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Court : Chennai

Decided On : Aug-31-2012

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appeal No. : CMA.No.1650 of 2005 CMP.No.508 of 2012

Appellant : P. Mani

Respondent : P. Dayalan and Another

Advocate for Pet/Ap. : For the Appellant: P. Mani, Advocate. For the Respondents: R2, K. Padmanabhan, M.J. Vijayaraghavan, Advocates.

Judgement :

(**Prayer**: This Civil Miscellaneous Appeal is filed against the Judgement and Decree dated 16.2.2005 made in MCOP.No.66/2003 by the learned Subordinate Judge (MACT) Tirupattur, Vellore District.)

1. This Civil Miscellaneous Appeal is filed by the injured claimant against the Judgement and Decree dated 16.2.2005 made in MCOP.No.66/2003 by the learned Subordinate Judge (MACT) Tirupattur, Vellore District, whereby the Tribunal awarded a sum of Rs.3,13,000/- as total compensation, but however, held that the claimant was entitled only 50 per cent of the compensation by fixing the contributory negligence on the part of the claimant to an extent of 50 per cent.

2. The appellant challenged the finding of the Tribunal in fixing 50 per cent contributory negligence on him.

3. The facts leading to the filing of this appeal are that on 28.9.2002 at 2.45 p.m. in Tirupattur to Vaniyambadi Highways Road opposite to Don Bosco Higher Secondary School, when the claimant was proceeding in his TVS-50 motorcycle, the bus belonging to the 1st Respondent and insured with the 2nd Respondent Insurance Company, coming in the same direction dashed against the motorcycle, as a result of which, the claimant has sustained severe injuries all over his body.

4. The claimant suffered fracture on the right leg, left hand and knee and was admitted in the Government Hospital, Tiruppathur and therefrom, he was referred to Government Hospital, Vellore. He also took treatment in the CMC, Vellore, where surgery was done to him. The claimant was working as a Head Master in the Government High School, Palanankuppam and was getting a salary of Rs.15,000/- p.m. As he suffered permanent disability and partial disability to an extent of 60 per cent as assessed by the Doctor, the claimant claimed a compensation of Rs.5 lakhs before the Tribunal. In spite of service of notice, the owner remained exparte before the Tribunal. However, the 2nd Respondent Insurance Company filed a counter affidavit, denying that the accident had occurred on account of the rash and negligent driving of the driver of the bus and further averred that the accident had occurred due to the rash and negligent driving of the claimant himself and as such, denied the claim for compensation.

5. Before the Tribunal, the claimant got himself examined as PW.1 and Doctor who assessed his disability was examined as PW.2. The 2nd Respondent did not examine any person as a witness on their side. The Tribunal, after analysing the evidence, came to the conclusion that the claimant himself had contributed to the accident to an extent of 50 per cent and as such, while awarding compensation of Rs.3,13,000/-, restricted it to Rs.1,06,500/- payable by the Insurer to the claimant. This finding is now under challenge in this appeal.

6. It is the contention of the learned counsel for the Appellant that the Tribunal misdirected itself in coming to the conclusion that the accident had occurred due to negligence of the claimant merely on the ground that the claimant had no driving

licence to drive the motorcycle at the time of the accident and further, it erred in not considering the evidence placed on record that the accident had occurred on account of the rash and negligent driving of the driver of the bus. It is his contention that the First Information Report was registered against the bus driver and the bus driver has been charge sheeted for the rash and negligent driving. Pending the appeal, the Appellant filed a petition in CMP.No.508/2012 to receive the certified copy of the judgement dated 5.12.2002 made in CC.No.397/2002 on the file of the Judicial Magistrate I, Tiruppathur as additional document, whereby and whereunder the driver of the bus had been convicted on admission of guilt by him.

7. The learned counsel for the Appellant would submit that the driver of the bus himself had pleaded guilty before the criminal court and he having been convicted for the rash and negligent driving of the vehicle, the Insurance Company cannot contend that there was no negligence on the part of the bus driver or the claimant contributed to the negligence. Elaborating his submissions on these grounds, the learned counsel would contend that the First Information Report Ex.P1 and the additional document, namely, the judgement dated 5.12.2002 made in CC.397/2002 on the file of the Judicial Magistrate I, Tiruppathur clearly would go to show that the accident had occurred on account of the rash and negligent driving of the driver of the bus as recorded therein and as such, the Tribunal was in error in fastening contributory negligence on the claimant to an extent of 50 per cent and hence, he seeks to set aside the award to that extent.

