerned, the Tribunal has not committed any error and the calculations are not in accordance with the principles laid down by the Apex Court. Thus, the contributory negligence fixed by the Tribunal is proper and in accordance with law.

8. Accordingly, the judgment and decree dated 12.03.2019 passed in M.C..O.P No.457 of 2016, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur stands confirmed and this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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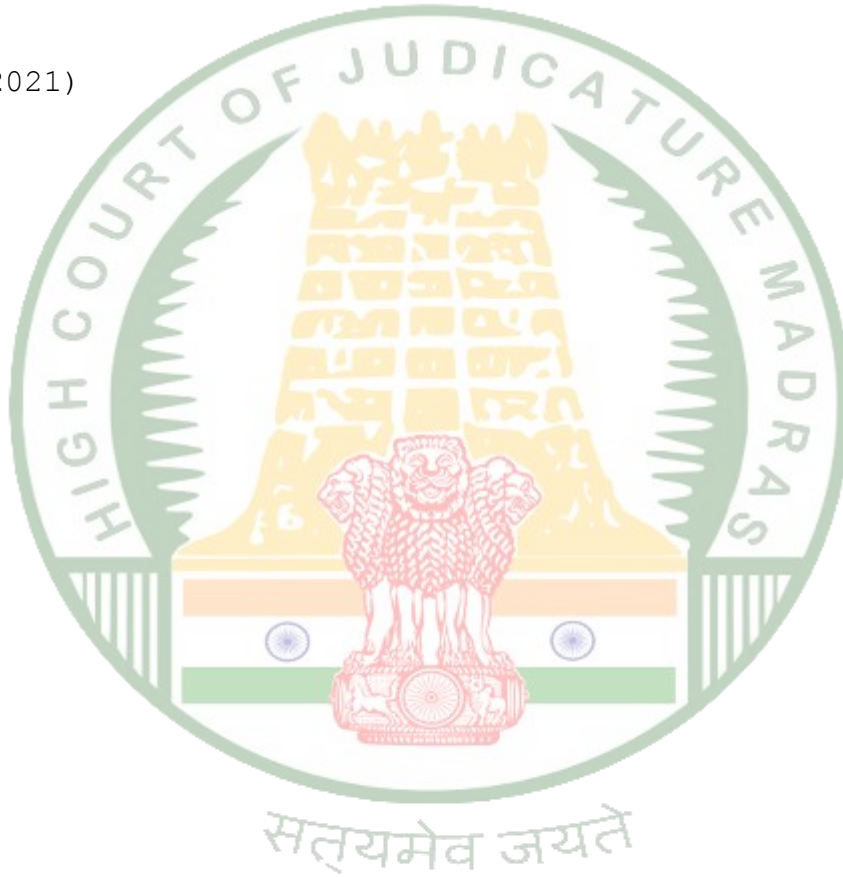
To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Perambalur.

2.The Section Officer,
V.R Section,
High Court, Madras.

C.M.A.No.2548 of 2019

AD(CO)
CB(20/04/2021)



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