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C.M.A.No.1665 of 2022

**IN THE HIGH OF JUDICATURE AT MADRAS
DATED : 11.01.2024**

**Coram
The Hon'ble Mr.Justice Krishnan Ramasamy**

C.M.A.No.1665 of 2022

Saravanan

... Appellant

Vs.

1. The Chairman,
Sri Balakrishna Polytechnic College,
Kuppur, Dharmapuri Road,
Dharmapuri Post, Omalur Circle,
Salem District.

2. United India Insurance Company Ltd,
Sri Ranga Complex, 1st Floor,
No.104-A, Peramanur Main Road,
Salem – 7.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 15.03.2019 made in M.C.O.P.No.2363 of 2016, on the file of the Motor Accident Claims Tribunal/Special Sub Judge, No.1, Salem.

For Appellant	: Mr.S.P.Yuaraj
Respondent-1	: No appearance
Respondent -2	: Mrs.I.Malar



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JUDGEMENT

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The present Civil Miscellaneous Appeal is filed challenging both quantum of compensation as well as fixation of 20% contributory negligence on the part of the rider of the two wheeler, viz., the appellant/claimant.

2. Mr.S.P.Yuaraj, the learned counsel appearing for the appellant would submit that though the Tribunal based on oral and documentary evidence has arrived at a categorical finding that the driver of the Mini Bus, viz., Swaraj Maxda bearing Regn.No.TN-30-BY-4973 was the sole cause for the accident, and rightly brushed aside Ex.P.4/Rough Sketch, relied on by the Insurance Company, however, fastened 20% liability on the rider of the two wheeler, viz., the appellant/claimant for the reason that the appellant/claimant failed to produce the driving licence as proof to show that he was in possession of same at the time of the accident. Therefore, the learned counsel contended that the findings rendered by the Tribunal fixing 20% contributory negligence on the part of the rider of the two wheeler has to be set aside.

2.1 It is also the grievance of the learned counsel that even the



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quantum of compensation awarded by the Tribunal under various heads is on the lower side and hence, prayed for awarding just and fair compensation.

3. On the other hand, Mrs.I.Malar, learned counsel appearing for the second respondent/Insurance Company would submit that the rider of the two wheeler has not produced the driving licence to buttress his contention that he was in possession of the same at the time of the accident, and under these circumstances, the Tribunal has rightly fixed 20% liability against the rider of the two wheeler and fastened 80% liability against the driver of the Mini Bus, and therefore, the findings rendered by the Tribunal with regard to the liability aspect requires no interference. Further, the learned counsel submitted that even the quantum of compensation awarded by the Tribunal under various heads is just and fair and the same also warrants no interference.

3. I have given due consideration to the submissions made by the



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learned counsel for the appellant and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

4. On perusal of the impugned award, it is seen that the Tribunal, while determining the negligence aspect rightly found that the accident occurred due to rash and negligent driving of the driver of the Mini Bus and refused to accept Ex.P.4/Rough Sketch relied on by the Insurance Company in support of their contention that the rider of the two wheeler was also a cause for the accident, however, committed a serious error in fastening 20% negligence on the part of the rider of the two wheeler/appellant for the mere reason that the appellant had failed to produce the driving licence so as to prove that he was a holder of the driving licence at the time of the accident. Once the Tribunal has rendered a categorical findings that the driver of the Mini Bus was the sole cause for the accident, the failure on the part of the rider of the two wheeler to produce the driving licence, cannot be put against the appellant/claimant, since, while determining the liability aspect, the Tribunal has to find out as to whose negligence has resulted in the accident



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and in the present, the driver of the Bus alone was sole cause for the accident.

4.1 Therefore, this Court is of the view that the Tribunal has committed a serious error in the decision making process in fastening 20% liability against the rider of the two wheeler. Hence, the findings of the Tribunal with regard to the negligence aspect, fixing 80% liability on the driver of the Bus and 20% liability against the rider of the two wheeler are set aside and 100% negligence is fixed against the driver of the mini Bus.

5. So far as quantum of compensation awarded by the Tribunal is concerned, this Court does not find any infirmity in the award of compensation passed by the Tribunal under various heads, as the same is just and fair and stands confirmed.

6. In the result, the Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the award amount as determined by the Tribunal along with interest and costs, less the



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amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount to the claimant's respective bank account through RTGS within a period of three weeks thereon or from date of furnishing the RTGS particulars by the claimants, whichever is later. The appellant/claimant is entitled to withdraw the entire award amount by making necessary application before the Tribunal. No costs.

11.01.2024

To

The Special Sub Judge, No.1,
Motor Accident Claims Tribunal, Salem.



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Krishnan Ramasamy,J.,

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