

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal Nos.4076 & 4077 of 2019
& CMP Nos.23024 & 23028 of 2019

United India Insurance Company Ltd.,
Silingi Building, 4th Floor,
No.134 Greams Road,
Chennai 600 006

.. Appellant in both CMAs

Vs.

1. Mrs. Kamatchi
2. Adhilakshmi
3. Boopalam (Minor) ... R-1 to R-3 in CMA No.4076/2019
4. Selvakumar (Minor)
(R-3 & R-4 are minors, rep. by
their mother and next friend,
Mrs. Kamatchi) ... R-4 in CMA No.4076/2019
& R-1 in CMA No.4077/2019
5. Mrs. Devaki ... R-5 in CMA No.4076/2019
6. Elumalai ... R-6 in CMA No.4076/2019
& R-2 in CMA No.4077/2019

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 20.03.2019 passed in MCOP Nos.4312 and 4313 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr. D.Bhaskaran
For R-1 to R-3 in CMA No.4076/2019
& R-1 in CMA No.4077/2019 : Mr. K.Varadhakaraj,

C O M M O N J U D G M E N T

These Appeals have been filed by the appellant / Insurer / Insurance Company as against the judgment and decree, dated 20.03.2019 passed in MCOP Nos.4312 and 4313 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. On 16.06.2014 at about 06.30 pm, one Sekar was riding his motorcycle bearing Registration No.TN22-CF-2035, along with his son Minor S.Selvakumar, as pillion rider, near Palar River Narrow Bridge, Kancheepuram District. At that place, the driver of the Tractor bearing Registration No.TN21-AE-3481 had parked the said vehicle, without any signal and indicator in the middle of the road and therefore, the rider of the motorcycle Sekar, who could not have a clear vision of the said vehicle being

parked proceeded as such and due to the same, the motorcycle dashed on the backside of the tractor. Due to the impact, the rider sustained fatal injuries and died on the spot and the pillion rider, Minor S.Selvakumar, sustained fractures on right hand, left hand, severe head injury and multiple injuries all over the body. Hence, the Legal Representatives of Sekar, who are the wife, daughter, Minor Sons and mother of the deceased, have filed a claim petition claiming a sum of Rs.20,00,000/- and the Pillion rider, S.Selvakumar, has filed a claim petition claiming a sum of Rs.6,00,000/- as compensation.

3. The Tribunal, after elaborate trial and based upon the evidence and documents adduced by both sides, has fastened the liability on the Insured and the Insurer of the Tractor and ultimately awarded the total compensation(s) at Rs.19,53,000/- and Rs.85,000/-, respectively, payable to the claimants, along with interest at the rate of 7.5% per annum from the respective dates of petitions. Challenging the findings on negligence as well as quantum, these Appeals have been preferred by the appellants / Insurance Company.

4. Heard both sides.

5. The learned counsel appearing for the appellant / Insurance Company, in both these Appeals, submitted that the motorcycle, which was ridden in a rash and negligent manner, had caused the accident and hence, contributory negligence has to be taken into consideration and the compensation has to be awarded fixing 50% negligence on the rider of the motorcycle also. He further submitted that the Tribunal has failed to consider the evidence of R.W.1 and Ex.R-2 properly; and in any event, the quantum arrived at by the Tribunal is very high, which needs significant reduction.

6. Per contra, the learned counsel appearing for the claimants / R-1 to R-3 in CMA No.4076 of 2019 and R-1 in CMA No.4077 of 2019 vehemently opposed the submissions of the learned counsel for the appellant and submitted that the accident had happened only due to the tractor, which was stationed without any signal in the mid of the road, i.e., in a place which was not meant for parking; though the two-wheeler was driven in a normal speed, the accident had occurred only due to the passing of the tractor by its driver in the middle of the road and hence, there cannot be any contributory negligence on the part of the rider of the motorcycle. In support of the said contention, the learned counsel relied upon the decision of this Court reported in 2019 (1) TN MAC 72 (DB) (Oriental Insurance Co. Ltd. v. V.Bhuvaneswari) wherein, on the question of contributory negligence in that case, it has been held that since there is no material to show that the parked van was having blinking / burning warning lights and admittedly, the accident took place in the late evening hours of the day, it cannot be said that the deceased therein has also contributed to the accident, as a result of his negligence. He also relied upon Ex.P-1-FIR with sketch and submitted that from the sketch it is very clear that the tractor was parked in the middle of the road

and hence, the accident would have been averted had the tractor driver been careful and vigilant while parking the tractor.

6.1. The learned counsel for the claimants further submitted that the Tribunal has analyzed each and every aspect into consideration and has fastened the liability on the Insured and the Insurer. He further submitted that the evidence and documents produced by both sides have been critically analyzed and based on that, the Tribunal has rendered findings on negligence and quantum, which do not require any interference by this Court.

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

8. The fact remains that the deceased motorcyclist had been hit behind the stationed tractor. The investigation authority, after enquiry, found fault on the deceased. Even as per the final report-Ex.R-2 the deceased was the tort-feasor. However, the Tribunal has rejected Ex.R-2 by stating that it is not the certified copy or the attested copy, but it is only the xerox copy. The conclusion arrived at by the Tribunal, in the opinion of this Court, is incorrect. The Tribunal ought to have summoned the witness to the said document before the Court and ought to have found out the proper source from which the document was set in motion. The Tribunal also could have called for the records from the Criminal Court to ascertain whether the said document was filed the Court and was accepted by the Criminal Court. Therefore, instead of totally neglecting the said document, the Tribunal ought to have made some efforts to find out the veracity of Ex.R-2.

