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CMA.No.2403 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.Nos.2403 of 2018 & 4758 of 2019

and CMP.No.18278 of 2018

M/s.Reliance General Insurance Company Limited,
3rd Floor, No.408, Perundurai Road,
Erode - 638 011.

...Appellant in CMA.No.2403/2018
& 3rd Respondent in CMA.No.4758/2019

..Vs..

1. Sahul Hameed

...Appellant in CMA.No.4758/2019 &
1st Respondent in CMA.No.2403/2018

2. Madeshwaran

..1st Respondent in CMA.No.4758/2019 &
...2nd Respondent in CMA.No.2403/2018

3.Loganathan

.. 2nd Respondent in CMA.No.4758/2019 &
...3rd Respondent in CMA.No.2403/2018

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.12.2017 made in MCOP.No.47 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Court, Sankagiri)

For Appellant in : Mr.E.Rajadurai

CMA.No.2403/2018

for M/s.M.B.Gopalan Associates



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For Respondents in : Mr.C.Paraneedharan for R1
CMA.No.2403/2018 No appearance for R2

COMMON JUDGMENT

The appeal in CMA.No.2403/2018 has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 07.12.2017 in M.C.O.P.No.47 of 2012 passed by the Motor Accidents Claims Tribunal (Subordinate Court, Sankagiri).

The appeal in CMA.No.4758/2019 has been filed by the claimant for enhancement of the compensation made in the award dated 07.12.2017 passed in M.C.O.P.No.47 of 2012 by the Motor Accidents Claims Tribunal (Subordinate Court, Sankagiri).

2. The facts of the case briefly are as under:

On 04.11.2011 at about 4.30 p.m., the claimant was going near burial ground, Sooriyampalayam, Tiruchengode, at extreme left side of the Tiruchengode to Veppadai Road by a vehicle bearing TN-34-M-8122 (HERO HONDA SPLENDER PRO) as a pillion rider, the driver of the



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vehicle bearing Regn.No.TN-34-E-5214(TVS XL SUPER) drove the vehicle in a rash and negligent manner and hit against the claimant's vehicle and the claimant fell down on the ground and thereby he sustained fracture on his right leg and abrasion all over body. Claimant was immediately taken to the Government Hospital, Tiruchengode and shifted to Krishna Hospital, Tiruchengode, admitted as an in-patient on 04.11.2011. Due to the said impact, the claimant sustained grievous injuries and mental agony. In view of the same, the claimant seeks compensation of Rs.5,00,000/- before the Tribunal. After trial, the claimant was awarded a sum of Rs.5,40,000/- as compensation fixing contributory negligence on the 2nd respondent and Insurance Company in the ratio of 30% : 70% respectively and thus directing the appellant/Insurance company to deposit a sum of Rs.3,78,000/- to the claimant as compensation. Being aggrieved over the aforesaid award, the appellant/Insurance company has filed CMA.No.2403/2018 seeking for exoneration of the liability fixed on them. Similarly, the claimant has filed CMA.No.4758/2019 for enhancement of the award of the Tribunal.

3. The learned counsel for the appellant/Insurance Company would submit that the award of the Tribunal is contrary to law, weight of evidence



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and probabilities of the case. It has grossly erred in holding that the second respondent is liable only to the extent of 30% whereas oral and documentary evidence clearly reveals that he was entirely responsible for the accident. The Tribunal has not given due and adequate weight to the FIR that was registered solely against the second respondent, *prima facie* establishing his fault. He further submitted that the appellant ought to have been exonerated from liability since the rider of the insured TVS 50 had no valid driving license. It failed to appreciate that the driving of vehicle without license was gross violation of MV Act and the policy of insurance as a result of which the appellant had no liability for the claim. It has not properly appreciated the legal and factual position. The quantum of compensation awarded is excessive and not in consonance with the facts and circumstances of the case. The various heads of award are not justified in the light of the nature of injuries and other relevant aspects of the case. Hence, he prays to set aside the award of the Tribunal.

