



WEB COPY



CMA.No.29 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.29 of 2023
& CMP.No.359 of 2023

The National Insurance Company Ltd,
rep by its Branch Manager,
at No.74A, Paramathy Road,
Namakkal Town, Namakkal District – 637 001.

... Appellant

-Vs-

1.S.Pavayal
2.K.Shanmugam
3.P.Elangovan
4.HDFC ERGO General Ins.Co Ltd,
Rep by its Branch Manager,
4th Floor, No.70, Race Course Road,
Rajananarayanan Towers,
Coimbatore – 641 018,
Coimbatore District.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 2-9-2022 made in M.C.O.P.No.507 of 2018 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Judge),



Gobichettipalayam.

For Appellant	: Mr.D.Bhaskaran
For R1 & R2	: Mr.SP.Yuaraj
For R3	: Notice not ready
For R4	: Mr.N.Somasundar

JUDGMENT

Challenging the fixation of the negligence by the Tribunal, the appellant/insurance company filed the present appeal.

2.The learned counsel for the appellant submitted that on 30.03.2018 at about 03.00 p.m. while the rider of the two wheeler bearing Regn.No.TN 36 AE 9065 was over-taking a bus, in a rash and negligent manner, it hit on the lorry bearing Regn.No.KA 01 AF 9469, which came on the opposite direction. The rider of the two wheeler crossed the median and almost went to the right side of the road and hit against the lorry while overtaking. Therefore, the accident occurred. He referred to Ext.P1, FIR, Ext.P3, Sketch and Ext.P7, final report and submitted that all these documents are against the rider of the two wheeler.



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3.He would further contend that in the two wheeler, there was a pillion rider also. Both the rider and the pillion rider passed away due to the accident. For the pillion rider, the fourth respondent/insurance company settled the claim in the Lok Adalat accepting to fact to some extent that the accident occurred due to the negligence on the part of the rider of the two wheeler. Therefore, the learned appearing for the appellant submitted that some contributory negligence, at least to the extent of 50%, has to be fixed as against the rider of the two wheeler. He further added that though this aspect was pleaded before the Tribunal, the Tribunal failed to consider the said aspect.

4.The learned counsel appearing for the claimants would submit that the contributory negligence may be fixed at the ratio of 40:60.

5.The learned counsel for the fourth respondent submitted that the fourth respondent may be exonerated from the payment of compensation in the event if there is any contributory negligence fixed against the



6.Considering the submissions of the learned counsel for the appellant, first and second respondents as well as the fourth respondent and upon perusal of the Exts.P1, P3 and P7 and other deposition of eye witness, this Court is of the considered view that the Tribunal fixing the entire liability against the driver of the lorry is not appropriate and apparently, the Tribunal should have fastened some negligence and liability against the rider of the two wheeler, but has failed to do so.

7.Hence, this Court is inclined to fix the contributory negligence against the rider of the two wheeler bearing Regn.No.TN 36 AE 9065 to the extent of 45% and the remaining 55% against the driver of the lorry bearing Regn.No.KA 01 AF 9469. Accordingly, the negligence and liability fixed by the Tribunal stands modified in the ratio of 45% against the rider of the two wheeler and 55% against the driver of the lorry. So accordingly, the appellant/insurance company is liable to pay 55% of the compensation as determined by the Tribunal.



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8.The learned counsel for the appellant submitted that he has already deposited 50% of the award as determined by the Tribunal. It is now required to deposit the remaining amount along with interest at 7.5%, from the date of the claim petition till the date of deposit, within a period of six (6) weeks from the date of receipt of a copy of this order. Upon the deposit of the entire amount, the Tribunal is directed to transfer the entire amount by way of RTGS to the respective bank accounts of the claimants, in the ratio as apportioned by the Tribunal, within a period of three (3) weeks thereafter.

9.As far as the contention of the fourth respondent insurance company that they are not liable to pay any compensation to the extent of contributory negligence fastened against the rider of the two wheeler is concerned, it is up to the insurance company to take a call in the event there is no policy issued to cover the rider of the two wheeler and no doubt they are not liable to pay any compensation to the extent of 45% for negligence fastened against the rider of the two wheeler, in such case.



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10. Accordingly, this Civil Miscellaneous Appeal is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

22.01.2024

Tsg

To

1. The III Additional District and Sessions Judge,
Gobichettipalayam.
2. The Section Officer,
V.R. Section, High Court, Madras.



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KRISHNAN RAMASAMY, J.,

Tsg

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