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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 14.07.2021

Delivered On : 28.07.2021
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A.(MD)No.1274 of 2013

V.Nanthakumar

.. Appellant/Claimant

Vs.

1.K.Sekar

2.The Branch Manager,

United India Insurance Company Ltd.,

Puthur,Trichy.

.. Respondents/Respondents

(1st Respondent set exparte by the Tribunal

Hence, notice may be given up against R1 herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to modify the award passed in M.C.O.P.No.2146 of 2006 dated 21.10.2011 on the file of the Motor Accident Claims Tribunal/Additional District Judge (Fast Track Court No.I), Trichirappalli.

For Appellant

: Mr.N.Sudhagar Nagaraj

For 2nd Respondent

: Mr.C.Jawahar Ravindran

For 1st Respondent

: Exparte vide E.B.

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.2146 of 2006 dated 21.10.2011, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Tiruchirappalli.

2.The appellant herein is the claimant and the respondent herein is the respondent in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.2146 of 2006, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 23.08.2006. The Tribunal has awarded a sum of Rs.1,37,084/- (Rupees One Lakh Thirty Seven Thousand and Eighty Four only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.2146 of 2006 is as follows:

On 23.08.2006, at about 09.45 hours, the claimant was riding a Hero Honda motorcycle bearing registration No.TN-45-R-4155 on the left side of the road. At the time of



accident, the first respondent's vehicle Hero Honda Super Splendor bearing registration No.TN-45-AF-2575 came from the opposite direction in a rash and negligent manner and dashed against the claimant. The claimant sustained multiple injuries and he was admitted in Tiruchirappalli C.S.I hospital as 'inpatient'. The claimant was aged about 20 years and he has completed MCA and took M.Phil. He lost an opportunity to get placement in the IT field and he claimed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

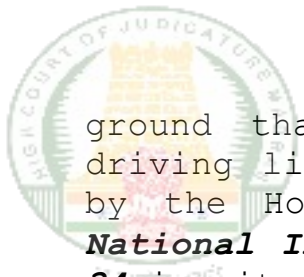
4.Brief substance of the counter filed by the respondent is as follows:

It was the petitioner, who drove the vehicle in a rash and negligent manner and invited the accident. The owner and the insurer of the claimant's vehicle were necessary parties. The petition is bad for non joinder of necessary parties. The age, nature of injury, period of treatment and medical expenses are denied and the claim is excessive.

5.On the side of the petitioner therein, three witnesses were examined and six documents were marked. One witness document was marked. On the side of the respondent therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.1,37,084/- (Rupees One Lakh Thirty Seven Thousand and Eighty Four only) as compensation and fixed 50% contributory negligence on the petitioner and after deducting 50% towards contributory negligence, the claimant was awarded Rs.68,542/- (Rupees Sixty Eight Thousand Five Hundred and Forty Two only) as compensation. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that fixing contributory negligence on the part of the appellant is wrong. There is no reason for fixing the contributory negligence. The version of the Hon'ble Supreme Court reported in **2012(2) SCC 356** and the version of this Court in the case of **National Insurance Company v. Sinitha** reported in **2010(2) TNMAC 167**, were not followed by the Tribunal. Ex.P1 was registered against first respondent. The accident was only due to rash and negligent driving of the first respondent. Ex.P3 reveals that the driver pleaded guilty and has paid fine in S.T.C.No.1696 of 2006. The award was passed in a mechanical manner and the Tribunal wrongly fixed contributory negligence. The claimant lost an opportunity for placement and that he has to undergo another surgery to remove the rod.

7.On the side of the appellant, it is further stated that the Tribunal has wrongly fixed contributory negligence on the



ground that the claimant has not produced the R.C. Book and driving licence. In support of his contention, a judgment passed by the Hon'ble Supreme Court in the case of **Dinesh Kumar v. National Insurance Co. Ltd., and Others** reported in **2018(1) TNMAC 34** is cited.

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8.On the side of the second respondent, it is stated that the claimant was examined as P.W.1 and he has admitted in his cross examination, that he turned to the right and that the accident is a head on collision. Only for the reason, contributory negligence was fixed by the Tribunal. The driving licence was not marked. Both the drivers of the vehicle are equally responsible for the accident and the Tribunal is correct in fixing contributory negligence.

9.On the side of the appellant, it is stated that the first respondent has admitted his guilt before the criminal Court. The respondent failed to examine the Investigating Officer engaged by the insurance company. The Tribunal has made an observation that the claimant failed to produce R.C. Book, insurance copy, DL, MV report of the vehicle. There was absolutely no evidence to fix contributory negligence on the appellant. The omission to file the driving licence and R.C. Book cannot be a ground for fixing contributory negligence. Since it is a head on collision, the Tribunal has presumed that there was contributory negligence on the part of the appellant.

10.In the judgment of the Hon'ble Apex Court cited above, it is observed that contributory negligence cannot be fixed for non production of driving licence and that there is no legal presumption, in head on collision case, the contributory negligence has to be fixed on the claimant. The FIR was registered against the first respondent. The first respondent has admitted guilt and has paid a fine, which is seen from Ex.R3. In the above circumstances, the presumption taken by the Tribunal is not acceptable. Hence, it is decided that there is no contributory negligence on the part of the claimant and that reduction of 50% towards contributory negligence is unwarranted.

11.For the above reasons, the order passed by the Tribunal is modified to the effect that the second respondent alone is liable to pay the entire compensation awarded by the Tribunal. There is no objection regarding the fixation of quantum. The compensation awarded by the Tribunal under various heads are reasonable.

12.In the result, this Civil Miscellenaous Appeal is partly allowed. The appellant is entitled to a sum of Rs.1,37,084/- (Rupees One Lakh Thirty Seven Thousand and Eighty Four only) as



compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13.The second respondent is directed to deposit Rs.1,37,084/- (Rupees One Lakh Thirty Seven Thousand and Eighty Four only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the second respondent. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge (Fast Track No.I),
Tiruchirappalli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-24273[F] dated 29/07/2021)

C.M.A.(MD)No.1274 of 2013

28.07.2021