

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1492 of 2010
and M.P.No.1 of 2010

M/s.National Insurance company Ltd.,
D.O.L.R.N.Colony
Sarada College Main Road
Hasthampatti,
Salem -7

..Appellant/2nd respondent.

-Vs-

1.P.Chinnathambi
2.Chinnamari
3.C.Selvam
4.C.Babu
5.C.Murugan
6.Sarala
7.Vijaya
8.D.Murugan

..Respondents 1 to 7/Petitioners
..Respondent No.8/1st respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 15.12.2009 made in M.C.O.P.No.812 of 2007 on the file of Motor Accident Claims Tribunal, Principal District Judge, Salem.

For appellant : : Mr.D.Bhaskaran

For Respondents : : Mr.S.Kumaradevan for R1 to R7.

R.8 - (R1 before Tribunal)NA

-set exparte before the Tribunal.

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J U D G M E N T

The Appellant/Insurance Company has filed this appeal challenging the order and decree dated 15.12.2009 made in M.C.O.P.No.812 of 2007 on the file of Motor Accident Claims Tribunal, Principal District Court, Salem.

2. For convenience sake, the parties are referred to

hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 25.03.2007 while the deceased Koppaiyan @ Perumal was travelling as a pillion rider, in the two wheeler, in Uthangarai to Harur Main Road, while going near Moppiripatty Milk Society, at about 12.45 hours, another two wheeler bearing Reg.No.TN-29-AZ-7066 came in the same direction at high speed, dashed against the vehicle, in which the deceased was travelling causing him fatal injuries, resulting in his death on the way to hospital. The deceased was aged 22 years and by working as agricultural cooly was earning Rs.4500/- per month. The Petitioners who are the parents, brother and sisters of the deceased are suffering due to loss of love and affection and contribution to the family by the deceased. Thus the Petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. The claim of the Petitioners about age, avocation and income of the deceased is denied. The vehicle bearing Reg.No.TN-29-AZ-7066 was not insured with the 2nd respondent. The rider of the vehicle did not possess valid driving licence. The amount claimed by the Petitioners under different heads is highly excessive. The Petitioners are not dependants of the deceased. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.4, produced documents Ex.A.1 to Ex.A.5 to prove their claim. On the side of the 2nd respondent, R.W.1 to R.W.3 were examined and Ex.B.1 was marked. Further as Court document, Ex.X.1-C.D.file was also marked.

5. The Tribunal, after considering the evidence on record, concluded that the negligence of the 1st respondent vehicle rider alone caused the accident and passed an award for a sum of Rs.2,23,000/- payable by the respondents to the Petitioners.

6. Being aggrieved over the finding of the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the 2nd respondent/Insurance company contended that the involvement of the insured vehicle is not proved. As per Ex.X.1-C.D.File, the accident did not occur due to negligence of the 1st respondent/driver, but it took place only due to negligence of the rider of the motor cycle in which the deceased travelled as a pillion rider. The Tribunal failed to consider the evidence of R.W.2 who clearly stated that the

negligence of the two wheeler rider in which the deceased travelled resulted in the accident. The insured vehicle belonging to the 1st respondent is not involved in the accident. Thus, the 2nd respondent/Insurance company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel for the claimants contends that the accident occurred only due to negligence of the 1st respondent vehicle rider. As such, the tribunal has arrived at just and proper conclusion in fixing the negligence on the 1st respondent vehicle driver and passed an award for a just and reasonable compensation. There is no need to interfere with the said award. Hence, the Petitioners/claimants sought for dismissal of the appeal.

10. The Petitioners stated that the deceased Perumal travelled as a pillion rider in the two wheeler driven by Prabu on the occurrence day. Due to rash and negligent driving of the 1st respondent vehicle driver bearing Reg.No.TN-29-AZ-7066, the accident occurred. Even though the 2nd petitioner who deposed as P.W.1 stated about the occurrence, he is not the eye-witness to the accident. Hence, the said evidence has no value.

11. The rider of the two wheeler in which the deceased travelled as pillion rider deposed as P.W.4 and clearly stated that the motor cycle bearing Reg.No.TN-29-AZ-7066 which was coming behind, dashed against the rear side of his motor cycle due to which the pillion rider Perumal was thrown out, suffered injuries all over his body and subsequently died. Thus, the eyewitness-P.W.4 stated that the accident occurred only due to rash and negligent driving of the 1st respondent vehicle rider.

