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C.M.A.No.1036



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 07.03.2023**

**Coram:**

**THE HONOURABLE MRS.JUSTICE N.MALA**

**C.M.A.No. 1036 of 2020**

**and**

**C.M.P.No. 6545 of 2020**

The Branch Manager,  
M/s. IFFCO-TOKIO General  
Insurance Company Limited,  
Branch office at  
'GSN ARCADE', II floor,  
Near Vimala Kalyana Mandapam,  
Bye-Pass Road,  
Hosur Town & Taluk,  
Krishnagiri District,  
Pincode- 635 109.

... Appellant

Vs.

1.Munusamy  
2.Manjunath

... Respondents

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Decree and Judgment dated 17th September, 2019, passed in M.C.O.P.No. 113 of 2017, by Motor Accidents Claims Tribunal (Court of Special Sub. Judge), at Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam



### **JUDGMENT**

The Appeal has been filed to set aside the Decree and Judgment dated 17.09.2019 made in M.C.O.P. No.113 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

2. According to the claimant, the first respondent, in a rash and negligent manner drove his two wheeler and dashed against the median, due to which the claimant fell down and sustained grievous injuries. The claimant therefore filed the claim petition seeking a sum of Rs.15 lakhs as compensation for the injuries sustained by him in the motor accident.

3.The first respondent remained ex-parte before the Tribunal. The second respondent filed counter denying all the averments in the claim petition. The second respondent, denied his liability on the ground that the first respondent did not possess valid license at the time of accident. The second respondent further questioned the quantum of compensation claimed by the claimant.

4. Before the Tribunal P.W.1 was examined and Exs. P.1 to P.9 were marked. The 2nd respondent/Insurance Company examined three witnesses and



Exs. R.1 to R.6 were marked. Ex.C1 the disability certificate was marked as Court document.

5. The Tribunal on assessment of the entire evidence on record, found that the rider of the two wheeler was negligent. The Tribunal assessed the partial permanent disability at 30% and accordingly awarded a sum of Rs.90,000/- under the said head. The Tribunal totally awarded Rs.2,33,501/- to the claimant as compensation. Aggrieved by the award of the Tribunal, the appellant/Insurance Company has filed the present appeal questioning the negligence and quantum of compensation.

6. According to the appellant/Insurance Company, in the wound certificate/Ex.P.2, the nature of accident was described as 'skid and fall from two wheeler' and therefore, the learned counsel for the appellant/Insurance Company submitted that the accident did not occur due to the negligence of the rider of the two wheeler. On the issue of quantum, the learned counsel for the appellant/Insurance Company submitted that the assessment of disability and the consequent Award of compensation under the various heads was exorbitant.



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7. Though notice was served on both the respondents, none appears before this Court.

8. On the issue of negligence, the finding of the Tribunal is based on evidence and merely because the wound certificate referred to the nature of accident as skid and fall, an inference of no negligence on the part of the rider of the two wheeler cannot be drawn.

9. The rider of the two wheeler drove the vehicle in a rash and negligent manner and dashed against the median, due to which the claimant fell down from the vehicle and sustained grievous injuries. Moreover, FIR was registered against the rider of the two-wheeler. The claimant also produced documents to show that he sustained the injuries in the accident which is borne out from Ex.P.8 and P.9. Hence, on basis of the above documents the Tribunal has rightly held that the claimant suffered injuries due to the accident.

10. The claimant sustained Fracture of the Left Distal Radius and Fracture of Left Clavicle. The Medical Board examined the claimant and issued Ex.C.1,



disability certificate assessing the disability at 30%.

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11. According to the claimant, he worked as Chef in a Hotel and was earning a sum of Rs.20,000/- per month, the Tribunal in the absence of any documentary evidence, assessed income at Rs.3,000/- per month and awarded compensation of Rs.90,000/- towards 30% partial permanent disability.

12. On a perusal of the Award of the Tribunal, it is seen that the award of the Tribunal towards various heads, is just, fair and reasonable and therefore the same is not interfered with in this appeal.

13. It is seen that the Tribunal directed the appellant/Insurance Company to pay first and later recover the amount from the owner of the vehicle, as there was violation of policy in that, the rider of the two wheeler in which the claimant was riding pillion, did not possess a valid driving license at the time of the accident.

14. I find no infirmity in the finding of the Tribunal and hence, the direction for pay and recover is confirmed.



15. It is stated by the learned counsel for the appellant/Insurance Company that the entire award amount has been deposited in pursuance of the order passed by this Court in C.M.P.No.6545 of 2020 in C.M.A.No.1036 of 2020, dated 19.03.2020.

16.The claimant is at liberty to withdraw the amount by making proper application before the claims Tribunal.

In the light of the above discussion, I am of the view that there are no merits in the appeal and the same is dismissed. There shall be no order as to costs in the present appeal. Consequently connected C.M.P. is closed.

07.03.2023

dsn

Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No



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**To**

1.The Special Sub Judge, (Motor Accident Claims Tribunal)  
Krishnagiri.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.



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**N.MALA, J**

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