

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1040 of 2015
and M.P.No.1 of 2015

Subramani ...Appellant /3rd Respondent.

1.Rukmani Vs ...1st respondent/Petitioner

2.V.Suresh2nd respondent/1st respondent

3.M/s.United India Insurance Co.Ltd.,
No.2, Dr.Sankaran Road
Namakkal Town & District ...3rd respondent/2nd respondent.

Civil Miscellaneous Appeal filed against the judgment and decree dated 26.06.2012 passed in M.C.O.P.No.331 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For appellant : : Mr.M.Aniruthan
for Respondents : : Mr.N.Manoharan for R1.
Mr.S.Arun Kumar for R3.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/3rd respondent, challenging the judgment and decree dated 26.06.2012 passed in M.C.O.P.No.331 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner is that on 26.05.2010, at about 11.30 hours, while the deceased Nirmalraj was travelling as pillion rider in a two wheeler bearing Reg.No.TN-20-AP-0456 driven by one Nallakumar in Manianoor to Velangoundampatti Road, while going near Thuthipalayam, the driver of the vehicle bearing Reg.No.TN-28-AC-6613 came at high speed, dashed against the two wheeler, in which the deceased was travelling, causing him fatal injuries in his head, resulting in his death subsequently. The accident occurred only due to rash and negligent driving of the 1st respondent vehicle driver and as the said vehicle bearing

Reg.No.TN-28-AC-6613 was insured with the 2nd respondent, both the respondents are liable to pay compensation. The further case of the petitioner is that at the time of the accident, the deceased Nirmalraj was aged 11 years and was admitted in 7th standard. He is the only son of the petitioner/mother and she was deserted by her husband/3rd respondent about three years back. As such, the petitioner sought for a sum of Rs.4,00,000/- as compensation from the 1st and 2nd respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the petitioner, the 2nd respondent/Insurance company by filing counter, contends that the accident did not occur in the manner alleged by the petitioner. The rider of the two wheeler in which the deceased Nirmalraj was travelling without noticing the minidoor auto coming in the opposite direction, overtook another vehicle going ahead of him, and in the process, lost control of the two wheeler, dashed against the minidoor auto, resulting in the accident. As such, the driver of the 1st respondent owned minidoor auto bearing Reg.No.TN-28-AC-6613 is not responsible for the accident, but the rider of the two wheeler in which Nirmalraj travelled alone is the cause for the accident. At any cost, contributory negligence has to be fixed on the part of the rider of the two wheeler. The claim of the petitioner is exorbitant. Thus, the 2nd respondent/Insurance company sought for dismissal of the claim petition.

4. The father of the deceased and husband of the petitioner/Respondent No.3 filed his counter stating that while the deceased was proceeding in a two wheeler on the left side of the road, the 1st respondent vehicle bearing Reg.No.TN-28-AC-6613 Minidoor auto came at high speed, dashed against the two wheeler resulting in the death of Nirmalraj. The 3rd respondent further submitted that he himself suffered injuries in another accident and he is not in a position to travel alone to any place and in MCOP.No.116 of 2006 filed by him in respect of injuries he sustained, he has been awarded compensation and in this case he is entitled for compensation amount higher than that to be given to the petitioner. Hence, the 3rd respondent sought for passing of an award in favour of him.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and eyewitness to the accident as P.W.2 and produced documents Ex.P.1 to Ex.P.13 to prove her claim. On the respondents side, the 3rd respondent/father of the deceased deposed as R.W.1, produced copy of the judgment passed in MCOP.No.116 of 2006 as Ex.R.1. The Tribunal, on the basis of available evidence on record, found that the 1st respondent vehicle driver alone is the cause for the accident and passed an award for a sum of Rs.2,10,000/- payable by the 1st and 2nd

respondents and apportioned the award amount between the petitioner and the 3rd respondent. Being not satisfied with the award passed by the Tribunal, the 3rd respondent/father of the deceased has come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the 3rd respondent contends that the amount awarded by the Tribunal is very low and further, the apportionment done by the Tribunal is not proper. No reason is stated by the Tribunal for awarding higher amount to the petitioner and much lesser amount to the 3rd respondent/father. Thus, the 3rd respondent sought for equal apportionment of the award amount to him. Hence, the appeal.

8. On the other hand, the learned counsel for the petitioner contended that her husband, the 3rd respondent deserted her long back and she alone took care of the minor boy and brought him up and there is no ground to alter or modify the award apportionment. Hence, the petitioner/mother sought for dismissal of the appeal.

9. The 2nd respondent/Insurance company also contended that the award passed by the Tribunal is on the higher side and there is no ground to enhance the award amount. Hence, the 2nd respondent also sought for dismissal of the appeal.

10. The Petitioner examined herself as P.w.1 and stated about the manner in which the accident occurred. However, P.W.1 is not the eyewitness to the occurrence. The person, who witnessed the accident deposed as P.W.2 and he clearly stated that negligent driving of the TATA ACE minidoor vehicle bearing Reg.No.TN-28-AC-6613 by its driver only caused the accident. The Police also registered Ex.P.1-FIR against the 1st respondent vehicle driver. After completion of investigation Police laid, Ex.P.5-Charge sheet also against the said vehicle driver only. The Petitioner also produced copy of the Rough Sketch of the occurrence spot as Ex.P.4. Further, as per Ex.P.3-Motor Vehicle Inspector's Report, no mechanical defect is found in the offending vehicle. As such, it is clear from the above said averments and the evidence of P.W.2-eyewitness to the accident that the accident occurred only due to rash and negligent driving of the 1st respondent vehicle driver.

