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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3141 of 2021

Shriram General Insurance Co. Ltd.,
First Floor Front Portion,
No.5-F, Sachin Plazza,
Reddiyoor, Block No.1,
Salem-636 016. .. Appellant

Vs.

1. Arumugam
2. Ramalingam
3. The National Insurance Company Ltd.,
Divisional Office No.1, LRN Colony,
Saradha College Main Road,
Salem-7.

4. Balamurugan .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 11.03.2021 in MCOP. No.1035 of 2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court-1) Salem.

For Appellant	:	Mr.S.Dhakshinamoorthy
For Respondents	:	Mr.D.Jeevitha R4
		Mr.S.Arunkumar R3
		R1 – No appearance

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JUDGMENT

This appellant/claimant has come forward with this appeal to set aside the award dated 11.03.2021 in MCOP. No.1035 of 2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court-1) Salem.

2. The first respondent is the injured claimant filed the claim petition on the ground that on 27.03.2016 at about 16.00 hours when he was riding his two wheeler bearing Reg. No.TN 30 AF 6358 in Salem City Nagarmalai Road from south to north, at that time, the second respondent was driving the motorcycle which was owned by the 4th respondent and insured with the appellant herein in the opposite direction. The offending vehicle hit the first respondent's two wheeler. As a result of which, the claimant was thrown out of the vehicle and he sustained grievous injuries and succumbed to the injuries. An FIR came to be registered against the rider of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the

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case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent riding of second respondent of the offending vehicle. The Tribunal in order to reach this finding, has relied upon the eye witness account of PW1 and also the FIR marked as Ex.P1.

4. The Tribunal thereafter proceeded to determine the total compensation at Rs.2,14,665/- under various heads in the following manner:-

Sl.No.	**Compensation awarded under the head**	**Amount (in Rs.)**
1.	Pain and sufferings	15,000
2.	Loss of income	18,000
3.	Medical expenses	87,665
4.	Transportation	6,000
5.	Extra nourishment	6,000
6.	Attender charges	6,000
7.	Damages to clothes	1,000
8.	Loss of Amenities	15,000
9.	Permenant disability	60,000
	Total	2,14,665/-

The Tribunal directed the above compensation to be paid with interest at the

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rate of 7.5% p.a.

5. The appellant/insurance company has preferred this appeal mainly questioning its liability and negligence aspect on the ground that there was contributory negligence on the part of the first respondent, which was not considered by the tribunal.

6. Heard the learned counsel for appellant insurance company. Though notice has been served on the first respondent, he has not appeared before this court either in person or through counsel.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. The main ground that was urged by the learned counsel for the appellant was that the claimant did not have a valid driving license and there

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was no proof to show that he was wearing an helmet and it was not established that the two wheeler was covered by any insurance policy. To substantiate his submission, the learned counsel relied upon the evidence of PW1. To disprove the same, the appellant has not examined any eyewitness in this case.

10. In the considered view of this Court, the issue regarding the contributory negligence is not a matter of assumption and it has to be proved like any other fact based on the evidence that is let in before the Tribunal.

11. The mere non possession of a driving license or not wearing an heltmet, by itself cannot lead to the assumption that there was contributory negligence. That apart, the Tribunal also took into consideration the FIR that was registered against the driver of the offending vehicle. The insurance company did not take any effort to examine the driver of the offending vehicle in order to establish that there was some amount of contributory negligence on the part of the first respondent/claimant.

12. In the light of the above discussion, the finding of the Tribunal

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fixing the entire negligence on the driver of the offending vehicle, does not warrant the interference of this Court. Hence, the liability fixed on the appellant is confirmed.

13. The quantum of compensation fixed by the Tribunal is also very reasonable and there is no scope for interfering with the same.

14. In the result, this Civil Miscellaneous appeal is dismissed. The appellant insurance company is directed to deposit the entire compensation amount, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, the connected miscellaneous petition is closed.

17.12.2024

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Index : Yes
Speaking Order : Yes

To

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The Judge,

Motor Accident Claims Tribunal (Special Sub Court-1) Salem.

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M.DHANDAPANI,J.

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