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C.M.A.No.1968 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1968 of 2023

Jaganathan

...Appellant/Petitioner

Vs.

1.A.Isravelraja,
2.M.V.Sivaraj Karthikeyan
3.The United India Insurance Company Limited
P.B.No.34, C.G.Complex,
No.139 Kumaran Road,
Thiruppur.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 (1) of Motor Vehicles Act, 1988, against the fair and decretal order dated 31.01.2023 passed in MCOP No.2034 of 2017 on the file of the Presiding Officer, Exclusive Motor Accident Claims Tribunal at Tiruppur.

For Appellant : Mr.K.Myilsamy

For Respondents : R1 and R2 – Dispensed with
R3 – M/s.R.Sreevidhya



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J U D G M E N T

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The instant appeal has been filed by the claimant aggrieved by the fact that his claim petition was dismissed by the Tribunal.

2. The appellant had filed the claim petition stating that on 27.08.2017 at about 11.30 A.M, when he was riding a Pulsar Motor cycle bearing Reg.No.TN 33 BM 0991 on the Dharapuram to Kangayam road, a Tipper lorry bearing Reg.No.TN 63 P 2985, belonging to the second respondent and insured with the third respondent herein had come in the opposite direction and rammed into the vehicle ridden by the appellant, as result of which, the appellant sustained serious grievous injuries all over the body and hence, he was entitled to compensation.

3. The first respondent/driver of the Tipper lorry and the second respondent/owner of the Tipper lorry remained ex-parte before the Tribunal.



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4. The third respondent/Insurance Company filed a counter stating that the accident took place only due to the negligence of the appellant; that the Police after investigation had closed the FIR as mistake of fact; that since the appellant is the tort-feaser, they are not liable to pay compensation; and that in any event, the compensation claimed by the appellant was excessive hence, prayed for dismissal of the claim petition.

5. Before, the Tribunal, the appellant examined P.W.1 and P.W.2 and marked six documents as Ex.P1 to Ex.P6. The Disability Certificate issued by the Medical Board, copy of the Charge Sheet, Rough Sketch, Observation Mahazer and Notice issued to the appellant were marked as Exs.X1 to X5. The third respondent/Insurance Company examined R.W.1/Sub Inspector of Police, Uthiyur Police Station and did not mark any document.

6. The Tribunal after taking into consideration, the oral and documentary evidence held that the accident took place only due to the negligence of the appellant and dismissed the claim petition.



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7. The learned counsel for the appellant, submitted that the third respondent/Insurance Company did not examine the driver of the offending vehicle; that the appellant was examined as P.W.1 to prove the manner of the accident; that the Tribunal had erroneously taken into consideration the criminal case records to hold that the appellant's version cannot be accepted. The learned counsel further submitted that the Tribunal ought to have determined the aspect of negligence only based on the evidence let in before it and ought not to have relied on the criminal case records. The learned counsel therefore, prayed for setting aside the order of the Tribunal dismissing the appellant's claim petition.

8. Since the respondents 1 and 2 remained ex-parte before the Tribunal, the learned counsel for the appellant submitted that notice may be dispensed with to the respondents 1 and 2 and made an endorsement to that effect. Hence, notice to the respondents 1 and 2 are dispensed with.



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9. The learned counsel for the third respondent, per contra, submitted that the third respondent had examined the Sub Inspector of Police, Uthiyur Police Station, who had assisted the Investigating Officer and his evidence is clear that the appellant was on the Eastern side of the road running from North to South direction; that the appellant was moving from South to North direction and ought to have stayed on the Western side; that the Rough Sketch Ex.X3, would show that the accident took place on the Eastern side, which clearly establishes that the accident was due to the negligence of the appellant, The learned counsel therefore, prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellant as well as the learned counsel for the third respondent and perused the materials available on record.



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11. The only question involved in the instant appeal is whether the Tribunal was right in holding that the appellant was guilty of negligence and dismissing the claim petition?

12. On perusal of records, it is seen that the appellant had examined himself as P.W.1. The FIR is marked as Ex.P1. It is also been established by the third respondent herein that the FIR was closed as “mistake of fact” and the Investigation Officer found that the accident took place due to the negligence of the appellant. The Rough Sketch also confirms the fact that the accident took place on the Eastern side of the road and the deceased had proceeded from South to North direction. The offending lorry proceeded from North to South and hence, it was on the correct side. There is no dispute with regard to these facts. However P.W.1/appellant in his deposition, before the Tribunal would state that the offending lorry was responsible for the accident. The appellant in his deposition has not stated clearly as to how the accident took place. Though the third respondent had not examined the driver of the offending vehicle, the records would show that the appellant was on the



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wrong side of the road, which resulted in an head on collision with the Tipper

lorry insured with the third respondent. However, this Court is of the view that the accident could have been averted, if the driver of the Tipper lorry insured with the third respondent had exercised due care and caution. The driver of the tipper lorry was also not examined to prove the version of the second respondent. Therefore, the finding of the Tribunal holding that the appellant was only responsible for the accident is erroneous and liable to be set aside. However, this Court is of the view that on account of the violations committed by the appellant, he was predominantly responsible for the accident. Therefore, this Court is of the view that in the facts of this case, it would be just and reasonable to fix 60% contributory negligence on the appellant and 40% on the driver of the Tipper lorry insured with the third respondent. Since the Tribunal had dismissed the claim petition, this Court is of the view that it is desirable that the matter is remitted to the Tribunal, for determining the quantum of compensation on the basis of the negligence apportioned by this Court.



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13. In view of the above:-

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(a) The order passed by the learned Presiding Officer, Exclusive Motor Accident Claims Tribunal, Tiruppur, is set aside

(b) The case is remitted to the Tribunal to determine the just compensation to be awarded to the appellant.

(c) The Tribunal may expedite the said process and in any event complete it within a period of three (3) months from the date of receipt of a copy of this Judgment.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

No Costs.

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dk

Index: Yes/No

Neutral Citation: Yes / No



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Copy to:-

1. The Presiding Officer,
Exclusive Motor Accident Claims Tribunal,
Tiruppur.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

dk

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