



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1329 of 2022
and CMP No.9606 of 2022

ICICI Lombard General Insurance Company Limited
Rep. by its General Manager
Having Office at
ICICI Lombard House
414, Veer Savarkar Marg
Near Siddhi Vinayak Temple
Prabadevi, Mumbai – 400 025

..Appellant

.VS.

1.Mounagurusamy

2.Balamani

3.Sathiyapriya

4.K.S.Arun

5.M/s.P.K.Indane Gas Ageencies
20/A1, Nehru Street,
Udumalpet – 642 126.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and Decree dated 06.09.2021 made in MCOP No.237 of 2015 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Udumalpet.



WEB COPY



For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.J.Aravind for
M/s.D.R.Arunkumar for R1 to R3
No Appearance for R4 & R5

JUDGMENT

This appeal has been filed by the Insurance Company questioning the Award passed by the Motor Accident Claims Tribunal, Udumalpet in MCOP No.237 of 2015, dated 06.09.2021, granting compensation to the claimants for the fatal accident in which the claimants 1 and 2 lost their son and claimant No.3 lost her brother.

2.The case of the claimants is that on 07.07.2015 at about 9.35 p.m., the deceased Sathishkumar was riding the two wheeler towards north at Udumalpet-Tiruppur Road. When the vehicle was nearing Annamuthu Nayakar Garden, the car which was coming towards south was driven in a rash and negligent manner by the 1st respondent and as a result, the car hit the two wheeler and the deceased was thrown out of the vehicle and he sustained multiple injuries. Unfortunately, the deceased succumbed to the injuries on 09.07.2015. It is under these circumstances, the claimants who are the parents and sister have filed the claim petition before the Tribunal seeking for compensation.



WEB COPY

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent manner on the part of the 1st respondent. Having rendered such a finding, the Tribunal proceeded to determine the compensation and a total compensation of Rs.16,00,835/- was fixed in the following manner:

Compensation awarded under the head	Amount (in Rs.)
Loss of Dependency	15,12,000
Medical Bills	33,835
Loss of consortium	40,000
Funeral Expenses	15,000
Total	16,00,835

4.The above compensation was directed to be paid by the Insurance Company with interest at the rate of 7.5% per annum.

5.The Insurance Company has questioned the Award passed by the Tribunal mainly on the ground that the accident itself had taken place only due to the negligence of the two wheeler rider and therefore, the entire negligence ought not to have been attributed against R1 and even assuming that R1 had driven the vehicle in a rash and negligent manner, should have attributed contributory negligence as



against the deceased.

WEB COPY

6. Heard Ms.R.Sree Vidhya, learned counsel appearing on behalf of the appellant and Mr.J.Aravind, learned counsel appearing on behalf of respondents 1 to 3.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court has also carefully gone through the Award passed by the Tribunal.

9. The main ground that was urged by the learned counsel for the appellant is that the earliest document that came into being was the FIR that was registered based on the complaint given by the driver of the four wheeler, the 4th respondent herein. In the FIR, which was registered within a period of five hours from the time of accident, it has been specifically stated that the deceased was carrying a dog in the two wheeler and all of a sudden, the dog jumped out of the two wheeler and deceased lost balance and hit the vehicle that was driven by the 1st respondent. The learned counsel submitted that this was further spoken to by RW2. This was not taken into consideration by the Tribunal and the Tribunal must have atleast attributed contributory negligence as against the deceased.



WEB COPY

10.Per contra, the learned counsel for the respondents 1 to 3/claimants submitted that the Tribunal had properly appreciated the evidence of PW2, PW3 and RW2 and has come to a conclusion that the evidence of eye witnesses viz., PW1 and PW2 points out to the fact that there was no dog traveling along with the deceased in the two wheeler. Therefore, it was contended that the complaint given by RW2 was false and such a complaint was given only to escape from the liability.

11.The father of the deceased was examined in this case as PW1. He is not an eye witness to the incident. The learned counsel for the appellant relied upon the following answer given by PW1 during cross-examination:

நான் தாக்கல் செய்துள்ள ம.த.சா.ஆ.1 முதல் தகவல் அறிக்கையில் இருசக்கர வாகனத்தில் நாயை முன்புறம் அமர்த்துக் கொண்டு நாய் சங்கிலியை என் மகனின் இருப்பில் கட்டிக்கொண்டு சென்ற பொழுது நாய் கீழே குதித்த பொழுது வெள்ளைக் கோட்டை தாண்டி எதிரே வந்த வாகனத்தின் மீது விபத்து ஏற்பட்டதாக குறிப்பிடப்பட்டுள்ளது என்று சொன்னால் சரிதான்.

