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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.637 of 2018

Karnan @ Karunanithi ... Appellant/Petitioner

Vs.

1.K.Rajkumar ... 1st Respondent/1st Respondent

2.The United India Insurance Company Limited,
Represented by its Divisional Manager,
South Main Street, Thanjavur.
... 2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to allow this appeal and set aside the judgment and decree, dated 04.11.2017 made in M.C.O.P.No.171 of 2010 on the file of the Motor Accidents Claims Tribunal cum I Additional District and Sessions Judge (PCR), Thanjavur and to pass an order for enhancement of compensation is prayed for herein against respondents 1 and 2 herein.

For Appellant : Mr.J.Muneer Khan

For R-1 : No appearance
For R-2 : Mr.C.Jawahar Ravindran

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JUDGMENT

The instant appeal has been filed by the claimant challenging the award passed in M.C.O.P.No.171 of 2010 on the file of the Motor Accident Claims Tribunal / I Additional District and Sessions Court (PCR), Thanjavur, seeking enhancement of compensation.

2. The injured claimant had contended that while he was travelling in a two-wheeler, a tipper lorry owned by the first respondent and insured with the second respondent came from the rear side and dashed against the two-wheeler. In the said accident, he had sustained grievous injuries. Hence, he has prayed for a compensation of Rs.5,00,000/-.

3. The Insurance Company has filed a counter contending that the accident has taken place only due to the negligence on the part of the rider of the two-wheeler and therefore, they are not liable to pay any compensation.

4. The Tribunal after considering the oral and documentary evidence has arrived at a finding that, the accident has taken place only due to the rash and negligent driving on the part of the driver of the

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tipper lorry. However, the rider of the two-wheeler was not having a valid driving license on the date of the accident. Hence, the Tribunal has proceeded to fix 50% of contributory negligence on the part of the rider of the two-wheeler and has proceeded to award a compensation of Rs.2,10,025/-. Challenging the portion of the award, wherein, 50% has been deducted towards contributory negligence, the present appeal has been filed by the claimant.

5. According to the learned Counsel appearing for the claimant, when the Tribunal has arrived at a specific finding that the driver of the lorry was solely responsible for the accident, 50% of contributory negligence ought not to have been mulcted upon the rider of the two-wheeler, just because he was not having valid driving license on the date of the accident. Hence, he had prayed for setting aside the fixing of this contributory negligence.

6. Per contra, the learned Counsel appearing for the Insurance Company has contended that, admittedly, the claimant as well as the rider of the two-wheeler were not wearing helmet. The rider of the two-wheeler was not having a valid driving license on the date of the

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accident. In such circumstances, the Tribunal was right in mulcting 50% of contributory negligence for not having a driving license.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. The Tribunal has arrived at a specific finding that, the accident has taken place only due to the rash and negligent driving on the part of the driver of the tipper lorry. However, the Tribunal has proceeded to mulct 50% of contributory negligence on the pillion rider of the two-wheeler on the sole ground that, the rider of the two-wheeler was not having valid driving license at the relevant point of time. In the present case, the claimant has not sustained any head injury so as to attract further contributory negligence for not wearing helmet.

9. The Hon'ble Division Bench of this Court in a judgment reported in ***2022 (1) TN MAC 794 [The Manager, Cholamandalam MS General Insurance Company Limited Vs. Nagarathinamma and Others]*** has deducted 10% towards not wearing of helmet and not having driving license at the relevant point of time. In such circumstances,

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following the judgment of the Hon'ble Division Bench, this Court is inclined to fix the contributory negligence on the part of the rider of the two-wheeler at 10% instead of 50%.

10. The Tribunal has fixed the total compensation at Rs.4,20,050/-. If 10% is deducted from the said award amount, it would come at Rs.42,005/-. Therefore, the compensation awarded to the claimant could be refixed as Rs.3,78,045/-.

11. The award of the Tribunal is enhanced from Rs.2,10,025/- (Rupees Two Lakhs Ten Thousand and Twenty Five only) to **Rs.3,78,045/- (Rupees Three Lakhs Seventy Eight Thousand and Forty Five)**. The Tribunal has fixed the interest at the rate of 9%. However, this Court is of the opinion that, the interest could be awarded only at the rate of 7.5%. The enhanced amount will carry interest at the rate of 7.5% from the date of claim petition excluding the default period. The Insurance Company is directed to deposit the said amount within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is entitled to withdraw the said amount.

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12. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

01.07.2024

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

1.The Motor Accidents Claims Tribunal cum I
Additional District and Sessions Judge (PCR),
Thanjavur.

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

3.The Divisional Manager,
The United India Insurance Company Limited,
South Main Street, Thanjavur.

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R.VIJAYAKUMAR, J.

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Judgment made in
C.M.A(MD)No.637 of 2018

01.07.2024

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