



CMA No.2934 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2934 of 2022
and CMP No.22677 of 2022

M/s.Shriram General Insurance Co.Ltd.,
Sri Kumaran Nagar, Saravana Nagar
Perungudi, Chennai 600 096

.. Appellant

.Vs.

1.M.Paranthaman

2.P.Saravanan

3.R.Ramesh

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, appeal against the judgment dated 7.6.2022 passed in MACTOP.No.1365 of 2019, on the file of the Chief Judge, Court of Small Causes, Chennai.

For Appellant : Ms.V.Pushpa

For Respondents : Mrs.Rita Chandrasekar

for Mrs.R.Meenakshi



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JUDGMENT

The Insurance Company aggrieved by the award passed by the Chief Judge, Court of Small Causes (Motor Accident Claims Tribunal), Chennai, in MCOP.No.1365 of 2019, dated 7.6.2022, has filed the present appeal.

2.The claimants, who are the father and brother of the deceased P.Chandrasekaran, filed a claim petition before the Tribunal on the ground that the deceased was working as a Cab Driver and on 25.4.2018, he was driving the Car at Thirumangalam 100 feet Road and at about 11.30 pm., when the Car was driven from South to North, the offending vehicle which is the Eicher Van was driven in a rash and negligent manner and it suddenly came in front of the Car and as a result, the Car hit the rear side of the Van. The deceased sustained grievous injuries and unfortunately he succumbed in the accident. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the offending vehicle was moving near the centre median and was marking the paint line and there were no precautions observed and no caution was given to divert



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the other vehicles and as a result, the Car that was driven by the deceased had dashed on the rear side of the offending vehicle. After having rendered this finding, the Tribunal fixed 25% contributory negligence on the driver of the Car on the ground that he had driven the Car without properly noticing the offending vehicle and hence contributed negligence on his part.

4.The Tribunal thereafter proceeded to fix the compensation under various heads and the total compensation was fixed at Rs.16,59,000/- in the following manner:

Monthly Salary	Rs.15,000/-
Add: 40% Future Prospects	Rs. 6,000/-

	Rs.21,000/-

Towards Loss of Income/Dependency Rs.21,000 * 12 * 17 * 1/2	= Rs.21,42,000.00
Towards Loss of Estate	= Rs. 15,000.00
Towards Loss of Consortium Rs.40000/- (each)	= Rs. 40,000.00
Towards Funeral Expenses	= Rs. 15,000.00

Total Compensation	Rs.22,12,000.00
Less: 25% Contributory Negligence	Rs. 5,53,000.00

Compensable Payable	Rs.16,59,000.00



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5.The above compensation was directed to be paid with 7.5% p.a.

6.The Insurance Company aggrieved by the award passed by the Tribunal has filed the present appeal before this Court by questioning the negligence that was attributed against the 3rd respondent herein (1st respondent before the Tribunal).

7.Heard Ms.V.Pushpa, learned counsel for the appellant Insurance Company and Mrs.Rita Chandrasekar, learned counsel for the respondents.

8.This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court had also carefully gone through the award passed by the Tribunal.

9.The main contention that was raised by the learned counsel for the petitioner was that the accident did not take place due to the negligence on the part of the driver of the vehicle of the 3rd respondent. It is clear from the materials available on record that the offending vehicle was moving slowly and it is only because of the negligent driving on the part of the deceased, the Car dashed on the rear side of the Van resulting in the accident. It was also



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contended that PW.2 was not an eye witness in this case and he was not shown as an eye witness in the final report. Therefore, the very veracity of the evidence of PW.2 was put to question.

10.Per contra, the learned counsel for the claimants/respondents 1 and 2, submitted that the Tribunal went wrong in attributing 20% contributory negligence on the part of the driver of the Car and the same requires the interference of this Court. It was further contended that the deceased was aged about 26 years at the time of the accident and was a cab driver who was earning Rs.20,000/- pm and hence, it was contended that the notional monthly income that was fixed by the Tribunal is on the lower side. The learned counsel submitted that the appellants did not have the financial wherewithal even to file appeal in this case. Therefore, the learned counsel requested this Court to exercise the power and jurisdiction under Order 41 Rule 33 CPC.

11.The bone of contention touches upon the aspect of negligence and therefore this Court has to necessarily take note off the evidence that was available before the Tribunal.



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12. Admittedly, PW.1 in this case was not an eye witness and he was the father of the deceased. Therefore, he cannot talk about this incident. Yet another witness who was examined on the side of the claimant was PW.2, who is said to be an eye witness in this case. The veracity of the evidence of PW.2 has been put to question by the Insurance Company mainly on the ground that this eye witness was brought by the claimants and he was the relative of the deceased and he was not even shown as an eye witness in the final report that was filed by the police.