4. The learned counsel for the claimant has submitted that the order passed by the Tribunal is against the established principles and rulings of



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the High Courts and the Supreme Court. He further submitted that after being discharged from the hospital, the claimant could not do his work as before. He lost his earning power. PW2 / Doctor examined the claimant and assessed 55% of permanent disability which has been marked as Ex.P8 before the Tribunal. He is taking further treatment and periodical check up . But the Tribunal has awarded very meagre amount under the heads of attender charges, loss of income, transport and further medical expenses. No amount has been granted under the head of loss of amenities. Stating so, he prays for enhancement of the Award of the Appeal.

5. Heard the learned counsel for the Insurance Company and the learned counsel for the claimant and perused the entire documents produced before this Court.

6. During the trial, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and 13 documents were marked as Ex.P.1 to Ex.P.13. On the side of the Insurance Company, R.W.1 was examined and Ex.R1 to Ex.R6 were marked as documents.



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7. On perusal of the award, it is seen that the Tribunal has fixed the liability in the ratio of 30% : 70%. The respondents 2 and 3 in CMA.No.2403 of 2018 remained exparte before the Tribunal. There is no contra evidence on the side of the Insurance Company. It is to be noted that the rider of the motor cycle bearing Regn.No.IN-34-M-8122 did not possess valid driving license at the time of accident that occurred on 04.11.2011. The claimant was travelling as a pillion rider and the rider of the TVS XL SUPER had come out his path and hit against the claimant's vehicle. The riders of the two vehicles are responsible for the accident. It is seen that the FIR has been laid only against the TVS XL Super and rider of the Hero Honda Splendor has not possess valid driving license at the time of accident which is a gross violation of the Motor Vehicles Act. The sketch prepared by the Enquiry Officer is marked as Ex.P4, in which, no pits or holes has been mentioned in the road. Hence both the riders have caused the accident. The second respondent had travelled in the bright day time and able to see the things clearly coming in the opposite direction. In the event of both the



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parties are liable for the accident, the ratio of contributory negligence has to be fixed in accordance with the law.

8. After considering the aforesaid all aspects, the Tribunal has fixed the liability in the ratio of 30% : 70% on the driver of the vehicle and Insurance Company respectively and it has directed the Insurance company and the driver of the vehicle to pay a sum of Rs.3,78,000/- and Rs.1,62,000/- respectively as compensation to the claimant.

9. After considering the aforesaid facts and circumstances of the case and on perusal of the entire records, it is seen that as per the deposition of PW1, the claimant travelled as a pillion rider in the motor cycle rode by the third respondent from Tiruchengode to Veppadai Road and the TVS XL Super which was coming on the opposite direction dashed against each other and that the rider of the insured Hero Honda Splendor had no valid driving license, this court is inclined to modify the ratio of liability as 60% : 40% fixing on the Insurance company and the driver of the vehicle respectively. In other words, the compensation awarded by the Tribunal is modified by changing the ratio on the negligence aspect in which 60% of



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the award amount shall be borne by the Insurance Company and the balance 40% of the award amount shall be borne by the driver of the vehicle. Other aspects of the award of the Tribunal shall remain the same.

10. In the result,

(i) The CMA.No.2403 of 2018 is partly allowed. In view of the same, CMA.No.4758 of 2019 is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(ii) The Insurance Company is hereby directed to pay the 60% of the award amount which works out to Rs.3,24,000/- and the driver of the vehicle is directed to pay the 40% of the award amount which works out to Rs.2,16,000/- together with interest @ 7.5% p.a. from the date of petition till the date of deposit, to the credit of M.C.O.P.No.47 of 2012 on the file of the Motor Accident Claims Tribunal, (Subordinate Court, Sankagiri) within a period of six weeks from the date of receipt of copy of the Judgment. On such deposit being made, the Tribunal is directed to transfer the award



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amount along with accrued interest to the bank account of the claimant through RTGS within a period of two weeks thereafter.

19.04.2023

Index: Yes/No
Internet: Yes/No
gv

To

- 1 The Motor Accidents Claims Tribunal
(Subordinate Court, Sankagiri)
2. The Section Officer
V.R.Section, High Court of Madras.



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CMA.No.2403 of 2018

A.A. NAKKIRAN, J.

gv

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