



C.M.A.No.2860 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2860 of 2023

L.Ambika

P.V.K.Ramachandra Kurup (Died)

(Cause title accepted vide order dated 25.05.2023 made
in C.M.P.No.11341 of 2023 in CMA.SR.No.61819 of 2023)

... Appellant

Vs.

1. T.Muniammal

2. ICICI Lombard Gen.Ins.Co.Ltd.,

No.84, Walltax Road,

Harrington Plaza 1st Floor,

Park Town, Chennai 600 003.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 22.10.2018 passed in M.C.O.P.No.9179 of 2015 by the Motor Accident Claims Tribunal, Chennai (in the V Judge of Small Causes, Chennai-104).

For Appellant : Mr.F.Terry Chella Raja
for Mr.M.Pachaiyappan

For R2 : Mr.M.Jayaraj



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the claimant, challenging the contributory negligence of 25% fixed by the Tribunal in the award dated 22.10.2018 made in M.C.O.P.No.9179 of 2015 on the file of V Judge of Small Causes, Chennai.

2. On 10.09.2015, at about 14.00 hours, when the deceased was riding a two wheeler bearing Reg.No.TN-12-C-4755 proceeding towards Vanagaram to Ambattur Road, he was hit by a water tanker lorry, bearing Reg.No.TN-01-V-8358, driven by its driver in a rash and negligent manner on the same direction and hit behind the two wheeler, and due to the said accident, the deceased sustained multiple fractures all over the body. Though he was rushed to the hospital and taken treatment, he died on 23.09.2015. However, the Tribunal fixed 25% contributory negligence on the part of the deceased. Challenging the same, the petitioner had filed the present Civil Miscellaneous Appeal.



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3. The learned counsel for the appellant contented that the accident was occurred only due to the rash and negligent act of the driver of the water tanker lorry. Further, PW4/eyewitness had also deposed that the accident was occurred only on the account of rash driving of the water tanker lorry. However, the said aspect was not considered by the Tribunal and erroneously fixed 25% as contributory negligence on the part of the two wheeler. Therefore, the learned counsel submitted that the Tribunal ought to have fixed 100% negligence on the part of the water tanker lorry, for having driven the vehicle in a rash and negligent manner.

4. The learned counsel for the second respondent/Insurance Company submitted that at the time of the accident, the deceased did not possess a valid Driving Licence and hence, the Tribunal has rightly fixed 25% contributory negligence on the part of the two wheeler, which requires no interference.



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

6. On a perusal of the Tribunal award, it is seen that the Tribunal had fixed 25% contributory negligence on the part of the rider of the two wheeler for the simple reason that he was not possessing a valid driving licence at the time of accident. Merely not possessing the driving licence, contributory negligence cannot be fixed, but if there is negligence on the part of the rider, which led to the accident only, the contributory negligence can be fixed. Therefore, this Court is of the view that the Tribunal has committed serious error in fixing 25% contributory negligence on the part of the two wheeler. Therefore, the Tribunal is supposed to fix the entire liability against the driver of the water tanker lorry only since due to the rash and negligent act on the part of the four wheeler lorry only, the present accident has occurred. This is what PW4 had also deposed. Hence, this Court is not inclined to accept 25% contributory negligence on the part of two wheeler, thereby, fixing the liability of 25% as against the rider of the



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two wheeler is set-aside. Further, this Court is inclined to fix 100% negligence on the part of the water tanker lorry and accordingly the entire liability is fastened on the driver of the four wheeler. Therefore, the second respondent/Insurance Company is liable to pay the entire compensation amount of Rs.36,44,720.20/- as determined by the Tribunal.

7. In the light of the above, the quantum of compensation fixed by the Tribunal stands confirmed and the entire liability is fastened the second respondent/Insurance Company. Therefore, the second respondent-Insurance Company is directed to deposit the said amount along with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.9179 of 2015 on the file of V Small Causes Court, Chennai. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation



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amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant.

8. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

08.01.2024

Index : Yes / No
NCC : Yes / No
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To

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



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Krishnan Ramasamy,J.,

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