12.The above deposition of PW1 does not lead to the conclusion that the deceased was carrying a dog in the front portion of the two wheeler and the dog had jumped out of the vehicle as a result of which he lost his balance and dashed on the



WEB COPY

four wheeler. PW1 has merely stated as to what is contained in Ex.P1 which is the FIR that was registered based on the complaint given by RW2. PW1 cannot talk about the accident in this case, since he was not an eye witness in this case. Therefore, whatever was stated by PW1 regarding the contents of the FIR does not establish the defence taken by the Insurance Company.

13.The next important evidence to be considered is that of RW2. He is the person who was driving the four wheeler at the relevant point of time. He had stated that the deceased was carrying a dog in the front portion of the two wheeler and the dog suddenly jumped and as a result, the two wheeler dashed on the car. This is the manner in which he gave the complaint before the police which resulted in the registration of the FIR which was marked as Ex.P1. Obviously, the statement of RW2 cannot be taken as it is, since he was the person who was driving the offending vehicle. Therefore, this Court has to necessarily see as to what PW2 and PW3 have stated about this incident, since both of them were examined on the side of the claimants as eye witnesses. It is to be noted here that the presence of PW2 and PW3 in the place of occurrence was admitted by RW2 in the cross-examination. This admission is very significant, since, if RW2 had questioned the very presence of PW1 and PW2 in the scene of occurrence, then, the evidence of RW2 coupled with the FIR marked as Ex.P1 would have gained some significance. However, the presence of PW2 and PW3 has not been denied by RW2 and therefore, it has to be seen as to



WEB COPY

what PW2 and PW3 had stated before the Tribunal. Both of them have categorically stated that the accident had taken place only due to the rash and negligent driving on the part of the RW2. Both of them have categorically denied that the deceased was taking along with him a dog on the front portion of the two wheeler. They have categorically denied the very presence of the dog at the time of the incident.

14. In the light of the above evidence of PW2 and PW3, it has to be tested with the available evidence of RW2 and Ex.P1 FIR.

15. The test in motor accident cases is the test of preponderance of probabilities. On the one hand, the evidence of RW2 is available and he is the driver of the offending vehicle. On the other hand, evidence of PW2 and PW3 is available and they are the eye witnesses. Their presence has been admitted by RW2 and hence, the evidence of PW2 and PW3 cannot be disregarded, more particularly, when their evidence has not been discredited in the cross-examination. Hence, the evidence of PW2 and PW3 definitely assumes higher evidentiary value than the evidence of RW2. The Tribunal has specifically taken note of this and has rightly relied upon the evidence of PW2 and PW3.

16. Apart from the above, it is quite strange as to why the rough sketch was not marked by the Insurance Company in this case. If this rough sketch had been



marked, it would have given some idea as to the exact place where the accident had taken place in the road. The Tribunal has rightly held that the non-marking of the rough sketch also goes against the Insurance Company.

17. In the light of the above discussion, this Court finds that the reasoning given by the Tribunal in attributing the negligence against the offending vehicle driven by RW2 cannot be faulted. That apart, there is absolutely no ground to attribute contributory negligence as against the deceased. Therefore, the negligence aspect has been properly dealt with by the Tribunal which does not require the interference of this Court.

18. The Tribunal has also properly fixed the compensation payable by the Insurance Company under various heads and the same also does not require the interference of this Court.

19. In the result, this civil miscellaneous appeal stands dismissed. The appellant has deposited 50% of the Award amount with accrued interest, pursuant to the order passed in CMP No.9606 of 2022, dated 21.06.2022. If the balance 50% has not been deposited till now, the same shall be deposited with interest, within a period of four weeks from the date of receipt of copy of this order. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No



Costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

08.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal (Subordinate Judge) at Udumalpet.



WEB COPY



N. ANAND VENKATESH., J

SSR

CMA No.1329 of 2022
and CMP No.9606 of 2022

08.04.2024