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C.M.A. No. 2184 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A. No. 2184 of 2021
and C.M.P. No.12113 of 2021

M/s. TATA AIG General Insurance
Company Limited,
'Rehiya Towers', 9th Floor,
No.177, Anna Salai,
Chennai - 600 002.

... Appellant/ 2nd Respondent

Vs.

1. S. Saravanan

... 1st Respondent/ Petitioner

2. A. Nagarajan

... 2nd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 01.03.2021 made in M.C.O.P. No. 128 of 2018, on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Vellore @ Ranipet.

For Appellant : Mr. J. Michael Visuvasam

For R1 : Mr. C. Prabakaran

For R2 : No Appearance

JUDGMENT



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This Civil Miscellaneous Appeal is filed by the Insurance Company against the Judgment and decree made in M.C.O.P. No. 128 of 2018, dated 01.03.2021 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Vellore @ Ranipet, wherein the Tribunal has awarded compensation for a sum of Rs.2,26,330/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimant is that on 06.05.2018 at about 9:30 hours, the claimant was riding a two-wheeler bearing Registration No. TN-23-CA-1432 at Periyamittur village, while he came near Veterinary hospital of that village, a Tata Ace goods vehicle bearing Registration No. TN-20-AT-9748, belongs to the first respondent was going in front of the two wheeler, and driver has suddenly applied the brake and stopped the vehicle in the middle of the road, hence the claimant hit on the backside of the said Tata Ace vehicle and sustained grievous injuries. A criminal case was registered against the claimant in Crime No.65 of 2018 under section 279



and 337 of I.P.C. on the file of Melpadi Police Station. Due to the injuries sustained, the claimant has come forward with the claim petition seeking compensation for a sum of Rs.7,00,000/- along with interest Under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the Tata Ace goods vehicle bearing Registration No.TN-20-AT-9748 has not contested the claim and remained Ex-parte. The second respondent - insurance company, who is the insurer of the vehicle filed a counter and contended that the claimant was not having a valid driving licence at the time of accident and also ridden the two wheeler in a rash and negligent manner, without maintaining a safe distance, followed the goods vehicle and hit on the rear side and sustained injuries. In this regard, a criminal case was also registered against the rider of the two wheeler, hence, the driver of the Tata Ace goods vehicle is not responsible for the occurrence and he is not a tortfeasor, hence, the insurance company is not liable to pay any compensation to the claimant.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs. P.1 to P.10 were marked, on the side of the respondent,



R.W.1 and R.W.2 were examined and Exs. R.1 was marked.

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6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the Tata Ace goods bearing Registration No.TN-20-AT-9748 is responsible for the accident. In point no.2, the Tribunal has held that there is no violation of policy condition, hence the second respondent - insurance company is liable to pay compensation to the claimant. In point No.3, the Tribunal has quantified and granted compensation for a sum of Rs.2,26,330/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the award and the liability to pay the compensation fixed on the insurance company, this appeal has been filed by the insurance company.

8. The learned counsel appearing for the Insurance Company has submitted that there is ample evidences placed on record before the Tribunal, to show that the claimant was not having a valid driving licence at the time



of accident and without having basic driving skill, the claimant has chosen to ride the two wheeler in State High Way that too in a rash and negligent manner and without maintaining proper or safe distance with the on-going vehicles and hit on the backside of the Tata Ace goods vehicle. Hence, the claimant himself is the tortfeasor and invited the occurrence but this was not properly appreciated by the Tribunal, hence prays to set aside the finding that the driver of the goods vehicle is responsible for the accident and also the liability fixed on the insurance company.

9. Per contra, the learned counsel appearing for the claimant submitted that there is a proper evidence to show that the driver of the Tata Ace goods vehicle has suddenly applied brake and stopped the vehicle in the middle of the road without minding of the vehicles coming back. Hence, the Tribunal has accepted the evidence of the claimant is more proper than the driver of the Tata Ace, hence, the finding of the Tribunal is proper, hence, prays to confirm the award.

