

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.843 of 2015
and
M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Thiruchirappalli - 620 001.

Appellant/2nd Respondent

Vs

1.Chandra 1st Respondent/1st Petitioner
2.Krishnamoorthy 2nd Respondent/2nd Petitioner
3.Vinoth 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 31.7.2014 made in M.C.O.P.No.406 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Perambalur.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.C.Jagadish (for R1 & R2)
No Appearance (for R3)

JUDGMENT

Aggrieved by the compensation of Rs.12,00,000/- awarded by the Tribunal in M.C.O.P.No.406 of 2013, dated 31.7.2014, the appellant insurance company has filed the present appeal.

2. The respondents 1 and 2, who are claimants have filed the claim petition claiming compensation of Rs.20,00,000/- for the death of the deceased Sathish.

3. Brief facts are that on 23.03.2013 at 5.45 P.M., the deceased was travelling as a pillion rider in a motorcycle bearing registration No.TN-61 C 8170 from Jayankondam to Sendurai and the rider of the motorcycle drove the same in a rash and negligent manner. When the motorcycle was nearing

Sengunthapuram High School, a dog crossed the road and the rider of the motorcycle applied sudden brake and the motorcycle dashed against the dog, as a result both the rider and the deceased fell down and sustained multiple grievous injuries. Immediately, both were taken to Government Hospital, Jayankondam for treatment, but the pillion rider succumbed to injuries at the hospital. The third respondent is the owner and the appellant is the insurer of the motorcycle. At the time of accident, the deceased was aged 23 years and was earning Rs.10,000/- per month by working as Manager in Muthoot Pin Corporation, Jayakondam. Stating that the accident occurred due to rash and negligent riding of the rider of the motorcycle, the respondents 1 and 2 have filed the claim petition.

4. Resisting the claim petition, the appellant filed counter stating that at that time of accident the rider of the motorcycle drove the same in a slow speed by obeying the traffic rules and a dog suddenly crossed the road. On seeing the same, the rider of the motorcycle applied brake and in spite of that the motorcycle had skidded and fell down on the road. The accident happened as an Act of God. It is stated that if it is found that the accident was due to the rashness and negligence of the rider of the motorcycle, the theory of contributory negligence has to be applied. The appellant also denied the age, occupation and monthly income of the deceased.

5. To prove the claim, on the side of the respondents 1 and 2, three witnesses were examined and Exs.P1 to P9 were marked. On the side of the appellant, two witnesses were examined and Exs.R1 to R4 were marked.

6. The Tribunal held that the accident occurred due to rash and negligent driving of the rider of the motorcycle and the principle of contributory negligence does not apply. Finding that at the time of accident, the third respondent vehicle was insured with the appellant, the Tribunal held that the appellant insurance company is liable to pay the compensation. Taking the monthly income of the deceased at Rs.10,000/- and after deducting 50% towards personal expenses and adopting multiplier 18, the Tribunal awarded Rs.10,80,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.12,00,000/- payable with interest at the rate of 7.5% per annum.

7. Assailing the award, the learned counsel for the appellant submitted that the Tribunal failed to note the evidence of R.W.1, who is the competent witness and also erred in properly appreciating Exs.R1 to R4. He would submit that though the appellant discharged its burden to the possible extent, the Tribunal erred in directing the appellant to pay the

compensation. The learned counsel further submitted that in the absence of tangible proof for payment of salary, the total compensation of Rs.12,00,000/- awarded by the Tribunal is highly exorbitant and prayed for setting aside the award.

8. Reiterating the findings of the Tribunal, the learned counsel for the respondents 1 and 2 submitted that after arriving the finding that the accident occurred due to rash and negligent driving of the rider of the motorcycle bearing registration No.TN-61 C 8170, the Tribunal rightly directed the appellant who is the insurer of the motorcycle to pay the compensation. He would submit that though the respondents 1 and 2 have claimed Rs.20,00,000/- as compensation, the Tribunal awarded only Rs.12,00,000/- and in fact, the same needs enhancement. Any how, the learned counsel submitted that there is no need to interfere with the award passed by the Tribunal.

9. I have considered the submissions made by Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.C.Jagadish, learned counsel for the respondents 1 and 2 and also perused the materials available on record. No representation on behalf of the 3rd respondent.

10. The point that arises for consideration is whether the Tribunal was right in directing the appellant to pay the compensation and whether the quantum determined by the Tribunal warrants interference.

