



C.M.A.No.3563 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.3563 of 2021
and CMP.No.20748 of 2021

Royal Sundaram Alliance Insurance Co.Ltd.,
Sundaram Towers, 45, 46, Whites Road,
Chennai 600 014.

... Appellant

Vs.

1. Vignesh
2. Santhosh Vasanth Kanavli
3. M/s.Tata Tea Limited
Idukki, Munnar, Kerala.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2021 made in M.C.O.P.No.1535 of 2008 on the file of Motor Accident Claims Tribunal (Chief Officer, Special Motor Accident Claims Tribunal) at Tirupur.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : M/s.MA.P.Thangavel for R1
NDW-R2 & R3



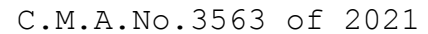
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J U D G M E N T

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The Civil Miscellaneous Appeal is filed by the Insurance Company challenging the negligence fixed on them and to pay compensation to the claimant herein as per the award dated 25.01.2021 on the file of the Motor Accident Claims Tribunal (Chief Officer, Special Motor Accident Claims Tribunal) at Tirupur.

2. The parties herein are referred as per their litigative status before the claims Tribunal. The claimant who was injured in this case was then a minor was riding a two wheeler bearing Reg.No. TN 37 AR 6878 along with one Sivagurusamy as a pillion rider on the Kovai to Pollachi road near Vivek Vidhya School at about 5:30 p.m on 25.08.2007. At that time a Car bearing Registration No.KL 06 D 6877 came in the opposite direction in a high speed and dashed against the two wheeler, which resulted in an accident. The claimant has sustained multiple injuries and criminal case was also registered in this regard in Crime No.226 of 2007 under Section 279, 337 of IPC on the file of the Kinathukadavu Police Station. The claimant was a 1st year student



3. The first respondent is the driver of the Car and 2nd respondent is the owner of the vehicle both remained exparte before the Tribunal. The third respondent Insurance Company contested the claim on the ground that the claimant itself a tort-feasor and that he came on the wrong side of the road and then minor was not having any valid license and the claim petition is not maintainable against him.

4. The Tribunal after considering the evidence placed on record has held that the claimant is also liable to contribute to the accident for an extent of 55% and accordingly compensation was computed and awarded Rs.4,42,985/- to the claimant. Aggrieved over the liability fixed on the Insurance Company on the ground that the 1st respondent driver of the car is also responsible for the accident this appeal has been filed by the Insurance Company.



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5. The learned counsel appearing for the Insurance Company submitted that the injured claimant herein was a minor then and he rode the two wheeler on the wrong side of the road in a high speed along with a pillion rider. Since he was a minor he was not possessing valid driving license and his negligence act was responsible for the accident. Hence prays to set aside the award.

6. The learned counsel appearing for the claimant submitted that there is an evidence placed on record to show that the claimant even though has driven the vehicle on a wrong side of the road, the 1st respondent driver of the Car has also drove the car in a rash and negligent manner and he could have avoided the accident if he has driven the same with due care and caution. After appreciating the evidence placed on record, the Tribunal has taken a view that the claimant is 55% responsible and the 1st respondent is 45% responsible for the accident, the findings of the Tribunal need not be interfered with. He further submitted that the claimant has sustained very serious injuries including head injuries and Tribunal has rightly accepted the case of the claimant and awarded. Hence prays to confirm the award.



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7. In the award, the Tribunal has categorically stated that the claimant has rode the two wheeler on the wrong side of the road which is a highway connecting Coimbatore and Pollachi. Riding two wheeler on the wrong side of the road in a highway is a clear negligent on the part of the claimant and the claimant ought not to have driven the vehicle on the wrong side of the highway. The findings of the Tribunal is that if the 1st respondent driven the Car with due care and caution he would have avoided the accident. This Court is of the view that the same could not be appreciable since the claimant was then a minor has driven the vehicle in an opposite direction and no one would have anticipated that the two wheeler will be coming in the opposite direction that too in the highway. It is also observed by the Tribunal that the minor was treated as a child in Conflict law and Juvenile Justice Board has passed a judgment admonishing act of the claimant herein. The Tribunal has further held that if the driver of the car has driven the vehicle with due care and caution that too with proper speed, the accident would not have occurred. This finding was based on rough sketch wherein it is stated that the accident was taken place almost near the median of the road.



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8. Before the Tribunal the Driver of the car was not examined to fasten the extreme negligence on the claimant. Non examination of driver of the car shatter the finding of the Tribunal to fix certain percentage of contributory negligence on the part of the Driver of the car. However, this Court is of the considered view that the Tribunal has to fix more percentage of contributory negligence on the part of the claimant. Considering all the above aspects, this Court re-determine the percentage of contributory negligence on the part of the claimant @ 60%, instead of 55%, and reduces the negligence on the part of the driver of the car to 40%.

9. Except the aforesaid fixation i.e., contributory negligence, this Court does not find any infirmity in the award of the Tribunal and all other aspects remain same. In the result, this Civil Miscellaneous Appeal is partly allowed and out of the compensation determined 40% of the compensation payable by the appellant/Insurance Company comes to Rs.3,93,764/-. The appellant/Insurance Company is directed to deposit the same along with interest and costs, less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment to the credit of



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M.C.O.P.No.1535 of 2008 on the file of the Motor Accidents Claims Tribunal (Chief Officer, Special Motor Accidents Claims Tribunal) at Tirupur. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with proportionate interest and costs, less the amount if any already withdrawn by making necessary application before the Tribunal. No costs. Consequently connected miscellaneous petition is also closed.

09.02.2024

Neutral Citation: Yes/No
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K. RAJASEKAR, J.



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To

1.The Motor Accident Claims Tribunal
(Chief Officer, Special Motor Accident
Claims Tribunal) at Tirupur.

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

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