10. Heard the submissions made on both sides and perused the



materials available on record:

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11. Before the Tribunal, in the cross examination, the P.W.1 - claimant has admitted himself that he is not having a valid driving licence and the two wheeler is not insured and he also admitted that he rode the two wheeler behind the Tata Ace goods vehicle and hit on its rear side and the F.I.R. was also registered against him. After investigation by the Police, the final report, marked as Ex.R.1 was also filed against the claimant herein.

12. Hon'ble Apex Court in ***Nishan Singh and others vs. Oriental Insurance Co. Ltd. and others [2018 ACJ 1466]***, has considered the Rules and Regulations of the Road and observed that sufficient and safe distance has to be maintained by the vehicle which is preceding the on-going vehicle in order to ensure the safety and necessary response time for its driver in controlling the vehicle at the time of any sudden application of brake or stopping of the on-going vehicle. If there is no such safe distance maintained by the rear side vehicle, then it shall be held that the vehicle coming backside and hit on the rear side of on-going vehicle is also responsible for the accident.



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13. The evidence of P.W.1 - the claimant, is that he was riding a two wheeler with due care and caution, however, the Tata Ace goods vehicle proceeding in front of him had suddenly entered middle of the road and applied brake and he also further contended that he has not ridden the two wheeler very close to the Tata Ace goods vehicle. But, the evidence of R.W.2 - the driver of the Tata Ace goods vehicle bearing Registration No.TN-20-AT-9748 is that on 06.05.2018 at about 9:30 hours, he was driving the Tata Ace goods vehicle from Serkaadu Kootroad to Vallimalai, at that time, an unknown two wheeler has suddenly entered before his vehicle, due to which, he has applied the sudden brake at that time, the claimant's two wheeler, which was coming backside of his vehicle had hit on the rear side of the Tata Ace goods vehicle and thereby the claimant has sustained injuries.

14. The above facts clearly shows that there are totally three vehicles were plying on the road, the first vehicle has suddenly entered before the second vehicle i.e., the Tata Ace goods vehicle, hence the driver of the second vehicle has applied a sudden brake, due to which, the third



vehicle i.e., two wheeler ridden by the claimant had hit on the rear side of the Tata Ace goods vehicle and thereby sustained injuries. If the rider of the two wheeler i.e., the claimant has cautiously rode the two wheeler, the accident may be prevented as well as if the driver of the Tata Ace goods vehicle has driven with due care and caution, the accident might be prevented. Hence, it could not be stated that only the Tata Ace goods vehicle alone is responsible for the accident or else the rider of the two wheeler alone is responsible for the accident. It is also the case that the claimant was not wearing helmet and also not having valid driving licence at the time of occurrence.

15. In view of the above facts, this Court is of the view that there is a contributory negligence on the part of the claimant as well as on the part of the driver of the Tata Ace goods vehicle. Accordingly, this Court is inclined to fix contributory negligence on the part of the claimant to the extent of 50%, hence, the finding of the Tribunal in respect of the liability fixed on the insurance company is modified and contributory negligence in the ratio of 50:50 is fixed on both the claimant and the driver of the Tata Ace goods



vehicle.

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16. With regard to the quantum of compensation, the learned counsel appearing for the insurance company has contended that the compensation awarded by the Tribunal on various heads is on the higher side and prays to modify the same, but, considering the nature of the injuries sustained by the claimant, this Court is of the view that compensation awarded by the Tribunal is just and the same is hereby confirmed. However, the claimant is entitled only for 50% of the compensation (i.e., Rs.1,13,165/-) awarded by the Tribunal due to his contributory negligence as observed by this Court.

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,26,330/- is hereby reduced to 50% on contributory negligence on the part of the claimant hence, the total compensation awarded to the claimant by this Court is **Rs.1,13,165/- [Rupees One Lakh Thirteen Thousand One Hundred and Sixty Five only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the



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default period, if any. The appellant - Insurance Company is directed to deposit the amount awarded by this Court 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 to the credit of M.C.O.P.No.128 of 2018 on the file of the II Additional District Judge, Motor Accidents Claims Tribunal, Vellore @ Ranipet. The appellant - insurance company also given liberty to withdraw the excess amount deposited, if any. On such deposit, the 1st respondent/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

31.10.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:



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1. II Additional District Judge,
Motor Accident Claims Tribunal,
Vellore @ Ranipet.

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

K. RAJASEKAR, J.

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