IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.03.2019

Judgment Delivered on : 08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKA RAMAN

C.M.A.No.3195 of 2011
and
M.P.No.1 of 2011

The Branch Manager,
National Insurance Company Limited,
Sundaram Building,
No.25, Coimbatore Road,
Kangeyam. ...Appellant/2nd Respondent

Vs.

1.Rajamani
2.Balusamy
(2nd respondent set-exparte
before the Tribunal) ... Respondents/Petitioner
and First Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.06.2011 in M.C.O.P.No. 443 of 2009, on the file of the Motor Accidents Claims Tribunal, (Sub-Court), Dharapuram.

For Appellant : Mrs.N.B.Surekha

For R1 : Mr.N.S.Sivakumar

For R2 : Exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging the order and decree passed in M.C.O.P.No. 443 of 2009, on the file of the Motor Accidents Claims Tribunal, (Subordinate Court), Dharapuram. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimant is as follows:

(i) The first respondent/claimant was aged about 33 years on the date of the accident. He was working as Automobile Mechanic and was earning a sum of Rs.5,000/- per month.

(ii) On 26.02.2009, at about 10.45 p.m., the deceased Sakthisivasubramaniam was proceeding as rider of Motor Cycle bearing Registration No.TN 47 7039 from his workshop to his residence. When the Motorcycle coming near Tamil Nadu Hotel, Kangayam to Karur main Road, Kangayam town from West to East, at the very left extremity in a moderate speed. At that time, the Lorry bearing Registration No.TDM 8845 driven by its driver Sundaramoorthy, was going in front of Motorcycle on the same direction, and the driver of lorry, without giving any signal, suddenly stopped the lorry negligently on the middle of the road, due to sudden negligent act of the lorry driver, the Motorcycle went back to the lorry and dashed on the back side of the lorry. Due to the accident, the deceased Sakthisivasubramaniam sustained multiple injuries on his head and other parts of the body, and died on the spot itself.

(iii) According to the first respondent/claimant, the accident happened solely due to the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 47 7039 and that, since, at the time of the accident, the second respondent herein is the owner and the appellant is the insurer of the said motorcycle, and both of them are jointly and severally liable to pay compensation of Rs.5,00,000/- to him.

3. The owner of the lorry bearing Registration No.TDM 8845 was absent before the Tribunal, and therefore, he was set ex-parte. The National Insurance Company Limited contested the claim petition by filing a counter statement that the accident was only due to the rash and negligent driving of the deceased himself and the deceased had no valid and effective driving licence to drive the Motorcycle at the time of the accident. The Insurance Company further submits that the Lorry bearing Registration No.TDM 8845 was parked on the left side of the road with the danger light on and the driver and the cleaner of the lorry were in the nearby restaurant at the time of the accident. The deceased drove his motorcycle in a rash and negligent manner and dashed against the parked lorry. On investigation, the police has found that the lorry driver was not responsible for the accident and the accident was only due to the deceased himself. The Investigation Officer had filed his final report regarding the accident before the Judicial Magistrate Court, Kangayam and RCS No.12/2009 was served on 17.03.009 and

disputing the age, avocation, income of the injured and contending that the quantum of compensation claimed by the first respondent/claimant is highly excessive, they also disputed the manner of the accident.

4. Before the Tribunal, the father of the deceased was examined as P.W.1 and through him, Exhibits P1 to P8 were marked and the occurrence witness is examined as P.W.2. On the side of the appellant-Insurance Company, the Assistant, who witnessed the summons and the Investigation Officer who has investigated the Criminal Case, filed a referred charge sheet which was examined as R.W.1 and marked Exhibit R1 and during the cross-examination of R.W.1, Exhibit P8 series were marked.

5. The Tribunal has considered the evidence of P.W.2 and Exhibit P1 and has held that the driver of the lorry was fault and accordingly, held that both the respondents are liable to pay the compensation and hence, the appeal is filed by the Insurance Company.

6. Heard both sides and perused the materials on record.

7. The learned counsel for the appellant-Insurance Company has categorically stated that in the counter statement, a specific plea was raised by the Insurance Company that the lorry was parked on the left hand side on the road and due to the rash and negligent driving of the motor cyclist, the deceased herein, he dashed in the backside of the lorry and died on the spot and in support of his submissions, he relied upon Exhibit R1, the referred charge sheet filed by the Investigation Officer.

8. On a perusal of the oral and documentary evidence, it is seen that P.W.1 is not an occurrence witness, while, P.W.2 has projected as if he is the occurrence witness.

