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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.2917 of 2024

D.Sathya Gandhi

... Appellant

Vs.

1. B.Anantha Padmanaban

2. The Authorised Signatory,
Reliance General Insurance company,
AVS Tower, 100 Feet Road,
Sundararaja Nagar,
Mudaliarpeta, Puducherry.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.726 of 2019 dated 11.03.2022 on the file of the Additional Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr.S.C.Vishwanth

For Respondents : Mrs.G.Sukumari

JUDGMENT

The present appeal has been filed by the claimant questioning the negligence awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.726 of 2019 dated 11.03.2022 on the file of the Additional Motor Accident Claims Tribunal, Puducherry.



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2. It is the case of the claimant is that on 09.10.2016 at about 11.55 a.m. When the appellant was riding his motor cycle bearing Reg. No.TN 51 R 9709 in Cuddalore-Pondy Road, the first respondent car bearing Reg. No.TN 02 AE 4064 driven by its driver in a rash and negligent manner. As a result, the appellant met with an accident and sustained injuries over the right leg with multiple injuries and all over the body. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, awarded a sum of Rs.5,03,064/- and fixed 15% negligence as against the appellant/claimant and directed the insurance company to deposit 85% of the compensation amount along with interest at the rate of 7.5% per annum. Having rendered such a finding, the Tribunal attributed 15% contributory negligence on the injured claimant.

4. The claimant has aggrieved over the award attributing 15%



contributory negligence on him, has filed the present appeal before this Court.

5. The learned counsel for the appellant submitted that the accident had happened due to rash and negligent driving of the driver of the car. The appellant sustained fracture injuries over his right leg with multiple injuries all over the body. There is no fault on the part of the appellant. At the time of accident, the appellant wore helmet. Without considering the entire fact, the Tribunal has fixed 15% negligence on the appellant, which is not sustainable one.

6. Per contra, the learned counsel appearing for the second respondent submitted that after elaborate trial, the Tribunal has fixed 15% negligence as against the appellant which cannot be interfered with and other heads awarded by the Tribunal is excessive.

7. Heard the learned counsel for appellant /claimant and the learned counsel for second respondent/insurance company.



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

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

10. Insofar as the quantum of compensation fixed by the Tribunal under various heads, this Court finds that the same is reasonable and it does not require the interference of this Court.

11. The only other issue that is left is with regard to the 15% contributory negligence attributed against the injured on the ground that he did not wear an helmet at the time of the accident. The Tribunal on considering the evidence of PW1 and PW2 came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car belonging to the first respondent. Having rendered such a finding, the Tribunal cannot attribute contributory negligence against the injured. While attributing



contributory negligence, there must be material to show that the injured had also contributed to the negligence resulting in the accident. The same is completely absent in this case and therefore, the contributory negligence cannot be attributed without mentioning any reason.

12. In view of the above, the finding of the Tribunal attributing 15% contributory negligence against the injured claimant is hereby set-aside.

13. In the light of the above discussion, there shall be a direction to the respondent Insurance company to pay the entire compensation amount of Rs.5,03,064/- as awarded by the Tribunal with interest 7.5% per annum. The compensation amount shall be deposited, less amount has already been deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit, it is left open to the sole appellant to withdraw the same.



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M.DHANDAPANI.,J

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14. In the result, this Civil Miscellaneous appeal is partly allowed in the above terms. No costs.

04.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To,

The Judge,

Additional Motor Accident Claims Tribunal,

Puducherry.

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