



C.M.A.No.629 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 13.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.629 of 2013

and

M.P.No.1 of 2013

The New India Assurance Company Limited,
II Floor, Jeewan Deep Building,
8, Parliament Street,
New Delhi – 110 001.

... Appellant/2nd Respondent

Vs.

1.V.Dineshkumar @ Kamalnath ... Respondent/Petitioner

2.P.Gopalakrishnan ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 31.08.2012 in M.C.O.P.No.262 of 2010 on the file of the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Erode.



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For Appellant : Mr.M.K.Krishnamoorthy

For Respondents : Mr.R.Nalliyappan for R1

R2 – Given up

JUDGMENT

The Insurance Company has filed the above appeal challenging the Award passed by the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Erode, in M.C.O.P.No.262 of 2010 both on the grounds of negligence as well as quantum. The parties are referred to in the same rank and array as before the Tribunal.

2.The facts which are germane for determining the issue on hand are hereinbelow narrated:

The petitioner had filed the above claim petition seeking compensation for the injuries sustained by him in a road accident on 12.07.2010 at about 04.30 pm. It is the case of the petitioner that he



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was riding his motor cycle, bearing Registration No.TN 45AZ 0453 on the Palladam to Kangayam Road from West to East direction. When he had reached the Madappur petrol bunk, a car bearing Registration No.TN 42C 0599 belonging to the 1st respondent came in the opposite direction with the same being driven in a rash and negligent manner by its driver. The car had hit the petitioner's motor cycle, as a result of which, the petitioner had fallen on the road and sustained bone fractures and other multiple grievous injuries all over the body. The petitioner would submit that he was employed as Tailor and earning a monthly income of Rs.10,000/- and he was 24 years of age. Therefore, the petitioner had filed the above claim petition.

3.The insurer of the 1st respondent's vehicle had alone contested the claim petition. They would submit that at the outset, the accident had occurred only on account of the negligence of the driver of the 1st respondent's vehicle. They would submit that it was the petitioner who was solely responsible for the accident.



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4.The 2nd respondent had further contended that the rider of the motor cycle, namely, the petitioner has been driving the same in a rash and negligent manner and coming from the wrong side of the road and they had hit the petitioner's vehicle on the right side. As a result of which, he had fallen on the road.

5.The Tribunal on considering the evidence on record omitted to consider the arguments put forward by the learned counsel for the 2nd respondent. A perusal of the sketch would show that the driver of both the vehicles were equally negligent, therefore, it is clear that this accident is an head on collision. Without appreciating the description of the accident, the Tribunal has come to the conclusion, based on the evidence of PW1, that the accident had occurred only on account of the negligence of the driver of the 1st respondent's car. According to the learned counsel for the 2nd respondent, the Tribunal has failed to consider the evidence of RW1, Motor Vehicle Inspector attached to the



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Regional Transport Office, Tiruppur, where he has clearly stated that the driver of the motor cycle had not produced his license for inspection. The Tribunal has ultimately awarded a compensation of a sum of Rs.2,99,200/-. It is aggrieved by this, the appellant is before this Court.

6.Heard the learned counsels appearing on either side and perused the papers.

7.A perusal of Ex.P.2 -Rough Sketch would show that the accident had taken place right in the middle of the road. The petitioner who was the rider of the motor cycle was not riding on the left side as pleaded by him in the claim statement. On the contrary, he was riding on the extreme right hugging to the central line. That apart, the driver did not possess a valid driving license on the date of the accident. Therefore, the Tribunal ought to have assessed the liability by apportioning the same with the driver of the two vehicles. In the



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instant case, one of them is the petitioner himself. Therefore, taking into account the above factors, the negligence is fastened equally on both the driver of the vehicles, namely, the petitioner as well as driver of the 1st respondent's car.

8.The appellant had made his submissions on the issue of quantum. However, this Court is of the view that the quantum of compensation granted is very reasonable and does warrant any interference. Therefore, the compensation awarded by the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Erode, is confirmed insofar as the quantum of compensation is concerned. However, with reference to the issue of negligence, the ratio is apportioned on 50:50 basis and therefore, the 2nd respondent Insurance company is liable to only pay a half of the amount awarded, i.e., Rs.2,99,200/-. In all other respects, the Award remains unaltered. Further, it is informed that the interest has been awarded by the Tribunal is @ 9% per annum. Therefore, it is reduced to 7.5% per



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annum. The Insurance Company pursuant to the orders of this Court has deposited the entire award amount. Therefore, the excess amount paid by them is to be refunded back to the Insurance Company.

This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Erode.



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P.T. ASHA, J,

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