9. It remains to be stated that the driver of the lorry was not examined to substantiate the case of the Insurance Company. However, the Investigation Officer who has conducted the Criminal Case registered in Crime No.152 of 2009 and under Exhibit R1, he had filed the charge sheet.

10. Admittedly, Exhibit P1 F.I.R has been filed against the lorry driver. However, a referred charge sheet has been filed against the motor cyclist, who died in the accident. It appears from the discussion by the Tribunal that based upon Exhibit P6-rough sketch marked in the referred charge sheet, it is clearly noticed that the vehicle was parked on the tar portion of the National Highway and the driver and the Cleaner were taking food in a shop 200 feet away on the Northern side. At the same time,

it remains to be stated that the road is a National Highway road.

11. After going through the rough sketch under Exhibit P6 and taking note of the fact that the lorry was parked on the tar side of the road which he ought not to have done, the negligence on the part of the driver of the lorry is established. However, it remains to be stated that the lorry was stationary and was parked with parking light on and therefore, the motor cyclist has to come in a safe distance as defined in Regulation 23 of the Road Regulations.

12. The case of the claimant before the Tribunal is that due to sudden application of the break by the lorry without indicator, the motor cyclist could not control his vehicle and hence, the negligence should be fixed upon the lorry and the same appears to have been accepted by the Tribunal and the said finding is under challengable by Insurance Company in this appeal.

13. In this regard, in a similar case, the Supreme Court, in the case of Nishan Singh and others Vs. Oriental Insurance Company Ltd and others in Civil Appeal No.10145 of 2016, by judgment dated 27.04.2018, held as follows:

> "15. The expression ' sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants."

14. Hence, this Court is of the considered view that even going by the version of P.W.1, the deceased who was riding the bike ought to have avoided the incident and he had not maintained the safe distance that has to be between the two motor vehicles.

15. Taking into consideration the referred charge sheet which has been filed against the deceased and also taking note of the position of the lorry as mentioned in Ex.P6 Motor Vehicle's Report and the version of P.W.2, this Court is of the considered view that the motor-cyclist, the deceased has contributed to the accident and accordingly, this Court holds

that both the driver of the lorry as well as the motor-cyclist have contributed to the accident at the 50:50 and accordingly, the contra finding rendered by the Tribunal is hereby vacated and this Court holds that the negligence on the part of the driver of both the vehicles is fixed at 50% each.

16. On the quantum of compensation, both the parties are heard.

17. The Tribunal has taken the monthly income of the deceased at Rs.4,000/- and annual income at Rs.48,000/-. After 1/3rd deduction arrived at the annual income Rs.16,000/-. After 1/3rd of deduction Rs.16,000/- annual income at Rs.32,000/-.

18. Taking into consideration the age of the deceased as 55, the Tribunal adopted multiplier 11 and arrived at the compensation at Rs.3,52,000/- as loss of earning and the said assessment of calculation appears to be correct and the widow is entitled to get a sum of Rs.40,000/- towards loss of consortium and for funeral expenses, the amount is enhanced to Rs.15,000/- and for loss of estate, Rs.15,000/- is awarded and hence, the compensation is re-assessed at Rs.4,35,000/- and the appellant is liable to pay 50% of the said amount and if they have not deposited, the same shall be deposited within a period of eight weeks from the date of receipt of a copy of this judgment and the claimant is also entitled to withdraw the share of the amount in accordance with law.

19. Accordingly, the award of the Tribunal in M.C.O.P.No.443 of 2009 is modified as follows:

Heads under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
For loss of earning	Rs. 3,52,000/-	Rs. 3,52,000/-
For Love and Affection	Rs. 10,000/-	Rs. 10,000/-
For Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
For Transportation	Rs. 3,000/-	Rs. 3,000/-
Loss of Estate	----	Rs. 15,000/-
Loss of consortium	---	Rs. 40,000/-

Heads under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
Total	Rs. 3,70,000/-	Rs.4,35,000/- 50% = 2,17,500/-

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The appellant - Insurance Company is directed to deposit the compensation awarded as above being 50% at Rs.2,17,500/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No. 443 of 2009, on the file of the Motor Accidents Claims Tribunal, (Sub-Court), Dharapuram within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Sub-Court,
Dharapuram.

Copy to

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

+1cc to M/s.N.B.Surekha, Advocate Sr.34173
1cc to M/s.N.S.Sivakumar, Advocate Sr.34637

C.M.A.No.3195 of 2011 and
M.P.No.1 of 2011

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