



C.M.A. No. 3316 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3316 of 2019

Munira Begum

... Appellant / Petitioner

Vs.

1. Nowshath Basha

2. M/s. Reliance General Insurance
Company Limited,
Shrilakshmi Complex (1st Floor)
Bharathi Street, Omalur Main,
Salem - 4.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 06.03.2019 passed in M.C.O.P. No. 232 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem.

For Appellant : Mr. K. Kuppusamy

For R1 : Dispensed

For R2 : M/s. C. Bhuvanasundari



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant challenging the Judgment and Decree passed in M.C.O.P. No. 232 of 2017, dated 06.03.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem, wherein, the Tribunal has held that the accident was caused due to the negligence act on the part of the first respondent and driver of the unknown car and granted a compensation for a sum of Rs.2,23,000/- in which, 50% of the amount Rs.1,11,500/- has to be paid by the second respondent - insurance company, who has to indemnify the first respondent for his 50% contributory negligence.

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

3. The case of the claimant is that on 19.06.2017 about 11:30AM, the claimant has travelled as a pillion rider along with the first respondent, who is her husband in a motor cycle bearing Registration No. TN-30-BF-6433 on the Omalur main road. While the motor cycle reached near Fiat Car Showroom on the Omalur Main Road at that time, an



unknown car driven by its driver in rash and negligent manner, came near the two wheeler while over taking the first respondent motor cycle, which prompted the first respondent to turn the motor cycle towards left hand side, which resulted in losing control of the motor cycle, and fell down, which resulted in causing serious injuries to the claimant. A criminal case was also registered against the unknown car in Crime No.437 of 2017 under section 279, 337 and 338 of I.P.C. in Sooramangalam Police Station and after investigation, Final Report was filed, in which, it is stated that the accident was occurred due to the rash and negligent riding by the first respondent. For the injuries sustained by the claimant, a claim petition was filed claiming a compensation for a sum of Rs.5,00,000/- against the first and second respondent.

4. Before the Tribunal, the first respondent, who is the husband of the claimant has filed counter and contended that his motor cycle bearing Registration No. TN-30-BF-6433 has been properly insured and he is also having proper driving licence at the time of accident. The first respondent has also admitted that due to his negligent act, the accident was taken place, hence, prays to admit the claim petition and to direct the second respondent -



insurance company to pay the compensation to the claimant.

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5. The learned counsel for the second respondent - Insurance Company has filed a counter and contended that the claimant shall prove the injury, income and also the fact that the manner in which the accident has taken place. There is no permanent disability caused to the claimant. In the FIR, it is also stated that an unknown car also involved in the accident. Hence, the claimant is not entitled to claim compensation from the second respondent and the compensation claimed under various heads is also on the higher side and prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.5 were marked and on the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R.1 to R.3 were marked and also Ex.X.1- Disability Certificate issued by the Government Hospital Medical Board and Ex.X.2-X-ray of the claimant were also marked.

7. Based on the evidence placed on record, the Tribunal in point No.1, has considered the allegation of the negligent act on the part of the



first respondent and the unknown car and concluded that the negligent act on the part of the first respondent and the driver of the unknown car are jointly responsible for the accident and hence, fixed contributory negligence in the ratio of 50:50. In point No.2, the Tribunal has quantified and granted a compensation for a sum of Rs.2,23,000/- in which, 50% of the amount Rs.1,11,500/- has to be paid by the second respondent - insurance company, who has to indemnify the first respondent for his 50% contributory negligence.

8. Aggrieved over the award of fixing the negligence in the ratio of 50% on the first respondent and 50% on the unknown car, the claimant has come forward with this appeal seeking to set aside the above finding.

9. The learned counsel appearing for the claimant has submitted that there is no evidence placed on record to show that an unknown car also involved in the accident. It is specifically admitted case that, the negligent act of the first respondent alone is responsible for the accident and it is also proved that, the first respondent pleaded guilty and paid fine and the same was not properly appreciated by the Tribunal. Hence, prays to set aside the



above finding.

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10. The learned counsel appearing for the Insurance company has submitted that the Tribunal has not properly appreciated the evidence to prove that the accident was occurred only due to the involvement of the unknown car driven by its driver in rash and negligent manner and erred in fixing negligence of 50% on the part of the first respondent instead, the Tribunal ought to have fixed the entire liability on the driver of the unknown car. However, the Tribunal considering the case that the first respondent has pleaded guilty in the criminal case registered, the Tribunal has fixed contributory negligence in the ratio of 50:50 on both the first respondent and the driver of the unknown car, hence, prays to confirm the same.

