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C.M.A.No.256 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.256 of 2023

1.T.N.Murugan
2.M.Sumathi

...Appellants
vs.

1.S.Ram Kumar

2.National Insurance Company Ltd.,
Rep. by its Branch Manager,
Regina Manson,
T.P.HUB, III Floor,
No.46, Moore Street,
Chennai 600 001.

(R1 was set exparte before the Tribunal)

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 14.10.2022 made in M.C.O.P.No.3577 of 2017 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

For Appellants : Mr.R.K.Arjun Raj

For R2 : Mr.J.Chandran

* * * * *



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J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed by the claimants against the Judgment and Decree dated 14.10.2022 passed in M.C.O.P.No.3577 of 2017 on the file of the MACT (III Court of Small Causes), Chennai.

2.The claimants are the appellants in this appeal.

3.The brief facts of the case are that on 19.06.2016 when the deceased Sudhakaran was riding pillion along with two others, due to the rash and negligent driving of the first respondent, the two wheeler dashed against the unknown lorry causing fatal injuries to the deceased Sudhakaran. The deceased was aged 18 years at the time of the accident and was studying in the 10th standard. The parents of the deceased therefore filed the claim petition claiming a sum of Rs.20 lakh as compensation.

4.The first respondent remained exparte before the Tribunal and the claim petition was contested by the second respondent/Insurance Company.



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5.The second respondent/Insurance Company filed a detailed counter to the claim petition denying all the allegations made therein. The Insurance Company denied the manner of accident, negligence, liability and the quantum of compensation claimed by the claimants.

6.Before the Claims Tribunal on the side of the claimants two witnesses were examined and 16 documents were marked. On the side of the respondents, two witnesses were examined and three documents were marked.

7.The Claims Tribunal, on the basis of both oral and documentary evidence on record held that the accident occurred only due to the negligent of the driver of the unknown lorry and therefore in the absence of proof of negligence against the first respondent the claim petition under Section 166 of the Motor Vehicle Act was not maintainable. Aggrieved by the Judgment and decree of the Tribunal the claimants have filed the above appeal.

8.The learned counsel for the appellant submitted that the finding of



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the tribunal on negligence was erroneous and unsustainable. He further submitted that the reliance placed by the Tribunal on Ex.P15, FIR to conclude that the claimants failed to establish the negligence of the first respondent was erroneous.

9.According to the learned counsel the Tribunal failed to note that the FIR was filed by the first respondent and the final report clearly mentioned that it can not be determined as to who is responsible for the accident i.e. whether the lorry driver or the first respondent. The learned counsel therefore submitted that the tribunal relying on the said documents to arrive the finding on negligence against the unknown lorry driver went wrong in rejecting the claim petition.

10.The learned counsel for the respondent on the other hand submitted that the Tribunal had discussed the entire evidence on record and given a factual finding and the same did not call for any interference by this Court.



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11.I have heard both the learned counsels and have perused the materials placed on record.

12.The short point for consideration in this appeal is whether the claimants established negligence against the first respondent, the rider of the two wheeler and if so what would be the amount of compensation payable to the claimants. In this case, it is seen that the tribunal has relied on Ex.P15 final report and the FIR to conclude that the claimants have not established the negligence of the first respondent.

13.It is pertinent to note here that the FIR was not marked as a document in the Claims Tribunal, but it was referred to in Ex.P15, the copy of the final report. It is also pertinent to note here that the FIR was lodged by the first respondent the owner/rider of the two wheeler in which the deceased travelled. Therefore in my view, the FIR cannot be taken as gospel truth, moreso, when the author remained ex-parte in Tribunal. It is now well settled by catena of Judgment that the contents of the FIR cannot be taken as gospel truth. Reliance in this regard is placed on the Judgments in the case of (*NKKJ Judgment*). It is further seen that even in Ex.P15, the



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final report, it is stated that conclusive decision cannot be arrived at as regards negligence.

14.The relevant portion of the final report is extracted hereunder.

