

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.875 of 2013

Sriraman Gopalan

... Appellant/Respondent

..Vs..

1.Periyaakka
2.Periyapappa
3.Nadupappa
4.Rajammal
5.Amsa
6.Chitra

... Respondents/Petitioner

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.09.2012 in M.A.C.T.O.P.No.613 of 2009 on the file of the learned Principal District Judge, Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Mr.S.Sethuraman

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 07.09.2012 passed by the Motor Accident Claims Tribunal cum Principal District Judge, Krishnagiri in M.A.C.T.O.P.No.613 of 2009.

2. On 03.10.2008, at about 4.50 p.m., when the first respondent's husband, Chinnappan was returning home by riding a Vehicle, viz., TVS 50, bearing Registration No. TN-23-P-1748, on the extreme left side of the road opposite to Velakalnatham Yerikodu and was nearing the "U" turning in Krishnagiri - Vanniyampadi road, the appellant, who was driving a Maruthi Car, bearing Registration No. KA 03 ME 4627 came in a rash and negligent manner and dashed against the TVS 50, as a result, the

said Chinnappan was thrown out from the Vehicle and sustained fatal injuries. Immediately, after the accident, the deceased was taken to a Government Hospital, Vaniyambadi and despite treatment, he died in the Hospital.

3. The deceased, who was aged 60 years at the time of the accident was doing self business (i.e. a vendor of tender coconuts) and was earning a sum of Rs.6,000/- per month. Hence, the claimants, being the legal representatives of the deceased made a claim in a sum of Rs.5,00,000/- as compensation against the owner of the offending Vehicle, viz., the appellant herein.

4. The appellant resisted the Claim Petition by filing a Counter Statement, disputing the age, income, liability and sought for dismissal of the claim.

5. Before the Tribunal, on behalf of the claimants, the first claimant, viz., second wife of the deceased was examined as P.W.1 besides examining one other witness, by name Shanmugam and marked three documents as Exs.P.1 to P.3. On the side of the respondent, the respondent examined himself as R.W.1 and marked one document as Ex.R.1.

6. The Tribunal, on evaluation of both oral and documentary evidence, came to a conclusion that the accident had occurred solely due to the rash and negligent act of the appellant/owner in riding the Maruthi Car and held that the appellant is liable to pay the compensation and awarded a total sum of Rs.2,10,000/- as against the claim of Rs.5,00,000/-.

7. Aggrieved by the finding rendered by the Tribunal with regard to the liability fastened on the appellant as well as the quantum of compensation awarded by the Tribunal as excessive and exorbitant, the appellant, owner of the offending Vehicle has filed the present Appeal.

8. Mr.S.Sethuraman, learned counsel for the appellant submitted that the Tribunal was wrong in holding that the accident occurred only due to the rash and negligent act of the appellant in driving the Car. The learned counsel submitted that the deceased was an age old person and was suffering with digression eye vision. Therefore, he was not fit to drive the Vehicle and in fact, he was not having valid driving license. Therefore, he contended that the deceased himself invited the accident, and the appellant is not liable to pay any compensation. Further, it is submitted that, in a criminal case registered against the appellant, in C.C.No.58 of 2008, on the file of the Judicial Magistrate Court, No. IV, Thirupathur, the appellant was acquitted from the offence, vide judgment dated 28.04.2010, marked as Ex.R.1, and that would per se show that the appellant was not the cause for the accident.

But the Tribunal, despite taking into consideration all these aspects, wrongly held that the accident had occurred only due to the negligent act of the appellant and directed him to pay the compensation.

9. Secondly, the learned counsel contended that there was no proof produced by the claimants before the Tribunal with regard to the income of the deceased. He further contended that the Tribunal while determining the income of the deceased has taken into consideration the statement made by P.W.1, whereas, as per Ex.P.2, Post Mortem Report, the age of the deceased is clearly mentioned as 60. Therefore, the annual loss of income determined by the Tribunal at Rs.36,000/- by taking into consideration the age of the deceased as 62 years old, and fixing the notional income of the deceased at Rs.4,500/- in the absence of any proof produced by the claimants with regard to the income of the deceased is incorrect and hence, the compensation awarded under the head "Loss of Annual Income " at Rs.1,80,000/-, is excessive and requires reduction. Similarly, the compensation awarded under other heads are also exorbitant and requires appropriate reduction.

10. Heard the learned counsel appearing for the appellant. Despite service of notice dated 30.03.2013 on all the respondents, none appeared on their behalf.

11. On a perusal of the award passed by the Tribunal, it is seen that the Tribunal, while determining the aspect to who is the cause for the accident, has taken into consideration the statement made by R.W.1 in his chief examination and it would be beneficial to refer to the english translation of such statement, which is as follows:-

"At Velakalnatham Yerikodu near "U" turning in Krishnagiri - Vanniyampadi road, a person came across the road all of a sudden. Immediately, I tried to slow down the speed of the car, before the Car could get stopped, within a spur of the moment, it dashed against the TVS 50 vehicle and ceased".

