

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
29.08.2018

Delivered on
17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
CMA.No.647 of 2014

The Divisional Manager,
The New India Assurance Company Ltd.,
Bangalore

... Appellant/2nd Respondent

-vs-

1.K.Swaminathan

2.Radha Swaminathan

... Respondents 1 & 2/Claimants

3.M/s.Carzonrent (India) (Pvt) Ltd,
Bangalore

4.V.Sumathi

5.The Divisional Manager,
United India Insurance Company Ltd.,
Namakkal.

... Respondents 3 to 5/Respondents 1, 3 and 4

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.261 of 2007 dated 19.04.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Hosur, Krishnagiri District.

For Appellant : Ms.S.R.Sumathy

For Respondents : Mr.K.Suryanarayanan
for Mr.M.Selvam for R1 and R2
Mr.T.Ravichandran for R5.
R3 - Left, R4 - Not ready notice

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J U D G M E N T

R.SUBRAMANIAN, J.

1. The Insurance Company which suffered an award of Rs.60,16,120/- as compensation for the death of one Sarayu Swaminathan D/o. the respondents 1 and 2 in a motor accident that occurred on 29.05.2006 is the appellant.

2. According to the claimants, she was travelling in a

Maruthi Swift Taxi bearing registration No.KA-03-C-679 from Pondicherry to Bangalore. At around 1.30 pm on 29.05.2006 when they were travelling near Shoolagiri on the Hosur - Krishnagiri road, it is claimed that, the driver of the car one Harish drove the car in a rash and negligent manner and dashed on the rear side of the Ashok Leyland lorry bearing registration No.KA-01-A-6561 which was going ahead of the car and because of the accident, the said Sarayu Swaminathan who was sitting on the left rear seat of the car suffered multiple injuries and she succumbed to the injuries on 05.06.2006 at about 4.30 pm. Contending that she has completed B.E., in Telecommunication from K.S. Institute of Technology, Bangalore and she joined the services of Oracle (India) Private limited as a Business Development Consultant, the claimants who are the parents sought for a compensation of Rs.2,00,00,000/-. The owners of the car and the lorry and the respective Insurers were made parties to the claim petition.

3. The appellant Insurance Company which was arrayed as 2nd respondent had resisted the claim petition contending that the accident did not occur in the manner narrated by the claimants. According to it, it was the driver of the lorry whose rash and negligent driving that caused the accident. It is claimed that the driver of the lorry had given overtaking signal to the driver of the car, but suddenly swerved the lorry towards right, resulting in the accident.

4. The 4th respondent, Insurance Company had filed a counter contending that it was the rash and negligent driving of the car which caused the accident inasmuch as the rear portion of the car had dashed against the rear portion of the lorry. It was also contended that the very topography of the area and the gradient of the road which is slopping upwards towards Hosur prevents heavy vehicles from speeding and therefore the claim of the 2nd respondent Insurance Company that the lorry was driven in a rash and negligent manner at a high speed cannot be correct.

5. The Tribunal on a consideration of the evidence on record particularly the fact that the FIR was filed against the driver of the car and the fact that the counter filed by the 2nd respondent Insurance Company contains only a vague denial of the claim regarding the negligence, concluded that it was the car driver who was responsible for the accident.

6. On the quantum, the Tribunal took the monthly income of the deceased at Rs.27,000/- and adding 50% towards future prospects arrived at a monthly income of Rs.40,500/-. Deducting 1/3rd from the income, the Tribunal worked out the loss of dependency at Rs.27,000/- per month. Applying a multiplier of '18', the Tribunal worked out the total loss of dependency at Rs.58,32,000/-. The Tribunal awarded a sum of Rs.10,00,000/- towards loss of love and affection, Rs.1,64,120/- towards

medical expenses, Rs.10,000/- towards funeral expenses and arrived at a total award of Rs.60,16,120/-. Aggrieved the 2nd respondent Insurer of the car has come up with this appeal.

7. We have heard Mrs.S.R.Sumathy, learned counsel appearing for the appellant and Mr.K.Suryanarayanan, learned counsel appearing for Mr.M.Selvam for the respondents 1 and 2 and Mr.T.Ravichandran, learned counsel appearing for the 5th respondent. Notice to the respondents 3 and 4 is dispensed with, in view of the fact that they had remained exparte before the Tribunal.

8. Mrs.S.R.Sumathy, learned counsel appearing for the appellant Insurance Company would contend that the Tribunal was not right in fixing the entire liability on the 2nd respondent Insurance Company. She would contend

that a perusal of the rough sketch filed as Ex.P2 would show that the driver of the lorry had also contributed to the accident.

9. Per contra Mr.K.Suryanarayanan, learned counsel appearing for the respondents/ claimants and Mr.T.Ravichandran, learned counsel appearing for the 5th respondent Insurer of the lorry would contend that the manner in which the accident happened would definitely suggest that it was the negligence on the part of the car driver which was the cause of the accident. Pointing out that the persons who were seated in the front seats of the car did not suffer any injuries and the person who was seated in the rear left side had suffered multiple injuries, resulting in death, Mr.K.Suryanarayanan, learned counsel would contend that it is the rear portion of the car which had rammed against the lorry. Therefore, at no stretch of imagination can it be held that the lorry driver was negligent.

10. We have considered the rival submissions. On a perusal of the evidence on record, we find that the accident had occurred only due to the negligence on the part of the driver of the car. The very nature of the accident shows that the rear portion of the car had collided against the lorry which would mean that it was the car driver who was responsible for the accident. As rightly contended by Mr.K.Suryanarayanan, the gradient of the road from Krishnagiri to Hosur prevents heavy vehicles from travelling at a higher speed because it is a steep raise, therefore the claim of the 2nd respondent Insurance Company that the lorry was speeding and the negligence of the lorry driver resulted in the accident cannot be countenanced. We are therefore of the considered opinion that the Tribunal was right in concluding that it was the car driver whose negligence caused to the accident and there was no contributory negligence on the part of the lorry driver.

11. On the quantum, though the counsel would make an

attempt to challenge the compensation awarded, we find that the Tribunal has adopted a very low monthly income for a computer Engineer employed in Oracle (India) Private Limited. Therefore, even though the Tribunal has adopted 50% towards future prospects, the over all compensation awarded seems to be just and reasonable.

12. We are therefore of the opinion that there is no ground to interfere with the award of the Tribunal and the appeal is dismissed, confirming the award. However, there will be no order as to costs in this appeal. The 2nd respondent Insurance Company is directed to deposit the balance award amount if any within a period of six (6) weeks from the date of receipt of a copy of the order and on such deposit the claimants will be permitted to withdraw the entire amount as apportioned by the Tribunal.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

dsa

To
The Motor Accident Claims Tribunal,
Subordinate Judge, Hosur,
Krishnagiri District.

Copy To : The Section Officer, VR Section, High Court, Madras

+1cc to Ms.S.R.Sumathy, Advocate SR.No.64014

+1cc to Mr.M.Selvam, Advocate SR.No.64270

+1cc to Mr.T.Ravichandran, Advocate SR.No.64229

GMV (22/10/2018)

CMA.No.647 of 2014

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