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CMA.Nos.2397 of 2024 and 2593 of 2022

and C.M.P.No.19043 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.2397 of 2024 and 2593 of 2022

and

C.M.P.No.19043 of 2024

C.M.A.No.2397 of 2024

The New India Assurance Company Limited,

Represent by its Branch Manager,

Opposite to New Bus Stand,

Perambalur - 621 212.

Now at Third Party Claims Hub,

No.232, NSC Bose Road,

Chennai - 600 001.

... Appellant

VS.

1.Rani

2.Manickam

... Respondents

C.M.A.No.720 of 2021

Rani

... Appellant

VS.

1.Manickam



CMA.Nos.2397 of 2024 and 2593 of 2022
and C.M.P.No.19043 of 2024

2.The New India Assurance Company Limited,

Represent by its Branch Manager,

Opposite to New Bus Stand,

Perambalur - 621 212.

Now at Third Party Claims Hub,

No.232, NSC Bose Road,

Chennai - 600 001.

... Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 22.07.2022 in M.C.O.P.171 of 2020 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

In C.M.A.No.2397 of 2024

For Appellant : Mr.R.Rajesh

For R1 : Mr.P.Parthikannan

In C.M.A.No.720 of 2021

For Appellant : Mr.P.Parthikannan

For R2 : Mr.R.Rajesh



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COMMON JUDGMENT

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The appellant, the New India Assurance Company Limited in C.M.A.No.2397/2024 is the second respondent in M.C.O.P.171 of 2020 on the file of the Motor Accident Claims Tribunal, Perambalur, and the appellant in C.M.A.No.2593/2022 is the claimant in the said petition.

2. The claimant filed the above said claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the injuries sustained by her, in a road accident that occurred on 24.05.2020.

3. The brief case of the appellant / claimant is as follows :

On 24.05.2020, the claimant was travelling as a pillion rider in TVS XL two wheeler bearing Registration Number TN-55-X-3658 on Nakkasalem - Chettikulam Road and at about 7.45 a.m., a speeding Ashok Leyland Heavy Goods lorry bearing Registration Number TN-46-Q-7827 came in the opposite direction and hit the two wheeler, as a result of which, the claimant sustained injuries all over her body. She was immediately rushed to Government Hospital, Perambalur. After getting



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first aid in the hospital, she got herself admitted in Atlas Hospital, Trichy for further treatment.

3.1. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-46-Q-7827 was the cause of the accident and that since the said vehicle was insured with the New India Assurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation to her.

4. In the Tribunal, the owner of the lorry remained absent and was set *ex parte*. The appellant, the New India Assurance Company Limited resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 22.07.2022, fastened negligence on the part of the driver of the lorry bearing Registration Number TN-46-Q-7827 and the rider of the two wheeler in the ratio 50:50 and awarded compensation of Rs.4,60,125/- (50% of the award amount i.e. Rs.9,20,251/-) to the claimant together with interest at the rate of 7.5%



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per annum from the date of petition till the date of realisation.

6. Challenging the contributory negligence fastened on the part of both the vehicles in the ratio 50:50 the present appeals are filed.

7. Heard Mr.R.Rajesh, learned counsel appearing for the Insurance Company and Mr.P.Parthikannan, learned counsel appearing for the claimant.

8. It is seen from the records that the FIR (Ex.P1) was registered against the driver of the lorry bearing Registration Number TN-46-Q-7827. The claimant examined herself as P.W.1 and she has deposed that the driver of the lorry was rash and negligent in driving his vehicle. On the other hand, Ajithkumar (R.W.2) the driver of the lorry in his evidence had deposed that the rider of the two wheeler came in the opposite direction rashly and negligently and hit his lorry. Since there is a head-on collision between two vehicles, the Tribunal had fastened negligence on the part of both the vehicles in the ratio 50:50.



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9. However, it is pertinent to point out that the claimant was not the rider of the two wheeler and FIR was registered against the driver of the lorry. Moreover, the lorry is a heavy motor vehicle and the driver of the lorry should be careful while driving his vehicle. He should see on all the four sides of the road while moving his vehicle. In the instant case, the evidence of the claimant is clear as to the rash and negligent driving of the driver of the lorry. Nothing useful was suggested to the claimant during the course of cross examination to discredit or disbelieve her version. Merely because the rider of the two wheeler did not possess a valid driving license on the date of accident, the Tribunal was wrong in deducting 50% of the amount from the total compensation awarded to the claimant who is only a pillion rider. It is also settled that when there are two tort-feasors, the claimant can proceed against any of them and in the instant case, the claimant has chosen to proceed against the owner of the lorry and his insurer.

10. There is no dispute with regard to the quantum of compensation. The Tribunal after taking into consideration various aspects of the case had awarded just compensation of Rs.9,20,251/-.



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11. In the result,

- i. C.M.A.No.2397 of 2024 is dismissed and C.M.A.No.2593 of 2022 is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. The contributory negligence fastened on the part of the claimant is set aside.
- iii. The New India Assurance Company Limited, Chennai, is directed to deposit the compensation amount, i.e., Rs.9,20,251/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.171 of 2020 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order.
- iv. On such deposit being made, the claimant is at liberty to withdraw the same, after following due process of law.

15.10.2024



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Index : Yes/No

Speaking/Non-speaking order
mtl

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Perambalur.

2.The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

mtl



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