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C.M.A. No.2002 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2002 of 2023 &
CMP.No.19454 of 2023

The Manager,
Reliance Gen. Ins.Co.Ltd.,
6, Haddows road, Reliance House, 6th Floor,
Nungambakkam, Chennai – 600 006.

....Appellant

Vs.

1.V.Selvam,
S/o. Venu,
No.3, Savadi Street, Uthukottai,
Thiruvallur District.

2. Mr.S.Gopalakrishnan,
S/o. M.Sivaraj,
No. 351A, Vigneswara Nagar, Polivakkam,
Thiruvallur District.

.... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 21st September 2021 passed in M.C.O.P No.58 of 2019 by the Motor Accident Claims Tribunal No. II, Special Sub Court at Thiruvallur.



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For Appellants : Ms.C.Bhuvanasundari

For Respondent : R1- Mr.Anand and Suryas
R2- remained exparte before
Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the finding with regard to negligence and quantum of compensation granted by the Tribunal in the award dated 21.09.2021 made in MCOP. No.58 of 2019 on the file of the Motor Accident Claims Tribunal No.II, Special Sub Court at Tiruvallur.

2.The 1st respondent/claimant filed M.C.O.P. No.58 of 2019 on the file of Motor Accident Claims Tribunal No.II, Special Sub Court at Tiruvallur claiming a sum of Rs.40,00,000/- as compensation towards the injury sustained by him in a road traffic accident held on 04.01.2019.

3. According to the 1st respondent/claimant, on 04.01.2019, at about 4.00 p.m., while the 1st respondent was travelling as a passenger in a share



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auto bearing Regn.No.TN-20-CK-4819 on the left side of Uthukottai to Tiruvallur Road near DMC Company, Othappai, a Renault Kwitd Car bearing Regn. No.TN-20-CP-6619 belonging to the 2nd respondent, coming on the same road towards Tiruvallur, driven by its driver in a rash and negligent manner, hit against the share auto, due to which, the share auto capsized on the left side of the road, as a result, the 1st respondent/claimant sustained grievous injuries and fractures in femur bone, left leg and right leg. The claimant was aged 41 years and was working as clerk at R.M.D. Engineering College and was earning Rs.12,550/- per month and hence he was entitled for compensation.

4. The 2nd respondent remained exparte before the tribunal

5. The appellant/insurance company filed counter denying the averments made by the 1st respondent in the claim petition, including the age, occupation, income and manner of accident. According to the appellant/insurance company, the car bearing Regn.No.TN-20-CP06619 is not insured with them. The accident was caused only due to rash and negligent



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driving of share auto driver who carried more than 10 persons. It also denied the period of treatment, medical expenses and disability sustained by the 1st respondent. Therefore, the insurance company is not liable to pay any compensation and thus prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as PW1 and marked documents Ex.P.1 to Ex.P.15. On the side of the appellant, RW1 was examined and Ex.R.1 was marked. Apart from that court exhibits Ex.C.1 and Ex.C.2 were marked.

7. The Tribunal, on considering the evidence and documents filed on both sides, held that the accident occurred due to the rash and negligent driving of the driver of the car belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.13,09,480/- as compensation to the 1st respondent.

8. The learned counsel for the appellant submitted that the award of Tribunal is erroneous in as much as no contributory negligence was fixed on



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the first respondent/claimant, although there is evidence to show that the driver of the share auto, in which, the 1st respondent/claimant travelled, did not possess valid driving license. The learned Counsel further submitted that the quantum of compensation awarded by the Tribunal is also excessive and prayed for allowing the appeal.

9. The learned Counsel appearing for the first respondent/claimant, per contra, submitted that there is no evidence to show that the driver of the share auto in which 1st respondent travelled as a passenger did not have a valid driving license. He further submitted that the Tribunal after taking into consideration the evidence on record, had rightly fixed the entire negligence on the owner of the car/2nd respondent herein and directed the appellant/insurance company to pay the compensation to the 1st respondent and thus prayed for dismissal of the appeal.

10. On perusal of the records, this Court finds that the Tribunal, after taking into consideration the evidence on record namely the deposition of PW1, the evidence of eye witness to the accident, came to the conclusion that



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the accident took place due to the rash and negligent driving of the car belonging to the 2nd respondent herein. The learned counsel for the appellant insurance company was unable to point out any infirmity with regard to the said finding of the Tribunal. Further, there is no evidence let in on the side of the appellant/insurance company to prove that the Share Auto driver did not possess a valid driving license. Hence, the said finding of the Tribunal is confirmed.

11. As regards compensation, this court finds that the first respondent was working as a clerk in RMD Engineering College and in order to substantiate his avocation and income, he had marked Ex.P12 - staff identity card and Ex.P13 - salary certificate. The Tribunal, after taking into consideration all those documents had fixed the income of the 1st respondent at Rs. 11,195/- per month and awarded compensation on that basis. Thus, there is no infirmity in the said finding of the Tribunal. That apart, this court finds that the compensation awarded under the other heads are also just and reasonable and no interference is called for.



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12. Therefore, the appeal is liable to be dismissed and accordingly, the same is dismissed confirming the award passed by the Tribunal along with interest and cost. The appellant is directed to deposit the compensation amount awarded by the Tribunal within the period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent is permitted to withdraw the same along with interest and costs, after adjusting the amount already withdrawn, if any, on making appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

29.08.2023

msr

Index:yes/no

speaking order/non speaking order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal No. II, Special Sub Court at Thiruvallur.

2. The Section Officer

VR Section,

High Court, Madras.

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SUNDER MOHAN, J

msr

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