

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.2221 OF 2017

&

CMP NO.11783 OF 2017

The Branch Manager,
M/s.IFFCO - TOKIO,
General Insurance Company Ltd.
K.S.Building, Near IT-Office,
No.5 College Road, 2nd Cross,
Thirupur 641 602

... Appellant/2nd Respondent

Vs.

1. Rani
2. Sutha
3. Sudhakar

... Respondents 1 to 3/Petitioners 1 to 3

4. Baggiawathi
(Set exparte before the Tribunal)

...4th Respondent/1st Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.09.2016 passed in MCOP No.94 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.C.R.Krishnamoorthy

For R-1 to R-3 : Mr.T.Gobinath

For R-4 : Exparte.

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J U D G M E N T

As against the claim made for a sum of Rs.20,00,000/-, the Tribunal has awarded a total compensation of Rs.6,60,000/-, along with interest at the rate of 7.5% per annum from the date of petition, by fixing 70% liability on the Insurer / Insurance Company. On account of the same, the Insurer was directed to pay a Rs.4,62,000/- plus interest, vide the award dated 09.09.2016 passed by the Claims Tribunal in MCOP No.94 of 2013,

aggrieved over which, this Appeal has been preferred by the Insurance Company/appellant.

2. The case of the claimant is that on 18.07.2012 at about 04.30 pm, when one Udhayakumar @ Thangeswaran was riding his Yamaha Fazer two-wheeler with one Sakthi as Pillion rider, near Cross Road of Keezha Kunnupatti, the rider of the two-wheeler rode the same in a rash and negligent manner and dashed against another vehicle, which came from the opposite direction and due to the accident, the rider of the two-wheeler died on the spot and the pillion rider sustained fatal injuries all over the body and succumbed to the injuries, later. Stating that the accident had happened due to the rash and negligent riding of the rider of the two-wheeler, but a case has been registered as against the driver of the lorry, in Crime No.294 of 2012 under Sections 279 and 304 (A) of the IPC, by Thuraiyur Police, the Legal Representatives of Sakthi (Pillion rider of the two-wheeler), who are the wife, daughter and son, have filed the claim petition claiming a sum of Rs.20,00,000/- as total compensation.

3. The Tribunal, based on the evidence and documents adduced by both sides, has fastened 70% liability on the Insurance Company (Insurer) of the two-wheeler / appellant herein and ultimately awarded a total compensation at Rs.6,60,000/- out of which Rs.4,62,100/- with interest at 7.5% per annum from the date of petition, is directed to be paid by the appellant herein. As against the fixing of 70% negligence on the appellant herein and as against the quantum arrived at, the Insurance Company / appellant is before this Court.

4. Heard both sides.

5. The learned counsel appearing for the appellant / Insurance Company has submitted that the Yamaha Fazer two-wheeler was not registered and insured with the appellant, at the time of accident and hence the Tribunal ought to have dismissed the MCOP as against the appellant herein; that Ex.P-1-First Information Report is filed against the unknown vehicle and the accident had occurred due to the rash and negligent driving of the unknown vehicle and hence the Tribunal has erred in awarding the compensation against the appellant; and that in any event the award passed by the Claims Tribunal is on the higher side which needs significant reduction.

6. The learned counsel appearing for respondents 1 to 3 / claimants has submitted that the Tribunal has erred in fixing the contributory negligence on the appellant herein, by overlooking the materials and documents adduced by the claimants; and that in any event, the award passed by the Tribunal under all the heads is too low, which needs significant enhancement.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. It is the case of the claimants that the accident had happened due to the composite negligence of the rider of the Yamaha Two-wheeler and the driver of the lorry. The lorry fled away from the spot and could not be traced out. The contention of the Insurer is that Thuraiyur Police has registered a case only as against the hit and run vehicle and thereafter, final report has been filed as the vehicle could not be traced out.

9. There is no eye-witness to the accident. Further, nothing is elicited to prove that the accident had happened due to the rash and negligent riding/driving of neither the rider of the two-wheeler nor the driver of the hit and run vehicle, except the contents of Ex.P-1-First Information Report. The statement said to have been recorded by the Police at the time of investigation cannot be used to fasten the liability on the hit and run vehicle alone.

10. However, it equally assumes importance that the brother of the deceased, who has preferred a complaint before the Police immediately after the accident, deposed before the Tribunal that the deceased rode the vehicle in a rash and negligent manner and dashed against the offending vehicle. To controvert such an evidence, no evidence or document was available before the Tribunal or before this Court.

11. Though a contention was raised by the appellant herein to the effect that the two-wheeler was not registered and insured at the time of accident, the same stands nullified, in view of Ex.P-6-Policy Certificate of the two-wheeler and in view of the statement made in the claim petition to the effect that the two-wheeler was purchased in the month of June 2012 and before the grant of registration number for the offending vehicle, the accident had happened, which statement was not refuted by the respondents. Hence, this Court is of the opinion that fixing the liability at 50% on the appellant / Insurer, instead of 70%, would meet the ends of justice and accordingly the same is fixed accordingly.

12. As far as the quantum of compensation arrived at by the Tribunal is concerned, towards loss of income, the Tribunal has taken the monthly contribution of the deceased at Rs.4,000/-, adopted the multiplier of 11 and awarded a sum of Rs.5,28,000/- towards loss of income. The Tribunal also awarded sums of Rs.50,000/- each under the heads, loss of consortium and loss of love and affection, apart from Rs.20,000/- on funeral expenses, Rs.10,000/- on Transport Expenses and Rs.2,000/- on damage to

clothes. Thus, the Tribunal has arrived at the total compensation at Rs.6,60,000/-. This Court is of the opinion that the quantum arrived at by the Tribunal is valid, sustainable and just, since the same is arrived, placing reliance on the evidence and documents on record.

13. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company / Insurer is partly-allowed. Since this Court has held that the appellant is liable to indemnify the claimants at 50% only, the appellant is directed to deposit a sum of Rs.3,30,000/- (50% of Rs.6,60,000/-) along with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit.

14. The appellant -Insurance Company is directed to deposit the said amount, as awarded by this Court now, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the same to the Savings Bank Account(s) of the claimant(s)/R-1 to R-3 herein, as per the ratio of apportionment made by the Tribunal. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
Principal District Court, Perambalur.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai.

+1cc to Mr.T.Gobinath, Advocate, S.R.No.97378

+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.97473

C.M.A.No.2221 of 2017
& CMP No.11783 of 2017

NRL (CO)
CS/23/11/2020