13. PW.2 during cross examination has stated as follows:

"விபத்து நடந்த சாலை Highways என்றால் சரிதான். ஈச்சர் வேன் சாலையில் பெயிண்ட் பண்ணக்கூடிய வாகனம் என்றால் சரிதான். மேற்படி வாகனம் பணியில் இருக்கும் போது அறிவிப்பு வைக்கப்படும் என்றால் சரி. விபத்து இரவு 11.30 மணிக்கு நடைபெற்றதாக கூறப்பட்டுள்ளது என்றால் சரி. இறுதி அறிக்கையில் ஈச்சர் வேனின் பின்புறம், பணியாளர் ஒருவர் நின்று கொண்டிருந்ததாக சொல்லப்பட்டுள்ளது என்றால் சரிதான். விபத்து பற்றிய முழு விபரம் எனக்கு தெரியாது என்றால் சரி "



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14.It must be kept in mind that the accident had taken place at about 11.30 pm., in the night. This eye witness states that he was present in the scene of occurrence and he had actually come to know of this accident only on hearing the sound after the Car had dashed the rear side of the offending vehicle.

15.The other materials that are available in the instant case are the FIR which was marked as Ex.P.1, and the rough sketch which was marked as Ex.R2 and also the final closure report that was marked as Ex.R.1.

16.A combined reading of all these documents goes to show that the Car was driven by the deceased at about 11.30 pm, on 25.4.2018 and there was an Eicher Van in the place of occurrence which was involved in marking the centre median line. The closure report shows that this Eicher Van was moving slowly in the road and unfortunately the driver of the Car did not notice it and had dashed on the rear side of the Van.

17.The Insurance Company has also relied upon the evidence of RW.1 and RW.2. RW.1 was the police officer who brought the case diary before the Court and spoke about the registration of the FIR, the rough sketch and also about the closure report that was filed in this case. Therefore, this officer has merely



spoken from the records and he could not have spoken about the actual incident since he was not an eye witness in this case.

18.The next witness is RW.2. This witness was not in any way involved in this case and he specifically states that he does not knows anything about this case. RW.2 is the legal officer of the Insurance Company and he also talks from the FIR, rough sketch and final report that was relied upon.

19.Insofar as the witnesses are concerned, what is available before the Tribunal was the evidence of PW.2, RW.1 and RW.2. Neither RW.1 nor RW.2 was an eye witness in this case. The fact as to whether PW.2 would have seen this accident is also not very clear. The Tribunal has therefore attempted to appreciate the evidence of these witnesses and gave a finding that there is nothing to discredit the veracity of the evidence given by PW.2. Such finding that was given by the Tribunal cannot be held to be illegal. If really there are other eye witnesses who are available to talk about this accident and whose names are also found in the final report filed by the police, the Insurance Company could have taken steps to summon those eye witnesses. Since no one has been summoned and what was available before the Tribunal was only the evidence of PW.2, the Tribunal has chosen to appreciate the evidence of PW.2 and accepted the same.



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20.While undertaking the above exercise, the Tribunal has not plainly relied upon only the evidence of PW.2 and Tribunal has also carefully considered the FIR, final report and also the rough sketch. Having considered those documents also, the Tribunal found that the Eicher Van was carrying out the painting work in the centre median without observing necessary precautions or by giving sufficient warning to the vehicles that were plying in the road and therefore, it has resulted in an accident. In view of the same, on a totality of the materials that were available, the Tribunal had come to such a conclusion which cannot be faulted in this case.

21.As stated supra, it must be borne in mind that the accident had taken place at about 11.30 pm in the night. It is common knowledge that such painting work in the centre median is carried out only during the night hours since the road will be relatively free from traffic. However, it is important that while carrying out that exercise, sufficient precaution must be taken and sufficient warning must be given to the vehicles that are plying in the road by indicating that such painting work is going on. If no such precaution is taken and no warning is given, it is very difficult for the vehicles which are plying in the road to know that such painting work is being carried out. Considering the fact that the road is free from traffic and also considering the fact that it was State Highways,



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the natural tendency for the vehicles is to ride the vehicle a bit faster. When vehicles are driven in such a fashion and all of a sudden they find a big Eicher Van moving slowly involved in painting work, it becomes very difficult to stop the vehicle. Therefore, this reality must be kept in mind while dealing with cases of this nature.

22.In the considered view of this Court, on a comprehensive appreciation of the evidence of PW.2, RW.1 and R.W.2 and also the FIR, closure report and rough sketch, this Court holds that the finding that has been reached by the Tribunal is supported by strong reasons and it does not suffer from any illegality or infirmity. Considering the nature of evidence that was tendered by PW.2, it cannot be stated that attributing 25% of the negligence on the deceased who was driver of the Car is illegal.

23.The compensation that has been awarded by the Tribunal is reasonable and the contributory negligence that was attributed by the Tribunal also cannot be faulted and therefore, this Court does not find any ground to interfere with the award passed by the Tribunal and accordingly, the civil miscellaneous appeal stands dismissed.



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24.The appellant Insurance Company is directed to deposit the compensation, less the amount already deposited, together with interest at 7.5% p.a from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. 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.

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

To

Court of Small Causes
Chief Judge,
(Motor Accident Claims Tribunal)
Chennai.



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N. ANAND VENKATESH., J
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