11. According to the respondents 1 and 2, the accident occurred due to rash and negligent driving of the rider of the third respondent's motorcycle which was insured with the appellant at the time of accident. On the other hand, it is the say of the appellant that the accident not occurred solely on the negligence of the rider of the third respondent's motorcycle and the accident happened as an Act of God and if at all any negligence, the theory of contributory negligence has to be applied.

12. To prove the accident, the respondents 1 and 2 have examined P.W.2-eye witness, who categorically deposed that the rider of the motorcycle drove the same in a rash and negligent manner and at that time a dog came from south to north and on seeing the same, the rider of the motorcycle applied sudden brake, as a result of which, the pillion rider (deceased) was thrown off and sustained fatal injuries. P.W.2 further deposed that the accident happened only due to the negligence of the rider of the offending motorcycle. His evidence was also strengthened by Ex.P1-FIR, registered against the rider of the third respondent's motorcycle.

13. Though the appellant contended that the rider of the offending motorcycle had no valid driving licence at the time of accident, the evidence of R.W.1 is to the effect that he did not know about the obtaining of licence by the rider of the motorcycle during 2012 and 2013 at Chennai.

14. After analysing the oral evidence of R.W.1 and 2 coupled with the documentary evidence i.e., Exs.R1 to R4, the Tribunal held that the appellant failed to prove that the rider of the third respondent's motorcycle had no valid driving licence at the time of accident. The Tribunal also held that the third respondent's motorcycle was insured with the appellant at the time of accident and therefore, the appellant is liable to pay the compensation. Since the said finding of the Tribunal is based on oral and documentary evidence, the same is confirmed.

15. Coming to the quantum, at the time of accident, the deceased was aged 23 years and was working as Assistant Manager in Muthoot Pin Corpn., Jayakondam. According to the respondents 1 and 2, the deceased was getting salary of Rs.10,000/- per month. To show that at the time of accident the deceased was employed in Muthoot Finance, the respondents 1 and 2 have marked Ex.P8-identity card and to prove the salary, they have marked Ex.P8-pay slip for the month of March 2013.

16. Finding that the avocation with which the deceased carrying on as customer executive at the time of accident, the Tribunal fixed the monthly income of the deceased at Rs.10,000/-. Since the appellant has not produced any contra evidence, the monthly income of Rs.10,000/- fixed by the Tribunal is reasonable and the same is maintained. As the deceased was a bachelor, the Tribunal deducted 50% towards personal expenses, which in my opinion is perfectly correct. Deducting 50%, the Tribunal has taken the monthly income of the deceased at Rs.5,000/- per month.

17. As stated supra, at the time of accident, the deceased was aged 23 years. For the age group 21-25, the multiplier to be adopted is 18, which the Tribunal has rightly adopted. Taking the monthly income of the deceased at Rs.5,000/- and adopting multiplier 18, the Tribunal awarded Rs.10,80,000/- for loss of dependency, which in my considered view is reasonable.

18. Insofar as conventional damages awarded are concerned, the Tribunal awarded Rs.50,000/- each towards loss of love and affection, Rs.5,000/- towards funeral expenses; another Rs.5,000/- towards transport charges and Rs.10,000/- towards loss of estate. Since amounts awarded under the aforesaid headings are reasonable, this Court does not want to disturb the same. Thus, the total compensation of Rs.12,00,000/- awarded by

the Tribunal is just and reasonable and no interference is warranted. Resultantly, the appeal filed by the appellant is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

On a perusal of the record, it is seen that by an order dated 20.04.2015 in M.P.No.1 of 2015, this Court granted interim stay on condition that the appellant shall deposit the entire award amount to the credit of M.C.O.P.No.406 of 2013 on the file of the Motor Accident Claims Tribunal, Perambalur within a period of eight weeks from the date of receipt of the copy of the said order. It is also reported that the conditional order of this Court has been complied with. Since the entire amount has been deposited by the appellant and the same was lying in the credit of M.C.O.P.No.406 of 2013, the respondents 1 and 2 are permitted to withdraw the compensation amount with accrued interest on filing proper application before the Tribunal.

Vs

27/08/2018

This matter has been posted under the Caption 'For Being Mentioned' on Tuesday, the Twenty Sixth day of February, Two Thousand and Eighteen, at the instance of Mr.S.Arunkumar, Advocate for the Appellant, the Court made the following order;

Today, this Civil Miscellaneous Appeal is listed under the caption ' for being mentioned' at the instance of Mr.S.Arun kumar, learned counsel for the appellant.

