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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2545 of 2019

Sathiyaraj

.. Appellant/Petitioner

Vs.

1.M/s.AMR Energy Resources

Pvt. Ltd.

No.86-A, Abhiramapuram South street

Chennai-600 018.

(R1 remained exparte before the Tribunal and hence, notice to R1 is dispensed with)

2.The Divisional Manager

The Oriental Insurance Co. Ltd.

Spencer towers, IV floor

No.770/A, Anna salai

Chennai

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.04.2019 made in M.C.O.P.No.455 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

For Appellant : Mr.S.Kamadevan

For R2 : Mr.M.J.Vijayaraaghavan

R1 - Exparte

#### J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 50% contributory negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 08.04.2019 made in M.C.O.P.No.455 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.



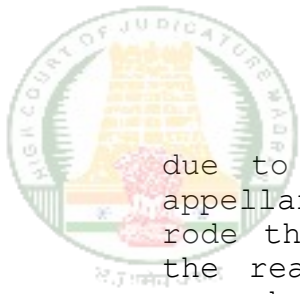
2.The appellant is claimant in M.C.O.P.No.455 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.01.2016.

3.According to the appellant, on the date of accident, i.e., on 05.01.2016 at about 12.15 p.m., while he was riding the two wheeler on Karai Pirivu Road - Kolakanatham Road from West to East direction, near Mallappillai Kovil curve, the driver of the Bolero car belonging to the 1st respondent which was coming from East to West direction, drove the same in a rash and negligent manner, instead of proceeding his extreme left side, came right side, dashed against the two wheeler driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries all over the body and therefore, he filed the above claim petition claiming compensation as against the respondents.

4.The 1<sup>st</sup> respondent, owner of the car remained exparte before the Tribunal.

5.The 2<sup>nd</sup> respondent/Insurance Company being insurer of the car filed counter statement denying the averments made by the appellant and stated that the accident has occurred only due to rash and negligent riding by the appellant. The accident did not occur due to negligent driving by the driver of the car belonging to the 1<sup>st</sup> respondent. The driver of the car belonging to the 1<sup>st</sup> respondent drove the same cautiously and the appellant all of a sudden entered into the main road from the left side to right side without noticing the 1<sup>st</sup> respondent's car and collided with the car. The accident has occurred due to own fault of the appellant. A false case has been foisted against the driver of the car. The owner and insurer of the two wheeler were not made as parties to the claim petition and hence, the claim petition is bad for non-joinder of necessary parties. The appellant and the driver of the car belonging to the 1<sup>st</sup> respondent did not possess driving license and the two wheeler was not insured at the time of accident. Therefore, the 2<sup>nd</sup> respondent/Insurance Company is not liable to pay any compensation to the appellant. The 2<sup>nd</sup> respondent/Insurance Company has also denied the age, avocation, income, disability and injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 2<sup>nd</sup> respondent.

6.The 2<sup>nd</sup> respondent/Insurance Company filed additional counter statement stating that the accident has occurred only



due to rash and negligent riding of the two wheeler by the appellant. The appellant is the tort-feasor. The appellant alone rode the two wheeler in a rash and negligent manner, dashed on the rear side of the car belonging to the 1<sup>st</sup> respondent and caused the accident. This fact was revealed in the F.I.R. and the charge sheet was filed against the appellant only. Therefore, the car belonging to the 1<sup>st</sup> respondent was not at all responsible for the accident and the 2<sup>nd</sup> respondent is not liable to pay any compensation to the appellant.

7.Before the Tribunal, the appellant examined himself as P.W.1 and three documents were marked as Exs.P1 to P3. The 2<sup>nd</sup> respondent/Insurance Company examined one Ms.Indra, Senior Assistant of Insurance Company as R.W.1 and one Mr.S.Raja, Padalur Special Sub-Inspector of Police as R.W.2 and marked three documents as Exs.R1 to R3. The disability certificate issued by the Medical Board was marked as Ex.C1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by both the appellant, the rider of two wheeler as well as the driver of the car belonging to the 1<sup>st</sup> respondent, fixed 50 : 50 contributory negligence on the part of the appellant as well as the driver of the car belonging to the 1<sup>st</sup> respondent respectively, awarded a sum of Rs.1,13,000/- as compensation to the appellant and directed the 2<sup>nd</sup> respondent/Insurance Company to pay a sum of Rs.56,500/- being 50% of the award amount as compensation to the appellant.

9.The appellant has come out with the present appeal challenging the portion of the award fixing 50% contributory negligence on the part of the appellant as well as for enhancement of compensation.

