

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.536 of 2016

1.Pushpa

2.Sigamani

.. Appellants/Claimants

Vs.

1.M.Shanthi

2.N.Bhuvaneswari

3.The Divisional Manager

United India Insurance Company Limited

Vellore Branch.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.12.2015 made in M.C.O.P.No.100 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.M.Sivakumar

For R1 and R2 : No appearance

For R3 : Mr.D.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 14.12.2015 made in M.C.O.P.No.100 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellants are claimants in M.C.O.P.No.100 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., Venkatesan, who died in the accident that took place on 22.03.2013.

3. According to the appellants, on the date of accident i.e., on 22.03.2013 at about 19.30 hours, while the deceased Venkatesan was driving his motorcycle from Chennai to Bangalore National Highways near Puduvasoor, K.G.N.Kalyanamandapam, the driver, who drove the lorry in a rash and negligent manner, suddenly stopped the lorry and the deceased, who came backside of the lorry, hit the lorry and died on the spot. The accident has occurred due to negligence on the part of the driver of the lorry. Therefore, the appellants have filed the claim petition claiming compensation.

4.The respondents 1 and 2 remained exparte before the Tribunal.

5.The 3rd respondent/Insurance Company filed counter statement denying the averments made by the appellants and contended that the lorry is not insured with the 3rd respondent. The driver of the lorry did not possess valid driving license at the time of accident. The claim petition is bad for non-joinder of owner and insurance company of the motorcycle driven by the deceased and prayed for dismissal of the claim petition.

6.Before the Tribunal, father of the deceased, 2nd appellant examined himself as P.W.1 and one Chandru, eye-witness to the accident, was examined as P.W.2 and marked thirteen documents as Exs.P1 to P13. On the side of the respondents, one Balamurugan, investigation officer of the insurance company, was examined as R.W.1 and through him, investigation report was marked as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the deceased/rider of the motorcycle and dismissed the claim petition.

8.Against the said order of dismissal dated 14.12.2015 made in M.C.O.P.No.100 of 2013, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition relying on the F.I.R. The Tribunal ought to have accepted the evidence of P.W.2, who is an eye-witness and come to the conclusion that the accident has occurred only due to negligent driving by the driver of the lorry belonging to the 1st respondent, who suddenly applied brake. The proceedings under Section 166 of the Motor Vehicles Act is summary proceedings and the provisions of the Motor Vehicles Act is a beneficial legislation. Therefore, object of the Act has to be honoured by proper appreciation of facts and law. The deceased was aged 26 years at the time of

accident, he was working as supervisor in a private company and was earning a sum of Rs.15,000/- per month. The appellants have lost their son at an early age and prayed for allowing this appeal.

10.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that father of the deceased only lodged the complaint, in which, he has stated that his son drove the vehicle, dashed the motorcycle on the backside of the lorry, fell down, sustained injuries and died. P.W.2 is not an eye-witness and he has admitted before the police that he did not see the accident. A contra evidence given by P.W.2 before the Tribunal is only an after thought and is not acceptable. The Tribunal has properly appreciated the evidence and dismissed the claim petition. If the deceased maintained the reasonable speed while riding his motorcycle, he would have avoided the accident and in any event, the deceased has also contributed to the negligence by not keeping the distance and prayed for dismissal of the appeal.

11.Though notice was served on the respondents 1 & 2 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

12.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused all the materials available on record.

13.From the materials available on record, it is seen that the contention of the appellants, who are parents of the deceased, is that driver of the lorry belonging to the 1st respondent drove the same in front of the motorcycle driven by the deceased, suddenly applied brake and the deceased dashed on the back side of the lorry and the accident occurred. The 2nd appellant was examined as P.W.1 and deposed as stated in the claim petition. One Chandru, an eye-witness to the accident was examined as P.W.2 and deposed in his evidence that the accident has occurred only when the driver of the lorry suddenly applied brake. He has further deposed that he gave a statement before the police that he did not see the accident as the police insisted him to give such a statement for handing over the body of the deceased.

14.From the materials available on record, it is seen that the 2nd appellant, who gave the complaint, was not an eye-witness. In the complaint, he has stated that he received information that the motorcycle driven by his son was dashed on the back side of the lorry and due to head injury, his son died.

The 2nd appellant did not state in the complaint that his son drove the motorcycle in a rash and negligent manner, dashed on the back side of the lorry and caused the accident. The Tribunal without properly appreciating the contents of F.I.R., erroneously has come to the conclusion that F.I.R. proves that the accident has occurred only due to rash and negligent riding by the deceased. Further, the Tribunal has rejected Exs.P5 & P6/complaints addressed to the Superintendent of police, Vellore District and Inspector of Police, Sathuvachari police station, Exs.P7 and P8/acknowledgment cards on the ground that the said complaint was given after one month of the accident. The Tribunal has also held that the said complaint was given as per the legal advice without any basis. The Tribunal has failed to consider that the appellants, who have lost their son at the age of 26 years and the delay in lodging the complaints to the Superintendent of Police and Inspector of Police is not fatal. The Tribunal has also not properly appreciated the evidence of P.W.2/eye-witness, who has deposed that the police insisted him to give the statement that he has not seen the accident as a condition for handing over the body of the deceased.