8. Per contra, the learned counsel for the 2nd Respondent Insurance Company would contend that the claimant, who was an Head Master of a Higher Secondary School, was well aware that he cannot driver the vehicle without having a valid licence and having driven the vehicle without such licence, the Tribunal rightly held that he contributed to the negligence to an extent of 50 per cent, inasmuch as the claimant, who had no experience to ride the two wheeler, has contributed to the negligence. Therefore, he would contend that the Tribunal was fully justified in arriving at the conclusion that the claimant had also contributed to the accident.

9. I have heard Mr.P.Mani, the learned counsel for the Appellant and Mr.K.Padmanabhan, the learned counsel for the 2nd Respondent Insurance Company and also perused the records.

10. In so far as fixing negligence on the part of the claimant to an extent of 50 per cent is concerned, the Tribunal has based its reasoning mainly on the ground that the claimant did not possess a valid driving licence to driver the motorcycle. Admittedly, on the report lodged by the injured claimant, a case has been registered against the bus driver in Cr.No.807/2002 even on the date of the accident. This fact is not denied by the driver or by the owner or the Insurance Company. It is also brought in evidence as additional document that the driver has pleaded guilty before the criminal court and he has been fined for causing rash and negligent act. Though the certified copy of the judgement is filed only in the appeal, but the said factum of guilty pleaded by the bus driver before the criminal court has not been disputed by the Insurance Company. In fact, no counter has been filed by the Insurance Company, objecting for the reception of the additional document.

11. The Honourable Supreme Court in **2009-1-TNMAC-407-SC (Sudhir Kumar Rana Vs. Surinder Singh and others)** has held that even if the injured person drives the vehicle without a licence, that may not lead to a finding of negligence as regards the accident. In that case, the Tribunal found that the injured claimant was guilty of contributory negligence on the ground that he had no driving licence to drive the vehicle at the time of the accident. The Honourable Supreme Court set aside the said finding and held that the Appellant cannot be held to be guilty of negligence on the ground that he had no driving licence at the time of the accident. It is held as follows:-

"8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the court below that it was the driver of the mini truck which was being driven rashly and negligently. It is one thing to say that the Appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two wheeler rashly and negligently. If he was not driving

rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

12. In the present case, admission of guilt made by the driver of the bus coupled with the evidence placed on record would clearly prove that the entire negligence was on the part of the bus driver. In fact, the evidence clearly indicated that the bus had hit behind the motorcycle, which was proceeding ahead of the bus. The bus driver ought to have seen the motorcycle which was going ahead of it and he could have avoided the accident, if he had driven the vehicle with care and caution. Ordinarily, the responsibility of a heavy vehicle is more in comparison to the small vehicle. Therefore, absolute care ought to have taken by the driver of the heavy vehicle after seeing the small vehicle going ahead of it, but in this case, that care was not taken properly and due to the carelessness of the bus driver, the accident had occurred and therefore, I am of the considered view that there was no contributory negligence on the part of the claimant, who drove the small vehicle.

13. To subscribe to the above view, the additional document filed by the claimant is to be received as additional evidence. Hence, the findings of the Tribunal fastening the contributory negligence to an extent of 50 per cent on the claimant and restricting the compensation payable by the Insured and the Insurer to the claimant to an extent of 50 per cent are liable to set aside, holding that the accident in question had occurred due to the rash and negligent driving of the bus driver and the claimant has not contributed to the accident.

14. The quantum of compensation awarded by the Tribunal is not under challenge in this appeal either by the claimant or by the Insurance Company. Therefore, the award passed by the Tribunal to the tune of Rs.3,13,000/- with interest at 9 per cent p.a. is confirmed and the claimant is entitled for the said sum.

15. In the result, this Civil Miscellaneous Appeal and CMP are allowed. The findings, of the Tribunal, fastening the contributory negligence to an extent of 50 per cent on the claimant and restricting the compensation payable by the Insurance Company to the claimant to an extent of 50 per cent, are set aside,

holding that the accident in question had occurred due to the rash and negligent driving of the bus driver and the claimant has not contributed to the accident. The Insurance Company is directed to deposit the entire award amount with interest at 9 per cent p.a. from the date of the claim petition till the date of deposit, after giving credit to the amount already deposited if any by them, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire award amount with interest. No costs.

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