



C.M.A.No.2131 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2131 of 2022

and C.M.P.No.16530 of 2022

The United India Insurance Co., Ltd.,
104-A, Peramanur Main Road,
Peraanur, Salem.

...Appellant

Vs.

1.B.Nivetha
2.Sethulakshmanan

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.08.2019 in M.C.O.P.No.10 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge No-II) Salem.

For Appellant : Mr.J.Chandran

For Respondents : No appearance for R1



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company aggrieved by the fact that no contributory negligence was fixed for the first respondent in the award dated 29.08.2019 in M.C.O.P.No.10 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge No-II) Salem.

2. The first respondent is the claimant in M.C.O.P.No.10 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge No-II) Salem. She filed the Claim Petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 24.08.2017.

3. According to the first respondent, on 24.08.2017 at 12.00 p.m., while she was riding pillion in the motorcycle bearing Registration No.TN-28-R-9776, a private bus bearing registration No.TN-54-E-7759 belonging to the second respondent came from the opposite direction in a rash and negligent



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manner and dashed against the first respondent's vehicle. Due to the impact, the first respondent sustained injuries. Hence, she filed claim petition against the second respondent, the owner of the bus and the Insurance Company being the insurer of the bus to pay sum of Rs.10,00,000/- as compensation.

4. The second respondent, who is the owner of the bus was set *ex-parte* before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the first respondent and contended that the driver of the bus was not responsible for the accident. The accident occurred due to negligence of the rider of the motorcycle who drove the vehicle in a zig zag manner. The rider of the motorcycle did not wear helmet and did not possess driving license at the time of the accident. Hence, the second respondent is not responsible for the accident. Therefore, the appellant/ Insurance Company is not liable to pay any compensation to the first respondent. The appellant had also denied the age, avocation and income of the first respondent and stated that in any event,



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the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the respondents examined P.W.1 and marked 17 documents as Exs.P1 to P17. The appellant/Insurance Company examined R.W.1 and did not let in any documentary evidence. The disability certificate issued by the Medical Board was marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the second respondent and directed the appellant to pay a sum of Rs.3,61,811/- as compensation to the first respondent. Aggrieved against the said award, the appellant/Insurance Company has come out with the present appeal.

8. The learned counsel for the appellant submitted that the Tribunal having found that the rider of the two wheeler did not possess a valid license and also did not wear helmet, erred in not fixing contributory negligence on the



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part of the rider of the two wheeler. The learned counsel relied upon the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd., Vs Ramakrishnan and 3 others* reported in *2020 (1) TNMAC 319 (DB)* and *National Insurance Co. Ltd. Vs Thangadurai and others* reported in *2018 (2) TN MAC 168 (DB)*, in support of his submissions and that contended non-possession of license leads to contributory negligence. The Tribunal ought to have fixed 20% negligence on the rider of the two wheeler and prayed for setting aside the award of the Tribunal.

9. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused all the materials available on record before this Court. Though notice was served on the second respondent, none have entered appearance on his behalf.

10. This Court, on perusal of the records and on hearing the submissions made by the learned counsel finds that the appellant had established through R.W.1 that the rider of the two wheeler in which the first respondent travelled as pillion did not possess a valid driving license. In such



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circumstances, the Tribunal ought not to have fastened the entire liability on the driver of the offending vehicle. However, in the judgments relied upon by the learned counsel for the appellant, it is seen that apart from the fact that there is no driving license, the deceased in that case was found to have contributed substantially for the accident and hence, contributory negligence of 20% was fixed. However, in the instant case, it has been established through the evidence of P.W.1 that the offending vehicle was responsible for the accident. However, in view of the admitted fact that the rider of the two wheeler did not possess a valid driving license, in the facts and circumstances of the case, this Court is of the view that the rider would be liable for 10% of contributory negligence. As far as the quantum of compensation awarded by the Tribunal is concerned, this Court is of the view that the same is just and reasonable and hence, the same is confirmed. However, since the offending vehicle was insured with the appellant/ Insurance Company, the appellant/ Insurance Company is directed to pay the entire compensation of Rs.3,61,811/- along with 7.5% interest awarded to the first respondent and to recover 10% of the compensation amount ie.,Rs.36,181/- from the second respondent herein. The award of the Tribunal in all other aspects are confirmed.



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11. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant/ Insurance Company shall deposit entire amount of a sum of Rs.3,61,811/- awarded by the Tribunal 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 and shall be entitled to recover 10% of the compensation amount ie.,Rs.36,181/- from the second respondent herein. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

17.07.2023

Internet: Yes/No

Speaking Order: Yes/ No

Neutral Citation: Yes/ No

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To

1.The Motor Accident Claims Tribunal,
(Special Subordinate Judge No-II) Salem.

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



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SUNDER MOHAN,J.

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