



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.63 of 2011

1.Balakrishnan
2.Parasakthi

... Appellants/Petitioners

Vs.

1.Jeyakumar
2.Shanmugavel
3.Narayanasamy

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the judgment and decree dated 01.06.2009 made in M.C.O.P.No.245 of 1999 of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.IV), Periakulam.

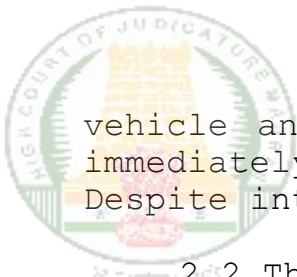
For Appellants : Mr.S.Siva Thilakar
For Respondents : Mr.N.Ranjith for R.1 and R3
: No Appearance for R.2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants to modify the judgment and decree dated 01.06.2009 made in M.C.O.P.No.245 of 1999 of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.IV), Periakulam.

2.The brief facts of the case are as follows:

2.1.The case of the claimants before the Tribunal was that the deceased Murali was the sole bread winner of their family and he was working as a Tractor driver and was earning a sum of Rs.3,000/- per month and he was taking care of his aged parents. On 20.10.1995, at about 04.15 pm, after finishing his personal work, he was returning home from Bodinayakkanur, in his two wheeler bearing Registration No. TN-60- 4023, adopting and observing the traffic rules and when he was nearing Lakshmipuram from South to North, on Theni - Periakulam main road, one Narayanasamy, who was proceeding in a Spark moped bearing Registration No. TCM - 4523 in the opposite direction from North to South in a very high speed, rash and negligent manner, without adopting the traffic rules, directly dashed against the two wheeler, which was ridden by the deceased. Due to the impact, the deceased Murali, was thrown out of his



vehicle and fell down on the main road and got head injuries and immediately, he was admitted in the Periakulam Government Hospital. Despite intense treatment was given, he died in the hospital.

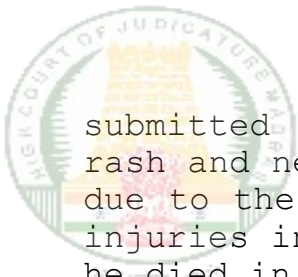
2.2. The Periakulam Police has registered a case in Crime No.704 of 1995 under Sections 279, 337 and 304 IPC against one Narayanasamy, who rode the Spark Moped, for his rash and negligence riding. The third respondent alone is liable to pay the compensation, since there was no insurance coverage for the said vehicle. The petitioners have claimed a sum of Rs.2,00,000/- as compensation. The first respondent, who is the son of the third respondent filed a counter denying the manner of the accident and also submitted that the vehicle did not stand either in his name or in his father's name and the said vehicle belongs to one Shanmugavel Nadar, S/o.Subbiah Nadar, who is residing at Nataraja Colony, Sivakasi. Since they were not the owners, the person, in whose name the vehicle was registered, alone is liable to pay the compensation and they sought for dismissal of the said petition.

3. The third respondent also filed a counter affidavit stating that he was not the owner and that therefore, he was not liable to pay any compensation to the claimants. He also denied the allegation of rash and negligent riding and further stated that the deceased only caused the accident. The petitioners had not arrayed the insurance company of the vehicle of the deceased, as a party to the proceedings.

4. Before the Tribunal, on the side of the claimants two witnesses as P.W.1 and P.W.2 were examined and two documents were marked as Ex.P.1 and Ex.P.2 and on the side of the respondents R.W.1 was examined and no document was marked.

5. The Tribunal after considering the witnesses, first and third respondents, held that the first and third respondents are not the owners of the offending vehicle and in the RTO Office's records, the same stands in the name of the second respondent, namely, Mr. Shanmugavel Nadar, and therefore, the first and third respondents submitted that they are not liable to pay the compensation to the claimants and as the owner of the offending vehicle, the second respondent alone is liable to pay the compensation to the claimants. The Tribunal after going through all the material placed before it, fastened the liability on the second respondent and awarded a sum Rs.1,64,500/- as compensation, to be paid by the second respondent.

6. This Court heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the first and third respondents and perused the materials available on record. This Court is of the opinion that the Tribunal has not given any reason for considering the evidence, deposed by the respondents 1 and 3. Since the accident has been committed by the third respondent, who is the rider of the vehicle (Spark moped), as per the evidence of PW-1, who is the eye witness to the accident,



submitted that the third respondent had ridden the vehicle in a rash and negligent manner and dashed against the deceased Murali and due to the same, Murali was thrown out on the road and he sustained injuries in head and all over the body and due to the said injuries, he died in the hospital.

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7. The evidence of the the first and third respondents that no injury was caused due to the accident and at the time of accident, they were not the owners of the vehicle and Mr. Shanmugavel Nadar, was alone the owner of the vehicle, was not proved by the first and third respondents. They did not take steps to examine any witness to prove that they were not the owners of the vehicle and it is only Mr. Shanmugavel Nadar, who is the owner of the said vehicle. Since the evidence of the first and third respondents that they are not liable to pay any compensation and the owner of the vehicle Mr. Shanmugavel Nadar alone is liable to pay the compensation, cannot be accepted, because the respondents did not prove the same by bringing any evidence and also how the third respondent was in possession of the vehicle. The said vehicle has been transferred into the third respondent's name, after a month of the said accident. This would show that the sale has taken place earlier to the accident and the name transfer was effected, only after the accident. No clear picture and no answer, why the third respondent purchased the said vehicle after one month of the accident. Normally, there will be hesitation to buy a vehicle which has involved in an accident and caused a death. The liability fixed by the Tribunal, on the second respondent has to be set aside and the contributory liability has to be fixed on the first and third respondents at 50% of the award amount and 50% of the award amount has to be paid by the second respondent. Accordingly, the liability is fixed at 50% on the first and third respondents and 50% on the second respondent.

8. As far the quantum of the compensation is concerned, this court is of the view that the tribunal by taking the salary of the deceased as Rs.15,000/- per annum and adopting 16 as multiplier and after deducting 1/3 of the income towards the personal expenses of the deceased, has rightly arrived at the loss of income at Rs.1,60,000/- and hence, the same needs no interference of this Court. Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses and the same is enhanced to Rs.15,000/- and the Tribunal has awarded Rs.2,500/- towards loss of estate and the same is enhanced to Rs.15,000/-.

S. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For loss of future income	1,60,000/-	1,60,000/-	confirmed

2	For funeral expenses	2,000/-	15,000/-	Enhanced
3	For loss of assets	2,500/-	15,000/-	Enhanced
	Total	1,64,500	1,90,000	Enhanced by a sum of Rs.25,500/-

9. In the result, the Civil Miscellaneous appeal is partly allowed. The judgment and decree dated 01.06.2009 made in M.C.O.P.No.245 of 1999 of the Motor Accident Claims Tribunal, Additional District Court is modified. The first and third respondents are directed to deposit 50% of the modified award and the second respondent is directed to deposit 50% of the modified award, with interest at 7.5% per annum from the date of petition, if already not deposited, if deposited, less the amount already deposited, along with proportionate interest and cost to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment. The claimants are permitted to withdraw their share of the award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge (Fast Track Court No.IV),
Motor Accident Claims Tribunal, Periyakulam.

Copy To:-

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.R.SARAVANAN, ADVOCATE IN SR No. 87502
+ 1 CC TO Mr.S.SIVA THILAGAR, ADVOCATE IN SR No. 87695

CMR

TE/MR/SAR-1 : 29/01/2018 : 4P/6C