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C.M.A.No.2107 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2107 of 2023

V.Selvakumar

... Appellant/Petitioner

Vs.

1. P.Perumal
2. M/s.New India Assurance Co. Ltd.,
Motor Third Party Claims Hub,
No.45, Moore Street,
Chennai 600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 20.01.2021 and made in M.A.C.T.OP.No.6486 of 2014 on the file of the Motor Accident Claims Tribunal in the V Small Causes Court, Chennai.

For Appellant	: Mr.N.S.Suganthan for V.Tamilamudhu
For R1	: No more
For R2	: Mr.S.P.Chockalingam



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the claimant, challenging the liability, contributory negligence as well as the quantum of compensation awarded by the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai in M.C.O.P.No.6486 of 2014 dated 20.01.2021.

2. On 24.07.2014 at about 10.00 hours, when the appellant/claimant was riding a two wheeler viz., Hero Honda Splendor Plus, bearing Reg.No.TN-21-AY-0298, a two wheeler viz., Bajaj Pulsar Motorcycle, bearing Reg.No.TN-09-AK-5350, which came from opposite direction and hit the two wheeler of the injured. Due to said accident, the injured sustained injuries all over his body. Thereafter, the appellant/claimant has filed a claim petition before the Tribunal, claiming a compensation of Rs.5,00,000/-.

3. The learned counsel for the appellant submitted that, the accident was occurred only due to the rash and negligent act of the rider of the two wheeler bearing Reg.No.TN-09-AK-5350. However, the said aspect was not considered by the Tribunal and erroneously fixed 40% as contributory negligence on the



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part of the rider of the two-wheeler bearing Reg.No.TN-21-AY-0298, for the reason that during cross-examination, the appellant admitted that he had ridden the two-wheeler along with two pillion riders and 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 fastening 40% contributory negligence on the part of the rider of the two wheeler viz., Reg.No.TN-21-AY-0298 has to be set aside.

4.1. It is also the grievance of the appellant learned counsel that even the quantum of compensation awarded by the Tribunal under various heads is on the lower side and hence, prayed for awarding just and fair compensation.

5. The learned counsel for the second respondent/Insurance Company submitted that at the time of the accident, the appellant/claimant did not possess a valid Driving Licence and hence, the Tribunal has rightly fixed 40% contributory negligence on the part of the two wheeler viz., Reg.No.TN-21-AY-0298, which 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.



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6. Heard the learned counsel for the appellant and the learned counsel on behalf of the second respondent and perused the materials available on record.

7. On a perusal of the Tribunal award, it is seen that the Tribunal had fixed 40% contributory negligence on the part of the rider of the two wheeler viz., TN-21-AY-0298 for the simple reason that he was not possessing a valid driving licence at the time of accident and ridden the vehicle along with two pillion riders. Merely not possessing the driving licence and also ridden the two-wheeler with two pillion riders, contributory negligence cannot be fixed, but if there is negligence on the part of the rider of the two wheeler, which led to the accident only, the contributory negligence can be fixed. This Court is of the view that the Tribunal has committed serious error in fastening 40% contributory negligence on the part of the rider of the two wheeler viz., TN-21-AY-0298, is not appropriate, thereby fastening 40% contributory negligence is set-aside and the entire liability is fastened against the rider of the two-wheeler viz., Reg.No.TN-09-AK-5350. Therefore, the second respondent/Insurance Company is liable to pay the entire compensation amount of Rs.67,082/- as determined by the Tribunal.



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8. 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.

9. 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 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 bank account through RTGS within a period of three weeks thereon or from date of furnishing the RTGS particulars by the claimant, whichever is later. The appellant/claimant is entitled to withdraw the entire award amount by making necessary application before the Tribunal. No costs.

29.01.2024

Index : Yes / No
NCC : Yes / No



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Krishnan Ramasamy,J.,

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To

1. The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

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