11. On the side of the respondents, no eyewitness to the accident is examined. The driver of the 1st respondent vehicle also is not examined. As such, there is no contra evidence to the version of the accident given by P.W.2 vis-a-vis corroborated by the contents of Ex.P.1-FIR and Ex.P.5-Charge sheet. Therefore, it is clear that the accident occurred only due to rash and negligent driving of the 1st respondent vehicle

bearing Reg.No.TN-28-AC-6613.

12. Admittedly, the said vehicle was insured with the 2nd respondent as evidenced by Ex.P.13-Insurance Policy copy. Therefore, the 1st and 2nd respondent as the owner and insurer of the offending vehicle are liable to pay compensation.

13. The Tribunal after carefully analysing the evidence of P.W.1 that her son/deceased was aged 11 years and studying in 6th standard and on the basis of Ex.P.2-Post Mortem Report, Ex.P.8-Identity Card and Ex.P.11-Admission Card, fixed the age of the deceased as 10 years. As the deceased was a student, the Tribunal fixed notional income at Rs.15,000/- per annum, applied multiplier 15 and after deducting 1/3rd of the income towards personal expenses, arrived at Rs.2,10,000/- as compensation, payable by the 1st and 2nd respondents. The Tribunal, after analysing the evidence on record found that the father of the deceased, who is the 3rd respondent was living separately and not with the petitioner/mother who alone took care of their son, the deceased Nirmalraj. The Tribunal, after considering the fact that 3rd respondent-Subramani is having 5 acres of land, awarded a sum of Rs.2,00,000/- to the Petitioner/mother and Rs.10,000/- to the 3rd respondent/father of the award amount of Rs.2,10,000/-.

14. Aggrieved over the said award passed by the Tribunal, the 3rd respondent/father of the deceased has come forward with the present appeal. The 3rd respondent/father contends that he suffered physical disability in another accident and he is unable to sustain himself on his own. The Tribunal, after holding that both the petitioner/mother and father/3rd respondent are entitled for the award amount, did not apportion the amount equally. The Tribunal, without any basis, awarded Rs.2,00,000/- of the award amount to the Petitioner while granting Rs.10,000/- only to the 3rd respondent/father and the same is not proper. The reasoning stated by the Tribunal for such apportionment is unsustainable. Thus, the 3rd respondent/father seeks to set aside the award passed by the tribunal.

15. Admittedly, the petitioner/mother who approached the Tribunal seeking compensation for the death of minor son has not come forward with any appeal seeking enhancement of the award amount. The 3rd respondent/father who has filed appeal also did not press for enhancement of the award amount. In the grounds of appeal also, no reason is advanced for seeking enhancement of the award amount. The only grievance of the 3rd respondent/father is that the Tribunal apportioned the award amount disproportionately giving major part of the award amount to the Petitioner and allotting very less share to the 3rd respondent/father.

16. Refuting the contentions raised on the side of the appellant/3rd respondent, it is contended by the learned counsel appearing for the petitioner/mother of the deceased that the 3rd respondent deserted the Petitioner and she only took care of the deceased minor boy and as such, the 3rd respondent is not entitled to ask for any share of the award amount. It is also conceded by the 3rd respondent that he is living separately. There is nothing on record to show that the 3rd respondent was in custody of the deceased minor Nirmalraj and he was taking care of the deceased boy. As such, the Tribunal considering the material available on record, found the 3rd respondent was possessing 5 acres of land and he has deserted the petitioner/mother and as such, he is entitled only for a lesser amount than the petitioner/mother.

17. As stated earlier, the 3rd respondent has not made out any ground to enhance the quantum of award passed by the tribunal. As such, this court is of the view that the quantum of award passed by the Tribunal is just and proper and the same needs no interference. However, taking into consideration the rival plea of the Petitioner/mother and the 3rd respondent/father of the deceased and the fact that the petitioner and 3rd respondent are living separately and the minor deceased was under the care and custody of the petitioner/mother only and she has executed the release deed in favour of her husband/3rd respondent, it will be appropriate to award 80% of the award amount to the Petitioner/mother and 20% of the award amount to the 3rd respondent/father of the deceased. To the extent indicated above, the award passed by the Tribunal is modified in respect of apportionment only.

18. In the result, the quantum of the award passed by the Tribunal granting Rs.2,10,000/- is confirmed. The apportionment of the award amount is modified as follows:-

- (i) Petitioner/mother/1st respondent in CMA.No.1040 of 2015 is entitled to 80% of the award amount.
- (ii) 3rd respondent/father/appellant in CMA.No.1040 of 2015 is entitled to 20% of the award amount.

The Civil Miscellaneous Appeal is disposed of with the above observation. The Tribunal shall disburse the award amount as indicated above by following necessary procedure and as per law. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
Principal District Judge, Namakkal.

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

+1cc to Mr.M.Anirutha, Advocate Sr.No.29037
+1cc to Mr.N.Manokaran, Advocate Sr.No.28601
+1cc to Mr.S.Arunkumar, Advocate Sr.No.28575

SVI (co)
sm:27.6.2018

C.M.A.No.1040 of 2015



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