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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.860 of 2021

Madheswaran

.. Appellant/Petitioner

Vs.

1. Sivakumar

2. The Bharti Axa General Insurance Company Limited,
Divya Trade Centre, 1st Floor, No.11,
Brindhavan Road, Alagapuram,
Salem - 636 016.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2019 made in M.C.O.P.No.972 of 2017, on the file of the Special Sub Court No-I, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For Respondent : Mr.M.B.Raghavan
No.2 for M/s.Gopalan Associates

For 1st Respondent : Exparte

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed challenging the portion of the award fixing 20% negligence on the appellant as well as not being satisfied with the amount awarded by the Tribunal in the award dated 14.03.2019 made in M.C.O.P.No.972 of 2017, on the file of the Special Sub Court No-I, (Motor Accidents Claims Tribunal), Salem.



2.By consent of the learned counsel appearing for the appellant as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.

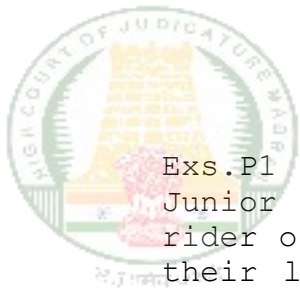
3.The appellant-claimant filed M.C.O.P. No.972 of 2017, on the file of the Special Sub Court No-I, (Motor Accidents Claims Tribunal), Salem, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.10.2016.

4.According to the appellant, on the date of accident, when he was riding a TVS 50 XL bearing Registration No.TN-30-B-8217 on the Attaiyampatty to Salem Main Road, near Indian Bank Branch Road, the rider of the Hero Honda Splendor Pro Motorcycle bearing Registration No.TN-88-A-5491 owned by the 1st respondent drove the same from behind in a rash and negligent manner and hit against the Motorcycle driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries. The accident occurred only due to rash and negligent riding of Hero Honda Motorcycle. Hence, the appellant filed the said claim petition, claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

5.The 1st respondent, owner of the Hero Honda Motorcycle, remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the counter statement, including the manner of accident. According to the 2nd respondent, on the date of accident, when the rider of the Hero Honda Motorcycle was driving the vehicle on the Attaiyampatty to Salem Road, the appellant came on the opposite side, which was wrong route and thus, the accident occurred. The accident occurred only due to the negligent riding of TVS XL by the appellant and he is the tort-feasor. At the time of accident, the rider of the Hero Honda Motorcycle did not possess valid driving license and the vehicle record viz., RC had lapsed prior to the date of accident and the same was not renewed. Hence, for violation of such policy conditions, the 2nd respondent-Insurance Company is not liable to pay any compensation to the appellant. In any event, the appellant has to prove his age, avocation and income, injuries sustained, treatment taken and disability suffered, to claim compensation and prayed for dismissal of the claim petition.

7.Before the Tribunal, the appellant examined himself as P.W.1, examined Dr.Nakeeran as P.W.2 and marked 11 documents as

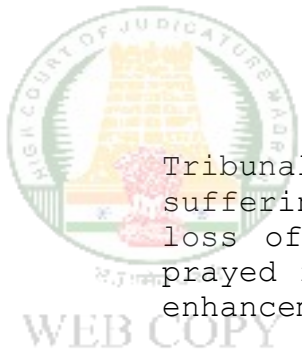


Exs.P1 to P11. The 2nd respondent examined one Prabhakaran, Junior Assistant of R.T.O, South Salem as R.W.1, one Vimal, rider of the 1st respondent's Motorcycle as R.W.2 and one Durai, their legal officer as R.W.3 and marked one document as Ex.R1. Two documents were marked as Exs.C1 and C2 and three documents were marked as Exs.W1 to W3.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by rider of the Hero Honda Motorcycle owned by the 1st respondent and fixed 80% negligence on the rider of 1st respondent's Motorcycle and 20% contributory negligence on the part of the appellant for not possessing valid driving license to ply the vehicle at the time of accident. The Tribunal awarded a sum of Rs.1,73,884/- and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,39,108/- being 80% of the award amount, as compensation to the appellant.

9.Challenging the portion of the award fixing 20% contributory negligence on the part of the appellant as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 14.03.2019 made in M.C.O.P.No.972 of 2017, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal having held that accident occurred only due to rash and negligent riding by rider of the Motorcycle bearing Registration No.TN-88-A-5491, owned by the 1st respondent, erroneously fixed 20% contributory negligence on the appellant on the ground that the appellant did not possess driving license. The learned counsel for the appellant further contended that in the accident, the appellant sustained grievous injuries and fracture and has taken treatment as in-patient at Dharan Hospital from 29.10.2016 to 01.11.2016, for a period of 3 days. During the treatment period, he underwent surgery. The appellant was referred to the Medical Board. The Medical Board examined the appellant and certified that the appellant suffered 15% disability. The Tribunal accepted the disability and granted only a sum of Rs.45,000/- towards disability at the rate of Rs.3,000/- per percentage for 15% disability, instead of granting a sum of Rs.5,000/- per percentage. The appellant was running a Grinding Mill and was earning a sum of Rs.10,000/- per month. The Tribunal erroneously fixed only a sum of Rs.7,500/- per month as notional income for the accident occurred in the year 2016. Due to the injuries suffered in the accident, the appellant suffered difficulties like pain and swelling in right clavicle, limitation in shoulder movements, right ankle and degloving skin flap, left ankle with doubtful vascularity. The



Tribunal ought to have granted more compensation for pain and suffering, transportation, extra nourishment, attendant charges, loss of amenities, damages to clothes and medical expenses and prayed for setting aside the 20% contributory negligence and for enhancement of the compensation.

11. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident has occurred only due to the rash and negligent riding of TVS XL by the appellant in the wrong route. The Tribunal considering the manner of accident and the fact that the appellant did not possess driving license at the time of accident, fixed 20% contributory negligence and the same is in order. The appellant failed to prove his avocation and income. In the absence of any materials, the Tribunal fixed the notional income of the appellant as Rs.7,500/- per month and the same is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused entire materials available on record.

13. From the materials on record, it is seen that the appellant has not produced his driving license before the Tribunal. Driving a vehicle without driving license is an offence and practice of driving a vehicle without driving license must be deprecated. The case of the learned counsel appearing for the appellant with regard to fixing 20% contributory negligence on the part of the appellant is concerned, from the award of the Tribunal, it is seen that there is no material to show that the appellant also contributed to the accident. The respondents have not proved that the accident has occurred only due to rash and negligent driving by the appellant. The Tribunal on perusal of the materials on record, held that the accident occurred only due to rash and negligent riding by rider of the Hero Honda Motorcycle owned by the 1st respondent. In the judgment of the Hon'ble Apex Court reported in 2018 (1) TN MAC 34 (SC) [Dinesh Kumar, J. @ Dinesh, J. Vs. National Insurance Co. Ltd. and others], it has been held that when there is a finding that there was no contributory negligence on the part of the deceased, non-production of driving license/insurance policy of the deceased or injured would be of no relevance. The relevant paragraphs are extracted hereunder:



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"8. Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on 1 (2008) 12 SCC 436 the part of the appellant is held to be without any basis, the second aspect which weighed both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this Court in Sudhir Kumar (supra) where it was held as follows :

"9.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. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence..

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."

The ratio in the said judgment is squarely applicable to the facts of the present case. When there is no evidence with regard to contributory negligence on the part of the appellant, not producing the driving license has no relevance. For the above



14.As far as the quantum of compensation is concerned, it is the case of the appellant that in the accident, he suffered grievous injuries and fractures, he was referred to the Medical Board and the Medical Board after examining the appellant, certified that he suffered 15% disability. The Tribunal has awarded a sum of Rs.45,000/- towards disability at the rate of Rs.3,000/- per percentage for 15% disability. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is modified to Rs.75,000/- [Rs.5,000/- x 15%]. The appellant has taken treatment as in-patient at the Dharan Hospital from 29.10.2016 to 01.11.2016, for a period of 3 days. During the treatment period, he underwent surgery. The Tribunal has awarded only a meagre sum of Rs.10,000/- towards attendant charges and hence, the same is enhanced to Rs.15,000/-. Considering the nature of injuries, period of treatment taken and the inconvenience suffered by the appellant, the sum of Rs.7,000/- granted by the Tribunal towards transportation, Rs.10,000/- towards extra nourishment, Rs.1,750/- towards damage to clothes and Rs.7,000/- towards loss of amenities are meagre and the same are enhanced to Rs.10,000/-, Rs.20,000/-, Rs.2,000/- and Rs.20,000/- respectively.

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sustained in the accident, the appellant would not have worked atleast for a period of 4 months. Hence, the compensation granted by the Tribunal towards loss of income is enhanced to Rs.60,000/- [Rs.15,000/- x 4 months]. Considering the nature of injuries, this Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	20,000/-	20,000/-	Confirmed
2.	Loss of income	30,000/-	60,000/-	Enhanced
3.	Medical expenses	43,134/-	43,134/-	Confirmed
4.	Transportation	7,000/-	10,000/-	Enhanced
5.	Attendant charges	10,000/-	15,000/-	Enhanced
6.	Damage to clothes	1,750/-	2,000/-	Enhanced
7.	Loss of amenities	7,000/-	20,000/-	Enhanced
8.	Disability	45,000/-	75,000/-	Enhanced
9.	Extra nourishment	10,000/-	20,000/-	Enhanced
	Total	1,73,884/-	2,65,134/-	Enhanced by
		1,39,108/- (80% of the amount awarded)	-	Rs.1,26,026/- (Rs.2,65,134- Rs.1,39,108)

16. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,39,108/- is enhanced to Rs.2,65,134/-, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of



a copy of this judgment, to the credit of M.C.O.P.No.972 of 2017. On such deposit, the appellant is permitted to withdraw the entire award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(AD IV)

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Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge No.I,
(Motor Accident Claims Tribunal),
Salem.
2. The Section Officer,
VR Section,
High Court, Madras.

+2CCs to Mr.T.S.Arthanareeswaran, Advocate, Sr.No.17809

C.M.A.No.860 of 2021

PA (CO)
K.RK. (09.11.2021)