



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.224 of 2017
and
C.M.P.NO.1467 of 2017

M/s.United India Insurance Co. Ltd.,
Branch Office,
3, 4th Floor, BOB Buildings,
State Bank Road,
Coimbatore.

....Appellant/Respondent
Vs

1.M.Subramaniam
2.O.V.Rajendran

..1st Respondent/Petitioner
...2nd Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2012 made in M.C.O.P.No.387 of 2009 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Erode at Gobichettipalayam.

For Appellant : M/s.I.Malar
For Respondents : Mr.Ma.P.Thangavel

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondents.

2.The appeal is filed by the Insurance Company being aggrieved by the quantum of compensation awarded by the Tribunal and the percentage of contribution fixed on the driver of the vehicle which is insured under the appellant.

3. The facts of the case is that on 02.07.2009, the first respondent herein while riding his two wheeler bearing Registration No. TN-36E-2088 near Udaiyagounder palayam pirivu, Sathyamangalam-Gobipalayam main road, the accident occurred due to collision with Jeep bearing Registration No.TSC 3419.



4. According to the claimant, the jeep driver turned right side with high speed in rash and negligent manner without observing road rules and hit the first respondent two wheeler. In the said accident, the first respondent sustained grievous injury on the left clavicle, head, knee, right elbow, chest and other parts of the body. He was taken to Gobipalayam Government Hospital and later shifted to Coimbatore Medical College Hospital. A case was registered against the jeep driver in Kadathur Police Station in Crime No.165/2009. A claim petition for a sum of Rs.5,00,000/- was filed by the first respondent before the MACT, Erode at Gobipalayam.

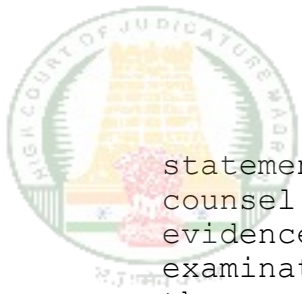
5. The Insurance Company as the appellant herein has filed the counter stating that the accident as narrated in the claim petition is not true and it was the negligence of the claimant which has caused the accident. The jeep driver was cautiously and carefully driving his vehicle whereas the claimant dashed against the jeep rash and negligently and caused the accident. Also, it was contended that the claimant had no valid driving license and the two wheeler was not duly insured.

6. Before the Tribunal, the claimant examined himself and the Dr.Thambiraj as P.W.1 and P.W.2. 9 Exhibits were marked. On behalf of the respondent, the final report of the police, which has closed the FIR as mistake of fact was marked as Ex.R1 and 2 witnesses were marked on behalf of the Insurance Company.

7. The Tribunal, after appreciating the evidence, held that there is a contributory negligence on the part of the claimant also for the accident, therefore, apportioned the negligence between the jeep driver and the claimant and awarded a sum of Rs.1,50,528/- after deducting 25% towards contributory negligence.

8. The present appeal is filed stating that the Tribunal failed to take note of the final report filed by the police after investigation wherein the eyewitness has specifically stated that the accident occurred due to the negligence of the claimant, who dashed against the jeep recklessly due to his rash driving. Though the appellant has established the fact that the accident occurred due to the fault of the claimant, apportioning only 25% of the award amount for his contributory negligence is unfair and the negligence ought to have been equally distributed among the claimant and the jeep driver.

9. Learned counsel for the claimant/first respondent would submit that Ex.R1 the final report and Section 161 Cr.P.C. statement relied by the appellant Insurance Company are not admissible in evidence unless the person who has made the



statement is examined by the Court. Further, the learned counsel would submit that the Tribunal after considering the evidence of P.W1 and P.W.2 and the facts elicited in the cross-examination of R.W.1, had rightly come to the conclusion that the contribution on the part of the claimant was 25% and for injuries sustained in the accident, adequate medical records and bills have been produced to justify the award. Furthermore, he would submit that the allegation of want of driving license for the claimant and insurance coverage for two wheeler not been established through adequate evidence by the Insurance Company and therefore, no adverse inference could be drawn against the claimant.

10. On perusing the records in the light of the rival submissions made by the counsel, this Court finds that the Tribunal has rightly assessed the negligence as well as the quantum of compensation. Based on the available material, the Tribunal has held that the contribution on the part of the claimant is only 25%. There is no need to distribute the ratio of negligence among the jeep driver and the claimant in the absence of contra evidence. Hence, this Court confirms the award of the Tribunal and the Civil Miscellaneous Appeal is dismissed.

11. The appellant is directed to deposit the award amount within a period of eight weeks from the date of receipt of the copy of this order. On such deposit, the claimant is permitted to withdraw the award amount on appropriate application. No order as to costs. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
III Additional District Judge,
Erode at Gobichettipalayam.

2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 561.

CMA No.224 of 2017

CNR (CO)
SP(11/08/2021)