

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.372 of 2009

and

M.P.No.1 of 2009

The National Insurance Company Limited,
Divisional Office - 1, 2nd Floor,
L.R.N. Complex, Saratha College Road,
Salem - 636 007. Appellant /2nd Respondent

Vs.

1.K.Radhika

2.Minor K.Pavithra

3.Minor Pradeepa

(2nd and 3rd respondents are minors represented
by their mother Radhika as natural guardian and
next friend)

Respondent 1 to 4/Petitioner 1 to 4

4.Pazhaniammal

5.Chellappan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 26.02.2007 made in M.C.O.P.No.910 of 2003 on the file of
Motor Accident Claims Tribunal, Additional District and Special
Court, Salem.

For Appellant

: Ms.N.B.Surekha

For RR1 to 4

: No appearance

R5

: Set Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
appellant/Insurance Company, challenging the award dated
26.02.2007 made in M.C.O.P.No.910 of 2003 on the file of Motor
Accident Claims Tribunal, Additional District and Special Court,
Salem.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.910 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Special Court, Salem. The respondents 1 to 4 filed the said Claim Petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Kamaraj, who died in the accident that took place on 10.10.2002.

3. According to the respondents 1 to 4, on the date of accident i.e., on 10.10.2002, the deceased was riding his motorcycle bearing Registration No.TN 07 A 458 from Salem to Attur Main Road and one Lingadurai, was the pillion rider in the said motorcycle. When they were nearing Valapaddy Lakshmi Electrical Shop, a lorry bearing Registration No.KA 01 AA 5630, belonging to the 5th respondent insured with the appellant/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the deceased's motorcycle, as a result of which, the deceased was thrown away and died on the spot. Therefore, the respondents 1 to 4 have filed the above claim petition claiming compensation as against the appellant and the 5th respondent.

4. The 5th respondent/owner of the lorry remained exparte before the Tribunal.

5. The appellant/Insurance Company filed Counter Statement denying the averments made in the Claim Petition and contended that the deceased was driving the motorcycle bearing Registration No.TN 07 A 458 in a rash and negligent manner from West to East on Salem Attur National Highways Road, hit against a pedestrian who was walking on the road on the same direction and had fallen down from the bike on the middle of the road and thereby invited the accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 4.

6.Before the Tribunal, the 1st respondent, wife of the deceased examined herself as P.W.1, one Sekar, eyewitness was examined as P.W.2 and marked seven documents as Exs.A1 to A7. On the side of the appellant, one Rajendran was examined as R.W.1 and one Elangovan, eyewitness was examined as R.W.2 and marked five documents as Exs.B1 to B5.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 5th respondent and directed both the 5th respondent and appellant/Insurance Company, being insurer of the said lorry to jointly and severally, pay a sum of Rs.3,80,000/- as compensation to the respondents 1 to 4.

8. Against the said award dated 26.02.2007 made in M.C.O.P.No.910 of 2003, granting compensation to the respondents 1 to 4, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing negligence on the part of the driver of the lorry, relying on the evidence of PW2, Ex.A1/F.I.R. and Ex.A2/Charge Sheet. The Tribunal failed to consider Ex.B1 & Ex.B2 and the evidence of RW2, who had locally investigated the manner of the accident, collected materials and pointed out that the deceased dashed against pedestrian Lingadurai, hit a lorry and caused the accident. The Tribunal without any reason failed to accept the evidence of RW2. The Tribunal did not accept the Investigation Report marked as Ex.B4 on the ground that it is only hearsay evidence. At the same time, the Tribunal accepted the same report for fixing avocation and income of the deceased. The Police records were manipulated to help the family of the deceased and it had been recorded that the said Lingadurai was a pillion rider though he was a pedestrian at the time of accident. It was further contended that the Tribunal failed to see that the Claim Petition which was filed for death of Lingadurai was dismissed for default, because the truth in the manner of the accident was unearthed. In any event, the multiplier applied is contrary to the judgment of the Hon'ble Apex Court. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. This Court by order dated 15.02.2019 appointed Mr.R.Ganesan as Legal Aid counsel for the respondents 1 to 4. Though respondents 1 to 4 entered appearance through counsel, there is no representation on 09.03.2020 and today also there is no representation.

11. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

12. It is the contention of the respondents 1 to 4 that while the deceased Kamaraj was riding in his motorcycle along with his friend Lingadurai as pillion rider, a lorry belonging to the 5th respondent driven by its driver in a rash and negligent manner, dashed against the motorcycle. Due to the injuries sustained in the accident, the deceased died on the spot. To substantiate the said contention, the respondents 1 to 4 and father of the deceased/5th claimant, examined PW2 an eyewitness and marked Ex.A1/F.I.R. and Ex.A2/Charge Sheet. FIR was registered against the driver of the lorry, based on the complaint given by the eyewitness PW2. It is the contention of

the appellant that Lingadurai was not a pillion rider but he was a pedestrian. The deceased drove the motorcycle in a rash and negligent manner, dashed against pedestrian fell down on the road and invited the accident. The appellant has not examined the driver of the lorry or any eyewitness to substantiate their contention. The appellant relied on the evidence of RW2 and his report.

13. From the material on record, it is seen that the Tribunal rejected the evidence of RW2 and his report, with regard to manner of the accident, as the evidence of RW2 is only hearsay evidence and RW2 is not an eyewitness. The reason given by the Tribunal is valid. In the absence of any contra evidence, considering the evidence of PW2/eyewitness and the contents of the F.I.R., the Tribunal held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 5th respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14. As far as quantum of compensation is concerned, the respondents 1 to 4 have contended that the deceased was aged 27 years at the time of accident and was earning a sum of Rs.8,000/- per month by working as a driver. They have not let in any evidence to substantiate the same. In the absence of material evidence, the Tribunal fixed notional income of the deceased as Rs.2,500/- p.m. The accident is of the year 2002 and the notional income fixed by the Tribunal is not excessive. As per the Ex.P7/driving license, the deceased was aged 29 years. As per II Schedule, the Tribunal applied multiplier 18 and after deducting 1/3rd towards personal expenses awarded compensation towards Loss of Dependency. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,80,000/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. Both the 5th respondent as well as appellant/Insurance Company are directed to deposit the award amount with interest and costs, jointly and severally, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 4 are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn. The share of the minor respondent 2 & 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st respondent being the mother of

the respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Mtl

To

1.The Additional District and Special Judge,
The Motor Accident Claims Tribunal
Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 23515

C.M.A.No.372 of 2009
and
M.P.No.1 of 2009

PP (CO)
GN (03/02/2021)



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