



C.M.A.(MD)No.1129 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1129 of 2014

John Charles

.. Appellant/Petitioner

Vs.

1.G.Jeyaletchumi

2. The Branch Manager,
National Insurance Company,
1st Floor, K.R.T.Building,
No.33, Barathidasan Salai,
Promenade Road, Contonment,
Trichy.

.. Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.12.2011 in M.C.O.P.No.338 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Fast Track Court, Pudukkottai.

For Appellant : Mr. P.Santhanakrishnan

For R2 : Mr.N.S.Ramakrishna Das



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For R1 : Given up

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Pudukkottai, in M.C.O.P.No.338 of 2011 dated 30.12.2011 wherein the appellant herein has filed a claim petition before the Tribunal seeking compensation of Rs. 25,00,000/- due to the injuries sustained by him in a road accident. The tribunal has awarded a sum of Rs.5,18,862/- towards compensation. But since the petitioner contributed negligence for the accident 30% of the compensation of Rs.1,55,658.00/- is deducted and he is entitled only for a sum of Rs.3,63,203/-. Being aggrieved by the order of the Tribunal, the claim petitioner has preferred this appeal.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.



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3. The brief averments of the petition filed before the Tribunal are as follows:

According to the petitioner, on 02.01.2010 at about 7.00 p.m., he was proceeding in his two wheeler bearing Registration No.TN-55-T-7565 along with one Martin Arputharaj, who is riding as pillion rider, near Pasumalaipatti on Pudukkottai to Trichy Road, at the time, the first respondent's vehicle lorry bearing Registration No.TN-58-A-6075, came in a rash and negligent manner and dashed against the petitioner's vehicle and thereby he sustained injuries and the pillion rider, Martin Arputharaj died on the spot. The accident took place due to the negligence of the driver of the first respondent lorry due to which the appellant sustained injuries and he spent Rs.2,40,000/- towards medical expenses. Therefore, the appellant herein filed the claim petition claiming compensation of Rs. 25,00,000/- before the tribunal.

4. The brief averments of the counter filed by the second respondent are as follows:

The second respondent denied the negligence on the part of the driver of the lorry and the rider of two wheeler had driven the vehicle in a



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rash and negligent manner and dashed against the lorry and the second respondent is not liable to pay the compensation. The age, income and occupation of the petitioner and the injury sustained by the petitioner are denied by the respondents and further, the amount claimed is also too high.

5. Before the trial Court, in order to prove the case, on the side of the petitioner, he examined PW1 to PW3 and marked Ex.P1 to Ex.P24. On the side of the respondents, RW1 was examined and no documents were marked.

6. After evaluating the oral and documentary evidences adduced on either side, has awarded a sum of Rs.5,18,862/- towards compensation. But since the tribunal fixed 70% liability against the lorry driver and 30% liability against the petitioner and after deducting the 30% of the award amount, the tribunal awarded a sum of Rs.3,63,203/- as compensation to the petitioner. As against the said deduction on contributory negligence fixed by the tribunal, the present appeal has been preferred by the claim petitioner.



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7. The learned counsel for the appellant would contend that the appellant's vehicle met with an accident and the accident took place due to the negligence on the part of the driver of the first respondent and the rider of the two wheeler is no way liable for the accident, but the tribunal, without considering the evidence adduced on the petitioner's side and without any basis, fixed 30% contributory negligence against the petitioner and 70% as against the lorry driver. Hence, the order passed by the tribunal is liable to be set aside.

8. The learned counsel for the 2nd respondent would contend that the accident was not occurred due to the negligence on the part of the driver of the first respondent and the same was occurred due to the negligence of the petitioner. The petitioner had driven the two wheeler in a rash and negligent manner and dashed against the lorry and thereby invited the accident. However, the tribunal fixed liability against the petitioner 30% alone and 70% against the lorry driver. Moreover, the petitioner did not wear any helmet at the time of accident and also the petitioner has admitted his negligence in his cross-examination and thereby the trial Court, after considering these aspects correctly fixed the liability.



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Therefore, the present appeal is liable to be dismissed.

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9. This Court has considered the submissions made by either side counsel and perused the materials available on record.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

(i) Whether the appeal is liable to be allowed or not?

11. In this case, the appellant preferred this appeal as against the order passed by the tribunal by fixing the contributory negligence of 30% on the petitioner's side. It is admitted fact that FIR has been registered as against the driver of the first respondent and the police also filed final report after investigation. In the criminal Court records or in the investigation, there is no mention about the preceding of the bus before the petitioner's two wheeler, that is, according to the respondent, the petitioner was proceeding behind the bus. When the bus was stopped, in order to over take the bus, without noticing the lorry came from the



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opposite side, the rider of the two wheeler dashed against the lorry. But in order to prove the same, there is no evidence except RW.1. The RW.1 is the driver of the offending vehicle and FIR also registered as against him. Except RW1, no evidence was adduced by the respondent and even in the criminal Court records, no reference about the bus preceding before the petitioner's vehicle. But the tribunal, in the order stated that the learned counsel established through the cross-examination of the PW1 that at the time of accident the bus was preceded in front of the petitioner's vehicle and the petitioner admitted that he tried to overtake the vehicle, at the time, dashed against the lorry. But the respondent did not produce any rough sketch and also not examined any witnesses to prove that contention. But mere admission at the time of cross-examination would not be sufficient to establish the contributory negligence and the entire evidence on record have been looked into. Therefore, the contributory negligence fixed by the tribunal as against the petitioner is unsustainable and the same is liable to be set aside.

12. In this case, there is no dispute with regard to the quantum of the amount and the insurance company also not filed any appeal. The



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petitioner also not disputed the quantum of the amount, he only disputed the quantum of negligence. Therefore, the order passed by the tribunal is liable to be confirmed to the effect that the petitioner is entitled for Rs.5,18,862/-.

13. In the result, this Civil Miscellaneous petition is partly allowed. The order passed by the tribunal is modified to the effect that the petitioner is entitled for a sum of Rs.5,18,862/-(Rupees five lakhs eighteen thousand and eight hundred and sixty two only) with interest at the rate of 7.5% per annum from the date of petition till the realisation of amount. Accordingly, the second respondent/insurance company is directed to deposit the entire amount within a period of two months from the date of receipt of a copy of this order with interest at the rate of 7.5% per annum from the date of petition, if already not deposited. No Costs.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To



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1. The Motor Accident Claims Tribunal/
Additinal District and Sessions Judge,
Fast Track Court,
Pudukkottai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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