"எனவே இவ்வழக்கில் விபத்து ஏற்படுத்திய லாரியினை கண்டுபிடிக்க முடியாததால் மேற்படி இவ்வழக்கில் சுதாகரனின் மரணம் மற்றும் தூர்யாவிற்கு ஏற்பட்ட காயங்களானது மேற்படி விபத்து ஏற்படுத்திய லாரி ஓட்டுனரின் அதிவேகம் மற்றும் அஜாக்கிரதையாலோ அல்லது இவ்வழக்கின் சாட்சி ராம்குமார் தனது இருசக்கர வாகனத்தில் மூன்று நபர்களை ஏற்றிக்கொண்டும் செல்லும் போது செல்போனில் பாட்டுக்கேட்டுக்கொண்டு சென்ற செயலினாலோ என்பது பற்றி என்னால் அறுதியிட்டு கூறமுடியவில்லை. இந்த வழக்கில் விபத்து ஏற்படுத்திய மற்றொரு வாகனத்தை கண்டுபிடிக்க அனைத்து தீவர முயற்சிகள் மேற்கொண்டும் கண்டுபிடிக்க முடியாததால் இந்த வழக்கினை



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கண்டுபிடிக்கமுடியாத வழக்ககாவே கருதி
மேல்நடவடிக்கையினை தற்காலிகமாக நிறுத்தி
வைத்தும் இதன் இறுதி அறிக்கையினை பணிந்து
சமர்ப்பிக்கிறேன். இந்த வழக்கின் புகார்தாரர்
ராம்குமார் என்பவருக்கு RCS.No.50/2016/2015, நாள்
19.10.16-ன்படி சார்பு செய்யப்பட்டது."

15.In the light of the above finding and in the absence of the examination of the first respondent, I am of the view that the finding of the Tribunal that the claimants failed to establish negligence against the first respondent is untenable. The Tribunal failed to note that the claimants examined PW2, eye witness, who stated that the accident occurred only due to the negligence of the first respondent. In the light of the evidence of the eye witness, the Tribunal erred in it's finding of negligence has already observed above as against the self serving document, the FIR of the first respondent and the evidence of PW2. The Tribunal ought to have relied on the evidence of PW2, moreso, when the first respondent remained ex-parte, I am therefore of the view that the claimants have established the negligence



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of the first respondent. Therefore, the claim petition filed under Section 166

of the Motor Vehicle Act is maintainable.

16.The deceased Sudhakaran was the only son and studying 10th standard and aged about 18 years at the time of the accident. The accident occurred in the year 2016 and therefore the notional income is taken as Rs.6,500/- per month and 40% is added towards future prospects and 50% is deducted towards personal expenses of the deceased Sudhakaran, as he died as a bachelor. The multiplier 18 is adopted as the deceased was aged 18 years at the time of the accident. Therefore, loss of dependency is calculated as follows:

$$\text{Rs.6,500} \times 40\% = \text{Rs.9,100/-}$$

$$\text{Rs.9,100} \times 12 = \text{Rs.1,09,200/-}$$

$$\text{Rs.1,09,200} - 50/100 = \text{Rs.54,600/-}$$

$$\text{Rs.54,600} \times 18 = \text{Rs.9,82,800/-}$$

17.An amount of Rs.15,000/- each is awarded towards funeral



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expenses and transport charges. The claimants are further entitled to

Rs.40,000/- each towards loss of filial consortium. Therefore the following amounts are awarded as compensation.

SI. No.	Heads	Amount awarded by this Court
1	Loss of Income	Rs. 9,82,800/-
2	Transport Expenses	Rs. 15,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Filial Consortium	Rs. 80,000/-
TOTAL		Rs.10,92,800/-

18.The claimants shall be entitled for a sum of Rs.10,92,800/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation. The second respondent/Insurance Company is directed to deposit a sum of Rs.10,92,800/- along with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their shares equally along with interest and cost, less the amount already withdrawn, if any, by making proper application before the Tribunal.



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19.In the result, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

18.04.2023

Index : yes/no
Internet : yes/no
kkd/ah

To

1.The Motor Accidents Claims Tribunal,
(III Court of Small Causes),
Chennai.

2.The Section Officer,
V.R.Section,
High Court,
Madras.



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N.MALA, J.

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