12. On the side of the respondents, the 1st respondent deposed as R.W.1 and stated that his motor cycle never dashed on the rear side of the motor cycle of Prabu. According 1st respondent/R.W.1, it was the negligence of the rider of the motor cycle in which the deceased travelled as pillion rider, the accident occurred. Thus the respondent side evidence is contrary to the evidence given by P.W.4.

13. The Petitioners also examined P.W.2 who witnessed the accident and he stated that at the time of the accident, he was proceeding in his bicycle and he witnessed two motor cycle coming behind him and after they overtook him, the two wheeler driven by Prabu reduced its speed, while so, the other motor cycle proceeded at high speed and dashed on the rear side of the motor cycle driven by Prabu resulting in the pillion rider Perumal being thrown out of the two wheeler and he suffered fatal injuries. The driver of the said motor cycle also

suffered injuries. P.W.4 stated that the 1st respondent vehicle came behind at high speed and dashed against him. However, Final Report filed by the Police tells different story. According to the Police investigation, it was only due to rash and speedy driving by P.W.1/Prabu, the accident occurred. However, the Tribunal, considering the fact that the respondents failed to explain as to how person travelling along with R.W.1 in his bike suffered injuries, concluded that the 1st respondent alone caused the accident.

14. Admittedly, both the vehicles were moving in the public road and they met with an accident. While two conflicting versions were given by the Petitioners' side witnesses and the 1st respondent, considering the eye witness account of P.W.1 and P.W.2 and contents of Ex.P.1-FIR, it will be appropriate to come to the conclusion that the drivers of both vehicles contributed to the accident by their negligence. As such, considering the fact that the 1st respondent vehicle came from behind and dashed against the vehicle in which the deceased travelled, it will be appropriate to fix the negligence on the 1st respondent driver and the rider of the deceased vehicle at 90% : 10%.

15. The deceased was stated to be 22 years old and by working as Agricultural cooly was earning Rs.4500/- per month. The Tribunal, on the basis of Ex.A.2-Post Mortem Report, found that the age of the deceased is fixed at 22 years. The multiplier for the said age group is '18'. The deceased was stated to be earning Rs.4500/- per month. Considering the fact that the date of accident was in the year 2007 and the deceased was employed as a agricultural cooly, the income fixed by the Tribunal at Rs.3000/- per month and deduction of 50% of income towards personal expenses of the deceased who was a Bachelor is completely acceptable. The Tribunal had taken Rs.18,000/- as annual contribution of the deceased to his family. Thus, the loss of dependency is arrived at Rs.1,98,000/-. Further, the Tribunal awarded Rs.20,000/- towards loss of love and affection and Rs.5,000/- towards "funeral expenses". The same appears to be just and proper. The total award passed by the tribunal to the tune of Rs.2,23,000/- is reasonable and hence, the same is confirmed.

16. In view of the foregoing discussion, by fixing the contributory negligence on the 1st respondent at 90% and the driver of the vehicle in which the deceased travelled at 10%, out of the total compensation of Rs.2,23,000/-, the compensation of 90% is payable to the claimants which comes to Rs. 2,00,700/- and as such, the claimants are entitled to the award amount of Rs.2,00,700/-.

17. The apportionment of the award amount to the claimants is as under:-

Claimants 1 and 2 - 30% each.

Claimants 3 to 7 are entitled to balance amount in equal share.

18. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) Since negligence is refixed at 90% on the 1st respondent and 10% on the driver of the vehicle, in which deceased travelled, the award amount payable to the claimants is reduced to Rs.2,00,700/- from Rs.2,23,000/-;

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iv) The Appellant/Insurance company has already been directed by this court by order dated 21.06.2010, to deposit the entire award amount. Hence, after satisfying the award of this court along with proportionate interest and cost, the appellant/Insurance company is entitled for refund of the excess amount, lying in deposit before the Tribunal;

(v) The respondents 1 to 7/claimants 1 to 7 are entitled to withdraw their share as stated above, along with accrued interest, less the amount, if any already withdrawn. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs. Consequently, connected MPs are closed.

सत्यमेव जयते
Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

nvsri
To

1.The Motor Accidents Claims Tribunal,
Principal District Court,
Salem.

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 41209
+1cc to Mr.S.Kumara Devan, Advocate, S.R.No. 41037

C.M.A.No.1492 of 2010

KS (CO)
GN (05/10/2018)



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