11. Heard the submissions made on both sides and perused the materials placed on record.

12. Before the Tribunal, to prove the negligent act on the part of the first respondent, the claimant has relied on the F.I.R., final report and the judgment passed in the criminal case in Crime No.437 of 2017 numbered as S.T.C. 290 of 2018, which are marked as Ex.P.1, Ex.R.1 and Ex.R.2



respectively. On perusal of the F.I.R., marked as Ex.P.1, shows that the complaint was given by the claimant herein, in which, she has stated that on 19.06.2017 at about 11:30 hours, she was travelling along with the first respondent, who is her husband, in a motor cycle bearing Registration No.TN-30-BF-6433 and while they reached near Fiat Car company on the Omalur Main Road, an unknown car came in rash and negligent manner, over took the motor cycle in which, the claimant and the first respondent travelled, by blowing sudden 'Horn' and due to this sudden crossing of the unknown car in rash and negligent manner, the first respondent has lost his control over the motor cycle and both fell down and sustained serious injuries. Subsequently, this case was investigated and a final report was filed, which is marked as Ex.R.1, which shows that the first respondent ridden the motor cycle in rash and negligent manner, so, he lost his control over the vehicle and resulted in accident. The first respondent also pleaded guilty and paid the fine which is marked as Ex.R.2

13. Before the Tribunal, P.W.1 - the claimant has also adduced oral evidence stating that while she was travelling in the two-wheeler along with the first respondent, a car came in a rash and negligent manner, due to which



the first respondent has lost his control over the vehicle and both were fell down and sustained injuries. This shows that the case of the claimant is that the first respondent is not responsible for the accident but only the driver of the unknown car is responsible for the accident. She has also not stated that the first respondent is responsible for the accident.

14. The first respondent adduced his side evidence and stated that while he was driving the vehicle on the Omalur to Salem road near Fiat car company, an unknown car which came behind, has crossed them in high speed by blowing sudden 'horn', due to which, he turned his motor cycle towards left hand side and lost his control over and fell down along with the claimant. He has also stated that he had pleaded guilty and paid fine in the criminal case registered. Hence, it is clear that due to the sudden entry of the car, the first respondent has lost his control over the motor cycle and resulted in accident. The evidence of P.W.1 also shows that the car has suddenly came in the road in rash and negligent manner, which resulted in accident and all these facts considered by the Tribunal and held that though, it is stated by the first respondent that he has pleaded guilty for the accident but



an unknown car is also responsible for the accident. By considering all the above factual aspects, the Tribunal has fixed the contributory negligence in the ratio of 50:50 on both the first respondent and the driver of the unknown car.

15. It is true that pleading guilty by the first respondent in the Criminal case is not a conclusive proof for proving the nature of accident before the claims Tribunal, but it is a relevant fact to be considered. However, in this case, the first respondent is the husband of the claimant, even though, she claims that unknown car driver is responsible for the accident, first respondent has come up with the case that he is ready to accept the blame that he lost his control over the vehicle which resulted in accident and caused injuries to her. However, the evidence deposed by both P.W.1 and R.W.1, shows that due to sudden crossing of an unknown car, which was driven in rash and negligent manner is also responsible for the accident. Hence, this Court is not inclined to take different view than the view taken by the Tribunal, which is based on the inseparable evidence and probability. Hence, the appeal filed by the claimant is not sustainable and hence this Court is inclined to confirm the finding and award of the Tribunal.



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16. In the result, this Civil Miscellaneous Appeal is dismissed. The Judgment and Decree passed in M.C.O.P. No. 232 of 2017, dated 06.03.2019, by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem is hereby confirmed. The Second Respondent - Insurance Company is directed to deposit the amount awarded by the Tribunal 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. 232 of 2017 on the file of the Chief Judicial Magistrate Court, Salem. On such deposit, the appellant is permitted to withdraw the same by making appropriate application before the Tribunal and the Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimant. There shall be no order as to costs in the present appeal.

08.09.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:



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1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Salem.

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

K. RAJASEKAR, J.

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