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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.3383 OF 2019

G.Rajesh

... Appellant/Petitioner

.Vs.

1.M.Rajamani

2.Iffco - Tokio General Insurance Company Limited,
No.145/131, Nelson Manickam Road,
Chennai - 600 029.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree order dated 06.07.2017 made in M.C.O.P.No.2111 of 2011, on the file of the Motor Accidents Claims Tribunal, the VI Court of Small Causes, Chennai.

For Appellant : M/s.A.Subadra

For Respondents : Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates for R2
Exparte R1

JUDGMENT

The claimant is the appellant in this appeal against the impugned Judgment and decree dated 06.07.2017 passed by the Motor Accidents Claims Tribunal, the VI Court of Small Causes, Chennai in M.C.O.P.No.2111 of 2011.

2.By the impugned Judgment and decree, the claim petition filed by the appellant was dismissed by the Tribunal on the ground that the claimant who was a pillion rider along with the rider who was intoxicated at the time of accident and hit the motor cycle against the stationery car which was parked on the side of the road. The Tribunal has considered Ex.R1 accident/injury report to come to the above conclusion.



3. Challenging the same, the learned counsel for the appellant/claimant submits that Ex.R1 Accident Register, by itself was not sufficient to come to a conclusion that the claimant or the rider were under the influence of the alcohol.

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4. Per contra, the learned counsel for the respondent submits that the impugned judgment and decree passed by the Tribunal is well-reasoned and requires no interference. He therefore prays for dismissal of this appeal.

5. He submits that the fact that the accident has taken place on account of the bike hitting against a stationery car itself brings out of the fact that the rider of the motor cycle was under the influence of the alcohol which is evident from Ex.R1 Accident Register.

6. Heard the learned counsel for the appellant and the respondent and also perused the impugned judgment and decree and the Exhibits that were marked before the Tribunal.

7. The Motor Accidents Claims Tribunal is not governed by strict rules of evidence under the Indian Evidence Act, 1872. These Tribunal are governed by preponderance of probabilities. The evidence on record particularly Ex.R1 Accident Register which is the first document generated after the accident at the time of admission of the injured person to the hospital indicates that the appellant and the rider of the motor cycle Ramalingam were under the influenced of alcohol. The fact that they also hit the stationery vehicle but also seems to indicate that they were responsible for the accident and therefore they are not entitled to any compensation. As a pillion rider, the appellant invited the risk upon himself in as much as he ought not to have travelled on a motor cycle which was being driven by the person who was under the influence of the alcohol by applying, the principles of doctrine of ''Res Ipsa Loquitur and Volenti Non Fit Injuria''. However, considering the fact there was accident and injury, I am inclined to dispose this appeal by awarding a sum of Rs.25,000/- as compensation to the appellant for the greivous injury suffered by the appellant in terms of Section 140 of the Motor Vehicles Act, 1988.

8. The appeal filed by the appellant thus stands partly allowed in terms of the above observations. The 2nd respondent/ Insurance Company is therefore directed to deposit a sum of Rs.25,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such



deposit, less any amount already deposited by it, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. On such deposit being made by the 2nd respondent/ Insurance Company, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, However, it is noticed that there is a delay in filing the appeal. Therefore, no interest shall be paid during the period of 437 days in filing the appeal.

10. Accordingly, this appeal stands partly allowed in terms of above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (P & A)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.
2. The V.R. Section,
Madras High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.25135

C.M.A.No.3383 of 2019

NRL (CO)
CS/25/11/2021