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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3768 and 3930 of 2019
and C.M.P.No.21636 of 2019

C.M.A.No.3768 of 2019

National Insurance Company Ltd.
No.751, Anna salai
Chennai-600 002.

.. Appellant /2nd Respondent

Vs.

1.Rohith

...1st Respondent/Petitioner

2.Jegan S.

..2nd Respondents/1st Respondent

C.M.A.No.3930 of 2019

Rohith

.. Appellant /Petitioner

Vs.

1.Jegan S.

2.National Insurance Company Ltd.
No.751, Anna salai
Chennai-600 002.

.. Respondents/Respondents

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2018 made in M.C.O.P.No.6248 of 2013 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

In C.M.A.No.3768 of 2019

For Appellant : Mrs.R.Sreevidhya
for Mr.R.Ravichandran
For R1 : Mr.K.Varadha Kamaraj

In C.M.A.No.3930 of 2019

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mrs.R.Sreevidhya
for Mr.R.Ravichandran



C O M M O N J U D G M E N T

C.M.A.No.3768 of 2019 is filed by the Insurance Company to set aside the award dated 24.09.2018 made in M.C.O.P.No.6248 of 2013 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

C.M.A.No.3930 of 2019 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 24.09.2018 made in M.C.O.P.No.6248 of 2013 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P.No.6248 of 2013 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.09.2013.

4.According to the claimant, on the date of accident i.e., on 03.09.2013 at about 2.15 p.m., while he was riding in his motorcycle bearing Registration No.TN-01-AJ-5161 on Poonamallee High Road from West to East direction, the rider of the motorcycle bearing Registration No.TN-01-AU-7369, who was coming in the opposite direction, rode the same in a rash and negligent manner endangering the public safety, hit against the claimant's motorcycle and caused the accident. In the accident, the claimant sustained grievous injuries all over the body. Therefore, the claimant has filed the above claim petition claiming compensation as against the 1st respondent, owner of the motorcycle bearing Registration No.TN-01-AU-7369 and 2nd respondent/Insurance Company.

5.The 1st respondent, owner of the motorcycle bearing Registration No.TN-01-AU-7369 filed counter statement denying the averments made by the claimant and stated that the accident has occurred on 03.09.2013 and the complaint was lodged by the father of the claimant on 14.09.2013, who is a Sub-Inspector of Police in Central Reserve Police Department with his official influence after 11 days from the date of accident. The accident has occurred only due to negligent riding of the motorcycle by the claimant. The rider of the motorcycle belonging to the 1st respondent is not responsible for the accident. The motorcycle belonging to the 1st respondent was insured with the 2nd



respondent/Insurance Company and the policy was in force at the time of accident. Therefore, the 1st respondent is not liable to pay any compensation to the claimant and prayed for dismissal of the claim petition.

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6.The 2nd respondent/Insurance Company insurer of the motorcycle bearing Registration No.TN-01-AU-7369 filed counter statement denying the averments made by the claimant and stated that the 1st respondent has been falsely implicated in this case. The claimant has to prove that the vehicle involved in the accident was insured with the 2nd respondent/Insurance Company and the rider of the motorcycle bearing Registration No.TN-01-AU-7369 had valid driving license to ride the vehicle at the time of accident. The accident has occurred only due to rash and negligent riding by the claimant. The rider of the motorcycle bearing Registration No.TN-01-AU-7369 was not responsible for the accident. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimant. The 2nd respondent/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1, Dr.Thiyagarajan was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. The 2nd respondent/Insurance Company examined the 1st respondent, owner of the motorcycle bearing Registration No.TN-01-AU-7369 as R.W.1 and Mr.Nadira Nishat, Sub-Inspector of Police as R.W.2 and marked three documents as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN-01-AU-7369 belonging to the 1st respondent and the claimant has also contributed to the accident, fixed 10 : 90 contributory negligence on the part of the claimant as well as the rider of the motorcycle bearing Registration No.TN-01-AU-7369 belonging to the 1st respondent respectively, awarded a sum of Rs.3,27,300/- as compensation to the claimant and directed the 2nd respondent/Insurance Company to pay a sum of Rs.2,94,570/- being 90% of the award amount as compensation to the claimant at the first instance and recover the same from the 1st respondent.

9.To set aside the said award dated 24.09.2018 made in M.C.O.P.No.6248 of 2013, the 2nd respondent/Insurance Company has come out with C.M.A.No.3768 of 2019 challenging 90% negligence fixed on the part of the rider of the motorcycle bearing Registration No.TN-01-AU-7369. Challenging the portion of the



award fixing 10% contributory negligence on the part of the claimant and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.3930 of 2019 seeking enhancement of compensation.

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10.The learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN-01-AU-7369 belonging to the 1st respondent. The claimant is not responsible for the accident. The Tribunal erroneously fixed 10% negligence on the claimant. The claimant suffered blow out fracture on left orbit. P.W.2/Doctor after examining the claimant certified that he suffered 60% disability. The Tribunal erroneously reduced the disability to 30% and granted lesser compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal filed by the 2nd respondent/Insurance Company and for enhancement of compensation.

