



C.M.A.No.1577 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1577 of 2021

K.Palaniappan

... Appellant

Vs.

1. Ravikumar

2. Sakthi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 22.04.2019 in M.C.O.P.No.1195 of 2009 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge No.2), Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.M.Arun for
M/s.Karan and Uday
for R1

No Appearance for R2

JUDGEMENT

This appeal has been filed against the judgment and decree dated 22.04.2019 in M.C.O.P.No.1195 of 2009 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge No.2), Salem.



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2. It is the case of the first respondent / claimant that on 23.06.2008 at about 8:30 pm, when he was riding a two wheeler bearing Reg.No.TN 07 Y 0706, at that time a maruti van bearing Reg.No.TN 27 V 9707 driven by its driver in a rash and negligent manner dashed against the two wheeler, due to which the claimant sustained grievous injuries all over his body. Hence the claimant made a claim petition before the Tribunal seeking a sum of Rs.25,00,000/- as compensation.

3. Before the Tribunal, the claimant had examined one witness viz. P.W.1 and marked Exs.P.1 to Ex.P.16. The first respondent examined R.W.1 and marked Exs.R1 to R3. The second respondent marked Ex.R.W.2. After adjudication, the Tribunal awarded a sum of Rs.12,70,494/- as compensation in favour of the first respondent. Being aggrieved with the same, the appellant has preferred the present appeal seeking modification of the award.

4. The learned counsel appearing for the appellant submitted that, the driver of the van was examined as R.W.2 and he deposed that the due to the rash and negligent driving of the first respondent who is the rider of



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the two wheeler, the said accident had happened. However, without appreciating the said facts the Tribunal fixed 20% negligence as against the first respondent and 80% as against the appellant and the second respondent which is not sustainable one. Hence, he prayed this Court to increase the ratio of negligence as against the first respondent by considering the oral evidence adduced by the appellant.

5. The learned counsel for the appellant further submits that though the appellant had sold the said van in favour of the second respondent, however, the second respondent has not mutated the records. Thereby the Tribunal fastened 80% negligence as against the appellant and the second respondent which is highly excessive. Accordingly, he prayed to allow this appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the



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parties. Therefore, this Court is not entering into the said aspect. The major grievances of the Appellant/owner of the van is with regard to the negligence fixed by the Tribunal as against him. Admittedly the first respondent was not in possession of a valid driving licence at the time of the accident. It is equally undisputed that the first respondent has not marked any driving licence before the Tribunal. It is therefore clear that the first respondent was not possessed of a valid driving licence at the time of accident, and such being the case, fixing of 20% contributory negligence on the first respondent is grossly inadequate and this Court feels that 40% contributory negligence would be just and reasonable, which could be fixed on the 1st respondent.

8. Though it is the case of the appellant that he had sold the van to the second respondent, however, the records have not been mutated. However, the fact remains that the ownership of the van still stand in the name of the appellant, though it is claimed to have been sold and in such a scenario, the fixation of negligence on the owner of the vehicle cannot be held to be erroneous.



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9. After reducing 40% for the negligence fixed on the part of the owner of the Maruti Van from the arrived compensation i.e., Rs.15,88,118/-, the compensation payable to the 1st respondent by the appellant comes to Rs.9,52,870/-.

10. Accordingly, this appeal is partly allowed and the appellant / owner of the van is directed to deposit 60% of the compensation amount, as awarded by the Tribunal, to the credit of M.C.O.P.No.1195 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of eight weeks (8) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent / claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal.

21.12.2023

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No



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M.DHANDAPANI, J.

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To

- 1.Motor Accidents Claims Tribunal (Special Subordinate Judge No.2), Salem.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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