15.It is well settled that the contents of F.I.R. is not a conclusive proof for the manner in which, the accident occurred or negligence on the part of the driver of the lorry. The Tribunal has to independently consider the evidence let in before the Tribunal and has to come to the conclusion with regard to negligence. The respondents have not examined the driver of the lorry or any other eye-witness to disprove the evidence of P.W.1 and P.W.2. Though the 3rd respondent has examined R.W.1/Investigation officer of the Insurance Company, they have not examined the driver of the lorry or any other eye-witness to disprove the evidence of P.W.1 and P.W.2.

16.Considering the materials available on record in its entirety, I hold that the Tribunal erred in dismissing the claim petition. In view of the fact that there is no contra evidence to the evidence of P.W.1 and P.W.2, I hold that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The 3rd respondent has not denied that the vehicle was insured with them at the time of accident. In view of the same, the 3rd respondent/Insurance Company being insurer of the said lorry is liable to pay compensation to the appellants.

17.As far as quantum of compensation is concerned, the appellants have stated that the deceased was working as A.P.L. Supervisor in a private company and was earning a sum of Rs.15,000/- per month. The appellants have failed to prove the same. In the absence of any evidence with regard to avocation and income of the deceased, considering the fact that the

accident is of the year 2013, a sum of Rs.9,000/- is fixed as monthly income of the deceased. The deceased was aged 26 years at the time of accident and the appellants are entitled to 40% enhancement towards future prospects. By applying multiplier 17 and deducting 50% towards personal expenses, a sum of Rs.12,85,200/- (Rs.9,000/- + 3600 (Rs.9,000/- X 40%) X 12 X 17 X 50%) is awarded towards loss of pecuniary benefits. Considering that the appellants have lost their son at an early age, they are entitled to get a sum of Rs.40,000/- each towards loss of love and affection. A sum of Rs.15,000/- each is awarded towards funeral expenses and loss of estate. Thus, the appellants are entitled to the following compensation:

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of pecuniary benefits	12,85,200
2.	Loss of love and affection	80,000
3.	Funeral expenses	15,000
4.	Loss of estate	15,000
	Total	Rs.13,95,200/-

18. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.13,95,200/- is awarded as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw equal share of the award amount along with proportionate interest and costs. No costs.

Sd/-

Assistant Registrar(CS III(MDU))

//True Copy//

Sub Assistant Registrar

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To

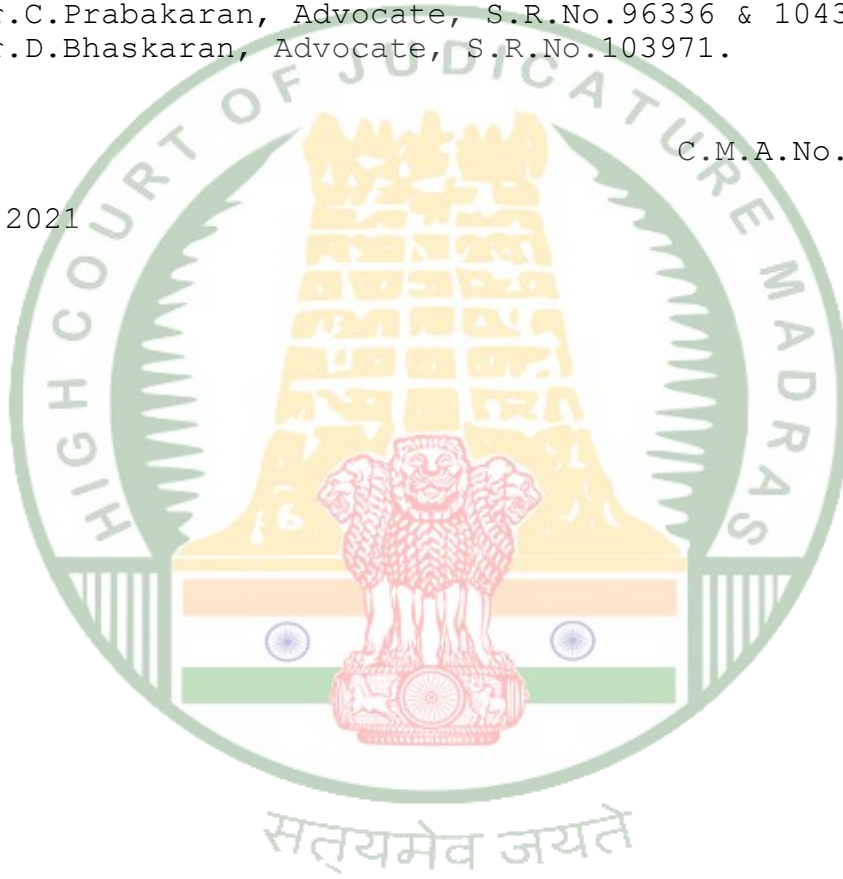
I Additional District and Sessions Judge
The Motor Accident Claims Tribunal
Velllore.

Copy to: The Section Officer
V.R.Section
High Court, Chennai.

+2cc to Mr.C.Prabakaran, Advocate, S.R.No.96336 & 104398.
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.103971.

C.M.A.No.536 of 2016

GP (CO)
CSR 23.04.2021



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