12. Secondly, the Tribunal has taken note of the statement made by P.W.2 who is an eye witness to the accident, in his chief examination as well as cross-examination, who deposed that the accident occurred due to the negligence of the driver of the Maruthi Car, as he came in a rash manner and dashed against the TVS 50. In fact, in the FIR, marked as Ex.P.1, it has been clearly mentioned that only due to the rash and negligent driving of the Maruthi Car by the appellant, the accident had occurred. Thus, the Tribunal by taking into

consideration all the above evidence and documents, came to the right conclusion that it was only due to the negligent act of the appellant, the accident had occurred and the deceased died. Merely because, the appellant was acquitted by the Trial Court in a criminal case that would ipso facto is not sufficient to hold that the appellant is not cause for the accident. Therefore, the finding rendered by the Tribunal that the appellant is the cause for the accident and the liability fastened on him is correct and the same is upheld.

13. So far as the contention raised by the learned counsel for the appellant with regard to the quantum of compensation arrived at by the Tribunal by wrongly fixing the age and income of the deceased is concerned, it is seen that though as per Ex.P.2, Post Mortem report, wherein, the age of the deceased is shown as 60, the Tribunal, based on the statement of P.W.1, who is the second wife of the deceased, who deposed that the first wife of the deceased had already pre-deceased him, and the deceased was aged 62 years, fixed the age of the deceased as 62 years. Though no proof was produced by the claimants before the Tribunal with regard to the income of the deceased, the Tribunal considering the fact that the deceased was a vendor of tender coconut by avocation, and was earning a sum of Rs.6,000/-, fixed a sum of Rs.4,500/- per month as the notional income of the deceased and determined the annual income at Rs.36,000/- and rightly awarded a total compensation of Rs.Rs.2,10,000/- and this Court finds no error over the same. Therefore, the award passed by the Tribunal is confirmed.

14. In the result, the Civil Miscellaneous Appeal stands dismissed. The appellant is directed to pay the entire compensation awarded by the tribunal along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereon. No Costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

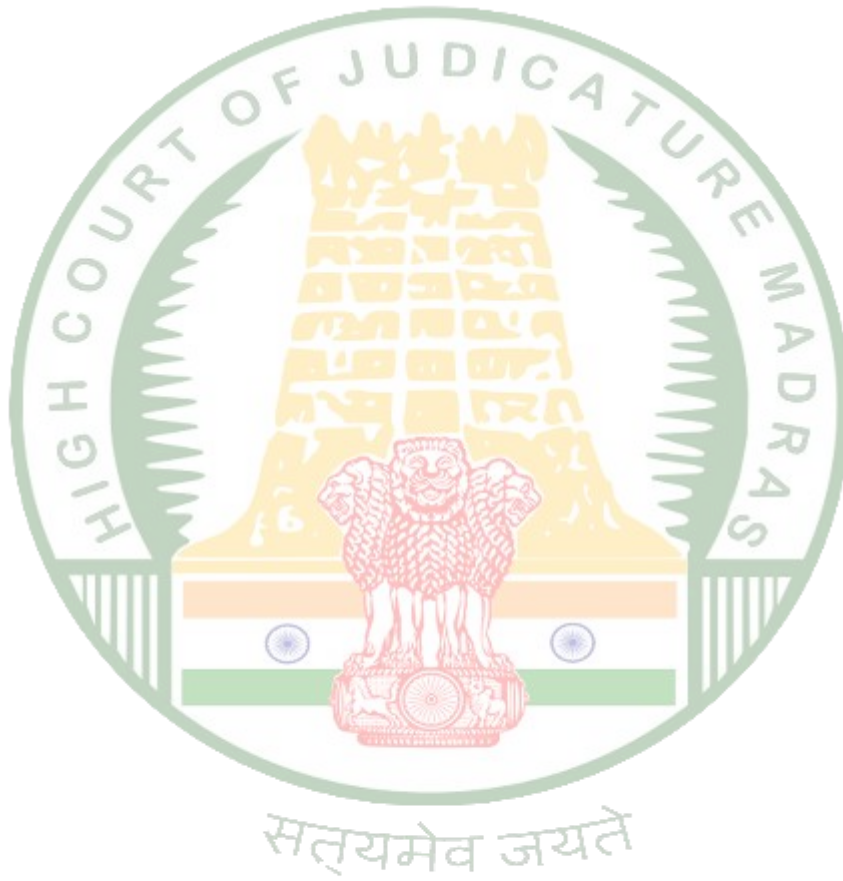
sd/vkr

To

The Principal District Judge,
Motor Accidents Claims Tribunal, Krishnagiri.

C.M.A.No.875 of 2013

BS (CO)
GMV (23/07/2019)



WEB COPY