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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1078 OF 2023

and

C.M.P(MD)No.14826 of 2023

M/s.United India Insurance Company Limited,
represented by its Branch Manager,
having office at No.61/2694,
First Floor(Indian Bank Upstairs),
South Main Road,
Thanjavur.

:Appellant/Second Respondent

.VS.

1.Sankaranarayanan

:Ist Respondent/Claim Petitioner

2.S.Kalaiselvan

: Second Respondent/First
Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award made in M.C.O.P.No.387 of 2016, dated 27.1.2023, on the file of the Motor Accidents Claims Tribunal(Special Subordinate Court), Tiruchirappalli.

For Appellant

:Mr.M.Arjun Varman

For Respondent-1

:Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award passed in M.C.O.P.No.387 of 2016, dated 27.01.2023, on the file of



the Motor Accidents Claims Tribunal(Special Subordinate Judge), Thiruchirappalli. The first respondent herein filed the above claim petition claiming a sum of Rs.9 lakhs as compensation for the injuries and disability suffered by him in the road accident.

2.The case of the first respondent/claimant is that on 26.12.2015 at about 9.30 p.m.when he was riding his motor cycle bearing Registration No. TN 48 L 7837 from east to west in Trichy to Salem Main Road. When he was coming near Rettai Mandapam, Nochiam, a Tavera car bearing Registration No. TN 49 AH 2851 belong to the second respondent, came from opposite direction ie, west to east in a rash and negligent manner and dashed against the two wheeler. As a result of the accident, the first respondent suffered injuries all over the body including right hip and left neck femur joint fracture, left leg above ankle fracture and left leg toe fracture and also injuries at left ear. He suffered permanent disability. He was working as a Cook before the accident and earning a sum of Rs.30,000/- per month and after the accident he is not in a position to work as before. Thus the claim petition.

3.In the counter filed by the appellant, the manner of the accident is disputed. It is said that the rider of the two wheeler



namely, the first respondent had driven the two wheeler in a rash and negligent manner and suddenly crossed the road and dashed against the car bearing Registration No. TN 49 AH 2851. since he was responsible for the accident, FIR was registered against the driver of the two wheeler. The nature of the injuries and disability said to have been suffered are disputed. The compensation claimed is excessive.

4. During enquiry before the Tribunal, on the side of the Petitioner, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondents, R.W.1 was examined and summoned witnesses were examined as R.W.2 and R.W.3 and no document was marked. The Disability Certificate was marked as Court Document/Ex.C1.

5. Considering the oral and documentary evidence, the learned Tribunal found that the claimant/first respondent had also contributed to the accident at 50%. Taking into consideration all the other aspects like injuries, medical treatment, medical bills, disability suffered, awarded a sum of Rs.3,21,260/-. Then deducted 50% of the award amount towards the contributory negligence on the part of the first respondent and finally awarded a sum of Rs.



1,60,630/- as compensation in favour of the first respondent.

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6.This award is being challenged by the learned counsel for the appellants mainly on the ground that the accident had happened out and out and the total irresponsible and negligent act of the rider of the two wheeler. Both the vehicles have been going in the highway. The second respondent vehicle was going from west to east direction keeping its left side ie., northern side of the road. The first respondent was coming from east to west, had taken a sudden turn, without giving any indication, towards north to reach Pachur Pirivu Road, on the north to east-west road and dashed against the side of the car bearing Registration No. TN 49 AH 2851. Therefore the Mannachanallur Police had registered an FIR against the rider of the two wheeler. However, the Tribunal has given a wrong finding that in accident cases, strict proof of negligence is not required. Quantum of compensation awarded is excessive and thus prays for setting aside the award passed by the Tribunal.

7.In response, the learned counsel for the first respondent submitted that the Tribunal had applied correct proposition of law with regard to the fixation of liability and finding that the first respondent had also contributed to the accident, fastened the



liability on him and deducted 50% of the compensation amount. In accident cases strict proof of negligence as required in criminal cases, is not required. Therefore, he prays to confirm the award passed by the Tribunal.

8.This Court considered the rival submissions made on either side and perused the records.

9.It is not in dispute that the accident involved the two wheeler bearing Registration No. TN 48 L 7837 and Tavera Car bearing Registration No.TN 49 AH 2851 and the accident had happened at about 21.30 p.m on 26.12.2015 in Trichy to Salem Main Road near Rettai Mandapam, Nochiam. In the accident, the first respondent suffered injuries. The learned counsel for the appellant brought to the notice of this Court the evidence of P.W.2 to show that P.W.2 was not able to pin-point as to who was responsible for the accident. He also produced the evidence of R.W. 1, the driver of the vehicle bearing Registration No. TN 49 AH 2851 to show that it was the two wheeler driver who had come in a rash and negligent manner and hit against the car on its left side.

10.The accident had happened in a highways.The first



respondent in his proof affidavit stated that when he was riding two wheeler from east to west near Nochiam Rettai Mandapam, the car bearing Registration No. TN 49 AH 2851 come from the opposite direction in a rash and negligent manner, came in the wrong side of the road and hit against the two wheeler. Evidence of R.W.3, driver of the Tavera Car is not specific with regard to the manner in which the accident had happened. He stated that when he reached Rettai Mandapam, a person had come in a two wheeler had dahsed against the left side of the car. There is no specific evidence that the two wheeler rider had come to the wrong side of the road and hit against the car. Of course, the FIR was filed against the rider of the two wheeler. It is settled propostiion of law, as found by the learned Tribunal, that in claims cases, strict proof of negligence of the driver of the offending vehicle is not necessary. This Court finds from the award passed by the Tribunal that the two wheeler rider was also 50% responsible for the accident. Therefore, this Court is of the considered view that the Tribunal taking into consideration all the relevant aspects had apportioned rightly the liability at 50:50 on the rider of the two wheeler and the driver of the Tavera Car bearing Registration No. TN 49 AH 2851.

11.Considering the nature of the injuries and the disability



suffered by the injured namely, the first respondent, the award of Rs.1,60,630/- after deducting 50% of the award amount towards contributory negligence on the part of the first respondent in causing the accident, cannot be considered as excessive. This Court finds that there is no valid grounds made out for interference in the award passed by the Tribunal and as such, there is no merit in the appeal.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.387 of 2016, dated 27.01.2023, on the file of the Motor Accidents Claims Tribunal(Special Subordinate Judge), Thiruchirappalli stands confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.11.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn



To

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1. The Motor Accidents Claims Tribunal
(Special Subordinate Court),
Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)NO.1078 OF 2023
and
C.M.P(MD)No.14826 of 2023**

02.11.2023