11.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident did not occur as alleged by the claimant. The claimant rode his motorcycle bearing Registration No.TN-01-AJ-5161 in a rash and negligent manner and dashed on the back side of the motorcycle bearing Registration No.TN-01-AU-7369 belonging to the 1st respondent. The respondents proved the same by examining the 1st respondent as R.W.1 and marking the rough sketch, Motor Vehicle Inspector's reports of both the vehicles as Exs.R1 to R3. From the reports of the Motor Vehicle Inspector, it reveals that the damages caused to the 1st respondent's vehicle are on the back side and damages caused to the claimant's vehicle is on the front side. The Tribunal failed to properly appreciate the evidence of R.W.1 and Exs.R1 to R3. The place of occurrence is one way. The contention of the claimant that the 1st respondent came in the opposite direction and dashed on the claimant's vehicle was disproved by the respondents by examining R.W.1 and marking Exs.R1 to R3. The Tribunal ought to have fixed entire negligence on the claimant instead of fixing 10% on the claimant and 90% on the rider of the motorcycle belonging to the 1st respondent. The Tribunal erred in fixing 90% negligence on the rider of the motorcycle belonging to the 1st respondent merely relying on F.I.R. and charge sheet. The Tribunal failed to independently arrive at with regard to negligence based on the oral and documentary evidence let in before it. The Tribunal ought to have given more weightage to the evidence of R.W.1 given on oath. The Tribunal failed to appreciate the facts that F.I.R. was lodged belatedly after 11 days of the accident using influence of the father of the claimant, who is Sub-Inspector of Police and prayed for setting aside the award of the Tribunal and dismissal of the appeal filed by the claimant.



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12. Heard through "Video-conferencing" the learned counsel appearing for the claimant as well as the 2nd respondent/Insurance Company and perused the entire materials on record.

13. It is the case of the claimant that while he was riding the motorcycle bearing Registration No. TN-01-AJ-5161 on Poonamallee High Road from West to East direction, the rider of the motorcycle bearing Registration No. TN-01-AU-7369, who was coming in the opposite direction, rode the same in a rash and negligent manner endangering public safety, hit against the claimant's motorcycle and caused the accident. In the accident, the claimant suffered injuries and filed claim petition claiming compensation for the injuries sustained by him. In support of his case, the claimant examined himself as P.W.1 and marked F.I.R., which was registered against the 1st respondent as Ex.P1. On the other hand, it is the case of the respondents that the accident has not occurred as alleged by the claimant. The place of occurrence is one way. The accident occurred in the one way. The accident occurred only due to careless riding by the claimant without following the traffic rules. The 1st respondent was no way responsible for the accident. The claimant in a rash and negligent manner rode the motorcycle and dashed on the back side of the motorcycle driven by the 1st respondent, which was going in front of the claimant. To substantiate their case, the 1st respondent was examined as R.W.1 and the Investigation Officer was examined as R.W.2 and marked the rough sketch, Motor Vehicle Inspector's Reports of both the vehicles as Exs.R1 to R3. The 1st respondent as R.W.1 deposed that the accident took place in one way. The claimant rode the motorcycle in a rash and negligent manner and dashed behind the motorcycle of the 1st respondent, who was going in front of the claimant. The Tribunal considering the rough sketch and Motor Vehicle Inspector's reports of both the vehicles, held that the claimant also contributed for the accident. The Tribunal considering the F.I.R., charge sheet and evidence of claimant as P.W.1, held that the accident has occurred due to negligent riding by the rider of the motorcycle belonging to the 1st respondent and claimant also contributed to the accident, fixed 10% negligence on the claimant and 90% negligence on the 1st respondent.

14. From the award of the Tribunal, it is seen that the Tribunal considering Ex.R1/rough sketch held that both the vehicles were going in the same direction. The contention of the respondents that the place of occurrence is one way is not disputed. From Exs.R2 and R3, it is seen that the vehicle of the claimant was damaged in the front side and the vehicle of the 1st respondent was damaged on the back side. This shows that the claimant's vehicle only dashed on the back side of the 1st



respondent's vehicle. The Tribunal without properly appreciating the rough sketch and Motor Vehicle Inspector's Reports with regard to damage of vehicles, evidence of R.W.1 and place of occurrence erroneously held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent.

15.From the above materials, it is seen that the case of the claimant that the 1st respondent came in the opposite direction and dashed on the claimant's vehicle is not correct. The claimant has also not explained the delay in lodging the F.I.R. The contention of the 1st respondent that father of the claimant is the Sub-Inspector of Police is also not denied. The contention of the 1st respondent that only due to influence of father of the claimant, the complaint was registered against the 1st respondent has considerable force and the same is acceptable. The Tribunal independently considering the pleadings and oral and documentary evidence placed before it, erroneously relied on F.I.R. and charge sheet and held that the accident occurred due to negligent riding by the rider of the motorcycle belonging to the 1st respondent. The erroneous finding is liable to be set aside and is hereby set aside. In view of the above facts, this Court is of the view that the claimant failed to prove that the accident has occurred due to negligent riding by the rider of the motorcycle belonging to the 1st respondent and the 2nd respondent/Insurance Company, the insurer of the vehicle belonging to the 1st respondent is not liable to pay any compensation.

16.In the result, C.M.A.No.3768 of 2019 filed by the 2nd respondent/Insurance Company is allowed. In view of allowing of C.M.A.No.3768 of 2019, C.M.A.No.3930 of 2019 filed by the claimant is dismissed. Consequently, M.C.O.P.No.6248 of 2013 filed by the claimant is also dismissed. The 2nd respondent/Insurance Company is permitted to withdraw the award amount, if any, lying in the deposit to the credit of M.C.O.P.No.6248 of 2013 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The III Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.7047

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.6722

C.M.A.Nos.3768 and 3930 of 2019
and C.M.P.No.21636 of 2019

VBM(CO)
CB(08/09/2021)