



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1412 of 2017
and
C.M.P.No.7543 of 2017

United India Insurance Company Ltd.,
Micro Office, 23/1, Sankari Bye-pass Road,
Pallipalayam - 638 108.

...Appellant

Vs

1. Satpritika
2. M/s.Bisquare Life Sciences,
No.1, Kumaran Colony, 1st Street,
Vadapalani, Chennai - 600 101.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 07.12.2016 made in M.C.O.P.No.545 of 2014 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Namakkal.

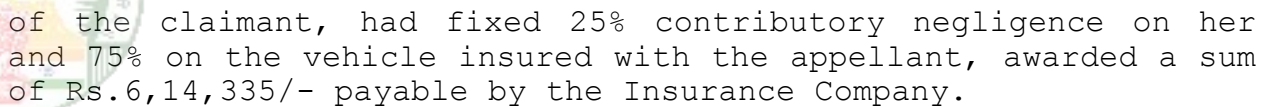
For Appellant : Mr.D.Bhaskaran

For Respondents : No Appearance

J U D G M E N T

Heard the learned counsel for the appellant. In spite of notice to the respondents, there is no representation for them particularly, the claimant, who is the first respondent in this appeal, has received notice through post on 04.11.2020. But she has not engaged any counsel or appeared in person.

2.The appeal is filed by the Insurance Company challenging the award passed by the Tribunal on the ground that the accident has occurred purely due to the negligence of the claimant, who had no driving license and tried to cross the central median without observing the proper traffic Rules. However, the Tribunal, without considering the total negligence on the part



4. While the facts being so, the Tribunal has observed that had the two wheeler rider of the Bajaj Platinum noticed the claimant standing at the central median with her motor cycle, he could have avoided the accident and therefore, attributed 75% negligence on the part of the Bajaj Platinum motor cycle rider and 25% on the claimant.

5. This Court fails to understand when a clear case of traffic violation and driving a motor cycle without license been proved, the Tribunal had said the negligence to drive a motor vehicle without license and attempted to cross the central median, where barricade is placed indicating that nobody should cross, will only amount to 25% negligence and the road user who meticulously followed the traffic Rule and expect that no one will cross the central median when there is a barricade, is 75% negligent. It is a clear case of improper appreciation of evidence and therefore, liable to be interfered.

6. When the claimant herself in the evidence admitted that she had no driving license and she tried to cross the central median, where there was a barricade and she paid fine for driving vehicle without license, this Court finds that there is no negligence on the part of the first respondent therein and the Insurance Company has no liability to indemnify the first respondent and pay compensation to the claimant. The belated F.I.R. after 27 days of the accident, alleging negligence on the part of the first respondent has been found to be fault and fabricated for the purpose of claiming compensation. The final report of the police after due investigation has been marked as



Ex.R1. The Tribunal has totally neglected to appreciate the said evidence.

7. In the light of the above fact, this Court finds that the award of the Tribunal is liable to be set aside and accordingly, set aside. As a result, the Civil Miscellaneous Appeal is allowed.

8. Learned counsel for the appellant says that pursuant to the condition order passed by this Court, the appellant has deposited 50% in the M.C.O.P. Account. If it is so, the appellant is permitted to withdraw the same on appropriate petition. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vri

To

The Motor Accidents Claims Tribunal,
(Additional District Judge),
Namakkal.

CMA NO.1412 of 2017

SSV(CO)
RGA(13/09/2021)