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C.M.A.No.1343 of 2023
and C.M.P.No.13495 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1343 of 2023
and
C.M.P.No.13495 of 2023

The Manager,
M/s. Iffco-Tokio General Insurance Company Limited,
'Srinivasa Arcade',
First Floor,
No.9/4, Advaita Ashram Road,
Salem – 636 004.

...Appellant

.Vs.

1. C.Bharathidasan

2. Tmt. Kanimozhi

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 14.11.2022 in M.C.O.P.143 of 2020 on the file of the Motor Accidents Claims Tribunal, Special Court No.II, Jayangondam.

For Appellant	: Mr.J.Michael Visuvasam
For R1	: Mr.N.Rajavannien
For R2	: No appearance



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JUDGMENT

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The appellant, the Iffco-Tokio General Insurance Company Limited is the second respondent in M.C.O.P.143 of 2020 on the file of the Motor Accident Claims Tribunal, Jayangondam. The first respondent filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.30,00,000/- for the injuries sustained by him in a road accident that took place on 07.04.2018.

2. The brief case of the claimant is as follows :

On 07.04.2018, the claimant was riding his two wheeler bearing Registration No. TN-61-J-9301 on T.Palur - Suthamalli Road. When he was nearing Saravana Mahal, a TVS XL 100 two wheeler bearing Registration Number TN-61-P-0322 which was going ahead of him suddenly turned right hand side and on seeing a speeding vehicle coming in the opposite direction took a left turn, as a result of which, the claimant hit the two wheeler bearing Registration Number TN-61-P-0322 and sustained injuries all over his body.



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3. According to the claimant, the rash and negligent riding of the rider of the two wheeler bearing Registration Number TN-61-P-0322 belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, the Iffco-Tokio General Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the two wheeler and the Insurance Company Limited contested the claim petition by filing their counter.

5. The Tribunal vide its orders dated 14.11.2022 after analysing the evidence on record, fastened negligence on the part of the two wheeler bearing Registration Number TN-61-P-0322 and since the rider of the two wheeler did not have a driving licence, the Tribunal directed the appellant Insurance Company to pay the compensation of Rs.3,32,025/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation in the first instance, and then recover 10% of the said amount from the owner of the vehicle.



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6. Challenging the orders passed by the Tribunal, the present appeal is filed by the appellant, the Iffco-Tokio General Insurance Company Limited.

7. Heard Mr.J.Michael Visuvasam, learned counsel for the appellant and Mr.N.Rajavannien, learned counsel for the first respondent.

8. Mr.J.Michael Visuvasam, learned counsel appearing for the appellant would contend that since the rider of the two wheeler was not having a valid driving license on the date of accident, the Tribunal should have directed the Insurance Company to pay the award in the first instance and then recover the same from the owner of the two wheeler. On the other hand, the Tribunal had directed the Insurance Company to recover only 10% of the award amount from the owner of the two wheeler bearing Registration Number TN-61-P-0322. He also contended that the police after conducting investigation had filed a referred charge sheet against the rider of the two wheeler and in the circumstances, the Tribunal was wrong in fastening negligence on the part of the rider of the two wheeler TN-61-P-



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9. *Per contra*, Mr.N.Rajavannien, learned counsel appearing for the first respondent contended that the Tribunal after analysing the evidence on record, had rightly concluded that the rider of the two wheeler bearing Registration Number TN-61-P-0322 was rash and negligent in riding her vehicle. He therefore, prayed for dismissal of the appeal.

10. It is seen from the final report (Ex.R1) that the Sub Inspector of Police, T.Palur Police Station filed a referred charge sheet against the rider of the two wheeler bearing Registration Number TN-61-P-0322. The manner of accident shows that both the vehicles were rash and negligent on the road. The present claimant was coming behind the two wheeler bearing Registration Number TN-61-P-0322 and his contention is that the rider of the said two wheeler that was going ahead of him suddenly turned left hand side on seeing a speeding vehicle coming in the opposite direction. The police after conducting investigation had filed a Referred charge sheet stating that the rider of the two wheeler bearing Registration Number TN-61-P-0322 was not rash and negligent in riding the vehicle. The report of the



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police cannot be wholly relied upon for the purpose of fixing negligence. As already observed, both the vehicles were at fault and the manner of accident also shows that the rider of the two wheeler bearing Registration Number TN-61-P-0322 was driving rashly unmindful of vehicular traffic. In the circumstances, this Court fixes contributory negligence on the part of the claimant to the extent of 20%.

11. The appellant has not questioned the quantum of compensation awarded by the Tribunal. A perusal of the compensation shows that the Tribunal had awarded just compensation taking into various aspects of the case. In the circumstances, the quantum of compensation awarded by the Tribunal is upheld. The only change is that 20% should be deducted towards contributory negligence on the part of the claimant. It is not in dispute that the rider of the two wheeler bearing Registration Number TN-61-P-0322 was not having a valid driving licence on the date of accident. In the circumstances, the appellant, the Iffco-Tokio General Insurance Company Limited is directed to pay the award amount in the first instance and then recover the same from the owner of the two wheeler bearing Registration Number TN-61-P-0322 on the same cause of action.



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12. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

ii. The appellant, the Iffco-Tokio General Insurance Company Limited is directed to deposit the award amount of Rs.2,65,620/-(80% of the compensation amount of Rs.3,32,025/-) (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 within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.143 of 2020 on the file of the Motor Accidents Claims Tribunal, Special Court No.II, Jayangondam, in the first instance and then recover the same from the second respondent on the same cause of action. **(Pay and Recover)**

iii. On such deposit being made the claimant / first respondent is permitted to withdraw the same with accrued interest and costs, after



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following due process of law.

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Index : Yes/No
Speaking / Non-speaking order
mtl

To

1. The Motor Accidents Claims Tribunal,
Special Court No.II, Jayangondam.

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

R. HEMALATHA, J.

mtl



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