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C.M.A.No.1806 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1806 of 2021

Vijayakumar

... Appellant/petitioner

Vs.

1. Murugan

[R1 remained ex-parte before Tribunal.

Hence, notice to R1 dispensed with]

2. National Insurance Company Limited,

No.66, Greams Road,

Nungambakkam,

Chennai – 600 006.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 31.01.2020 made in M.C.O.P.No.502 of 2012, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr. K. V. Muthu Visaran

For R1 : Ex-parte

For R2 : Ms. N. B. Surekha



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant challenging the contributory negligence fixed on him by the Tribunal to the extent of 10% for not having valid driving licence of drive the two-wheeler, in the Award passed in M.C.O.P.No.502 of 2012, dated 31.01.2020, on the file of the Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The claimant herein is the rider of the two-wheeler, while he was riding his two-wheeler bearing Registration No.TN 02 T 6990 at Nelson Manickam road, near Matha Nagar Bridge, on 24.11.2011 at about 14.00 hours, a lorry bearing Registration No.TN 09 Y 4167 belongs to the first respondent, came in a high speed and hit on the backside of the two-wheeler, which resulted in causing grievous injuries. Subsequently, he has come forward with the claim petition claiming compensation of



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Rs.8,00,000/- under Section 166 of the Motor Vehicles Act.

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4. The first respondent, who is the owner of the lorry has not contested the claim. The second respondent, who is the insurer of the lorry has contested the claim and contended on the ground that the injured has negligently rode the two-wheeler on the main road, which resulted in causing accident and that the driver of the lorry is not responsible for the accident and they have also disputed the income of the injured and the disability sustained, etc. Hence prays to dismiss the claim.

5. Before the Tribunal, on the side of the petitioners P.W.1 was examined and Exs.P1 to P9 were marked. On the side of the second respondent no oral and documentary evidence marked. The Medical Board has issued the Disability Certificate which is marked as Ex.C1.

6. Based on the evidences placed on record, the Tribunal in Point No.1 has held that the driver of the lorry is responsible for the accident and however, the claimant has not produced his driving licence to show that he was eligible to ride the two-wheeler. Hence, it is held that he



has also contributed to the accident to the extent of 10%. In Point No.2 the Tribunal has quantified the compensation and awarded a sum of Rs.2,43,800/- as compensation.

7. Aggrieved over the contributory negligence fixed on the claimant, the appeal has been filed to set aside the finding of the Tribunal. The Insurance Company has not file any appeal against the award.

8. On perusal of the Award, it shows that the Tribunal has taken a view that since the claimant has not produced his driving licence to ride the two-wheeler, he has also contributed to the accident. The Insurance Company has not taken any defence that the claimant has not entitled to ride the two-wheeler.

9. The facts of the case also shows that while the claimant has riding his two-wheeler in the left hand side of the road, a lorry has came in a rash and negligent manner and hit on the backside of the two-wheeler. The evidence adduced is sufficient to show that there is no contributory negligence for causing the accident. However, since no driving licence has been produced by the claimant, contributory negligence has been fixed on



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him to the tune of 10%.

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10. On perusal of records, it shows that there was no issue relating to non-possession of driving licence on the part of the claimant herein. Without affording any opportunity to produce the driving licence on the part of the claimant, the Tribunal, on its own has held that, the claimant has failed to produce the driving licence. Even, on perusal of cross-examination, the only defence taken by the Insurance Company that the lorry driver was not having valid driving licence. Hence, they are not liable to indemnify the owner of the lorry.

11. This Court is of the view that without giving affording opportunity to the claimant, the Tribunal (*suo-motu*) has held that, the claimant has not possessed valid driving licence and hence, he has also contributed to the negligence. It is not based on any evidence. Hence, the finding of the Tribunal is liable to be set aside. Accordingly, the award passed by the Tribunal is modified to the extent that the second respondent shall pay the entire compensation fixed by the Tribunal in its award.



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12. In the result, this Civil Miscellaneous Appeal is allowed.

The Award and Decree passed in M.C.O.P.No.502 of 2012, dated 31.01.2020 by the Motor Accidents Claims Tribunal/V Judge, Small Causes Judge, Chennai is hereby modified. The finding of the Tribunal in fixing the contributory negligence of 10% on the part of the claimant is hereby set aside. The second respondent - Insurance Company is directed to deposit the total compensation of Rs.2,70,850/- [Rupees Two Lakhs Seventy Thousand Eight Hundred and Fifty only] quantified by the Tribunal with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit (except the default period, if any). On such deposit the claimant is entitled to withdraw the compensation amount. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs.

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No



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To

1.The V Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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



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K.RAJASEKAR,J..

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