2.Mr.S.Arun kumar, learned counsel appearing for the appellant drawn the attention of this Court to the order dated 27.08.2018 in C.M.A.No.843 of 2015, wherein, in paragraph No.14, it is stated that the rider of the third respondent's motorcycle had no valid driving licence at the time of accident. He further states that since the rider of the motor cycle had no valid licence, the appellant is not liable to pay the compensation amount awarded by the Tribunal and sought for modification of the same.

3.Considering the submission made by the learned counsel for the appellant, the paragraph no.19 of the order dated 27.08.2018 dated is modified as follows:

19. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

On a perusal of the record, it is seen that by an order dated 20.04.2015 in M.P.No.1 of 2015, this Court granted interim stay on condition that the appellant shall deposit the entire award amount to the credit of M.C.O.P.No.406 of 2013 on the file of the Motor Accident Claims Tribunal, Perambalur, within a period of eight weeks from the date of receipt of the copy of the said order, and recover the same from the owner of the vehicle. It is also reported that the conditional order of this Court has been complied with. Since, the entire amount has been deposited by the appellant and the same was lying in the credit of M.C.O.P.No.406 of 2013, the respondents 1 and 2 are permitted to withdraw the compensation amount with accrued interest on filing proper application before the Tribunal.

4. All other observations made in the above said order shall remain intact.

smn

26.02.2019

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

vs

To

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

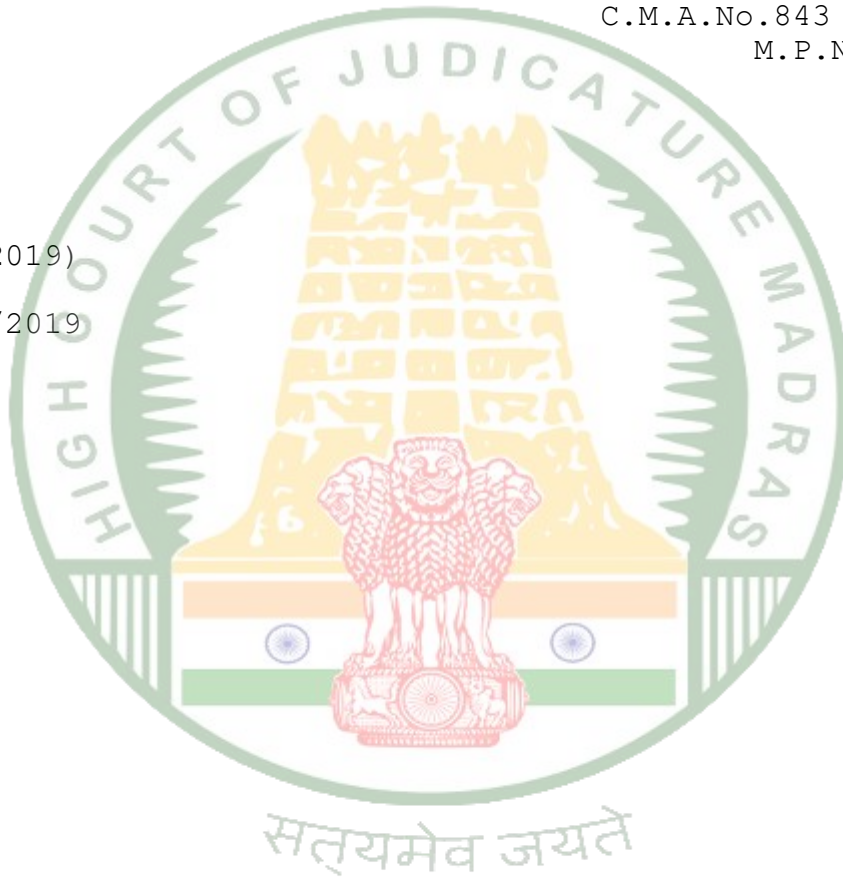
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr. S.Arun Kumar, Advocate, S.R.No. 58975
+1cc to Mr. C.Jagedish, Advocate, S.R.No. 59073

C.M.A.No.843 of 2015 and
M.P.No.1 of 2015

KJ(CO)
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srg 20/06/2019



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