10.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 50% contributory negligence on the part of the appellant. The appellant has deposed as P.W.1 about the manner of the accident. The Tribunal erred in relying on F.I.R. and fixing negligence on the appellant. The contents of F.I.R. cannot be the basis for fixing negligence. The total compensation awarded by the Tribunal is meagre and prayed for setting aside 50% of the negligence fixed on the part of the appellant and for enhancement of compensation.

11.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the accident has occurred, while the appellant was overtaking the bus going in front of him, dashed on the right side of the bumper of the car and caused the accident. The appellant alone rode the two wheeler in a rash and negligent manner and caused the accident.



The driver of the car was not responsible for the accident. The accident has occurred only in the middle of the road and not on the left side as alleged by the appellant. The Tribunal considering all the materials especially the evidence of R.W.2 and rough sketch, rightly held that the appellant also contributed negligence to the accident. In any event, the total compensation awarded by the Tribunal is 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 2<sup>nd</sup> respondent/Insurance Company and perused the entire materials on record.

13. It is the contention of the appellant that while he was riding the two wheeler, the driver of the car belonging to the 1<sup>st</sup> respondent drove the same in a rash and negligent manner, came to the wrong side and dashed on the two wheeler and caused the accident. The appellant examined himself as P.W.1 and deposed to that effect. On the other hand, it is the case of the 2<sup>nd</sup> respondent in the counter statement that while the rider of the car was going cautiously following the rules, the appellant all of a sudden entered into the main road from left side to right side without noticing the car, lost control and collided with the car belonging to the 1<sup>st</sup> respondent. Hence, the appellant is responsible for the accident. In the additional counter statement, the 2<sup>nd</sup> respondent has stated that the appellant in a rash and negligent manner rode the two wheeler and dashed on the rear side of the car. F.I.R. was registered against the appellant, charge sheet was also laid against the appellant and hence the 2<sup>nd</sup> respondent is not liable to pay compensation. The 2<sup>nd</sup> respondent in support of their case, examined the Special Sub-Inspector of Police as R.W.2 and marked the rough sketch as Ex.R2.

14. From the materials on record, it is seen that R.W.2, Special Sub-Inspector of Police in his evidence has stated that the accident occurred, while the appellant overtook the omni bus and dashed on the right side bumper of the car belonging to the 1<sup>st</sup> respondent. R.W.2 admitted that final report was filed. Even though there are contradictions in the stand taken by the 2<sup>nd</sup> respondent and evidence of R.W.2, the fact remains that the accident has occurred in the middle of the road as per Ex.R2/rough sketch. The appellant has not denied the rough sketch as fault and has not filed any objection. The Tribunal considering the rough sketch, held that both the appellant and the driver of the car belonging to the 1<sup>st</sup> respondent are equally responsible and contributed to the accident and fixed 50% contributory negligence on the part of the appellant. There is no error in the award fixing contributory negligence on the part



of the appellant.

15. As far as quantum of compensation is concerned, the Medical Board after examining the appellant, certified that the appellant has suffered 20% disability. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.60,000/- (Rs.3,000/- X 20%) towards disability by awarding a sum of Rs.3,000/- per percentage of disability. The accident is of the year 2016 and the amount awarded by the Tribunal per percentage of disability is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh 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. Thus, the compensation awarded by the Tribunal towards disability is hereby enhanced to Rs.1,00,000/- (Rs.5,000/- X 20%). The amounts awarded by the Tribunal under all 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 or reduced |
|------|-------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Loss of income          | 18,000                          | 18,000                            | Confirmed                                         |
| 2.   | Disability              | 60,000                          | 1,00,000                          | Enhanced                                          |
| 3.   | Transportation          | 5,000                           | 5,000                             | Confirmed                                         |
| 4.   | Pain and suffering      | 15,000                          | 15,000                            | Confirmed                                         |
| 5.   | Extra nourishment       | 10,000                          | 10,000                            | Confirmed                                         |
| 6.   | Attendant charges       | 5,000                           | 5,000                             | Confirmed                                         |
|      | Total                   | 1,13,000                        | 1,53,000                          |                                                   |
|      | 50% of the award amount | 56,500                          | 76,500                            | Enhanced by Rs.40,000/-                           |



16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,13,000/- is hereby enhanced to Rs.1,53,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent is directed to deposit a sum of Rs.76,500/- being 50% of the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,  
The Motor Accident Claims Tribunal,  
Perambalur.
2. The Section Officer,  
V.R.Section,  
High Court, Chennai.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.1558

C.M.A.No.2545 of 2019

VBA (CO)

RLP(02/09/2021)