9. Further, this Court is of the opinion that had the deceased, rider of the motorcycle, maintained reasonable speed, and had he controlled his vehicle, he would have seen the parked vehicle within the vicinity. Hence, this Court is of the opinion that the motorcyclist failed to exercise reasonable care while riding and had he been vigilant in his riding, the accident would have been averted. The motorcyclist failed to avail the last opportunity to avoid the accident.

10. Further, a perusal of the entire materials on record show that the tractor was parked in the middle of the road as the tyre was punctured. The said tractor was fully loaded. Therefore, it could not be moved, when the tyre was punctured for being parked on the road side. Though the tyre getting punctured in the middle of the road is quite natural, the driver or the owner of the said vehicle must have followed certain procedures when the vehicle is parked in the middle of the road and more particularly during peak / night hours. There is nothing found in the materials available on record to show that the driver of the said tractor had followed any safety measures to indicate that the said vehicle has been parked in the middle of the road with some bonafide reasons. The driver could have placed reflector signals to show that the vehicle is in the middle of the road or could have shown signals to the vehicles

coming from behind and to divert them. Hence, this Court is of the view that both the rider of the motorcycle and the driver of the tractor are responsible for the accident. In view of the above, though there is no quarrel over the proposition laid down in the decision reported in 2019 (1) TN MAC 72 (DB) (referred to supra), the said decision is not applicable to the facts of this case.

11. In view of the above reasonings, this Court is of the opinion that ends of justice would be met if 25% contributory negligence is fixed on the motorcyclist and 75% on the driver of the tractor. Accordingly, this Court fixes the contributory negligence at the rate of 25% on the motorcyclist and 75% on the driver of the tractor. Since this Court fixes 75% of the contributory negligence on the part of the driver of the tractor, the appellant / Insurer is liable to pay 75% of the compensation amount.

CMA No.4076/2019:-

12. As far as the quantum of compensation arrived at by the Tribunal is concerned, based on Ex.P-2-post-mortem certificate and P-3-death certificate, the age of the deceased was taken as 45. In the absence of any income proof, the Tribunal has taken the monthly income at Rs.11,000/-, as notional income of the deceased. As per Sarla Verma's case, adopting the multiplier of 14, the Tribunal has awarded a sum of Rs.18,48,000/- towards loss of income and applying the Pranay Sethi's case the Tribunal has added 25% of the amount towards future prospects and arrived at Rs.23,10,000/-. Thereafter deducting 1/5th towards the personal expenses, the compensation under loss of dependency has been arrived at Rs.17,32,500/-. The Tribunal has also awarded Rs.15,000/- towards loss to estate, Rs.40,000/- towards loss to consortium to the wife, Rs.50,000/- each to daughter and sons towards loss of love and affection and ultimately, awarded a sum of Rs.19,53,000/- with interest at the rate of 7.5% per annum from the date of petition, as total compensation.

CMA No.4077/2019:-

13. It is not in dispute that the claimant, in this case, is a minor at the time of accident and on account of the accident, he suffered fractures on right hand, left hand, severe head injury and multiple injuries all over the body. In support of the same, the claimant has produced Discharge summary-Ex.P-10, wherein it is found that the claimant was diagnosed with commuted fracture distal left humerus, right clavicle and that he had taken treatment at Government Hospital, Chengalpet, and was referred to Rajiv Gandhi Government Hospital, Chennai, for further management. Hence, based on the disability assessed the Doctor, the Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering, Rs.10,000/- towards transportation, Rs.15,000/- towards extra nourishment and Rs.10,000/- towards medical expenses (both spent and towards future expenses). In total, the Tribunal has awarded a sum of Rs.85,000/- with interest at the rate of 7.5% per annum, as total compensation.

14. This Court is of the opinion that the quantum arrived at, in each of the above cases, by the Tribunal perfectly matches with the documents produced, latest decisions of the Supreme Court and this Court and probabilities of the case. Hence, the quantum arrived at by the Tribunal is confirmed as such.

15. In view of the above reasonings, the findings rendered by the Tribunal on quantum are confirmed as such.

16. In the result, these Civil Miscellaneous Appeals filed by the Insurer / Insurance Company are partly-allowed. No costs. Consequently, the connected CMP is closed.

17. The appellant / Insurance Company, in both the cases, is directed to deposit 75% of the compensation amount(s), as awarded by the Tribunal along with interest and costs, less the amounts already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The shares of the claimants shall be as per the same proportion apportioned by the Tribunal.

17.1. It is stated by the learned counsel for the claimants that the minor claimants have attained majority by now. Hence, on such deposit being made, within one week thereafter, the Tribunal shall transfer the respective share amounts of all the claimants in their Savings Bank Account(s).

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1.Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

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

+1cc to Mr.K.Varadhakaraj , Advocate SR.No. 90092

+1cc to Mr.D.Bhaskaran , Advocate SR.No. 90068

C.M.A.Nos.4076 & 4077 of 2019
& CMP Nos.23024 & 23028 of 2019

A.SK(08/09/2020)