

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.565 and 566 of 2009
and M.P.Nos.1 and 1 of 2009 and 1 of 2010
and C.M.P.Nos.4404 and 4405 of 2016

M/s.United India Insurance Co. Ltd.
Third Party Motor Claims Office
Co-operative Buildings
No.38, Anna salai
Chennai-600 002.

..Appellant/2nd Respondent
in both the CMAs.

Vs

1.Sasikala

2.Minor.Sureshkumar

3.Minor.Sangeetha

(Minors 2 and 3 represented by
mother and guardian 1st respondent/Sasikala)

4.Amirthammal

5.Kasi

6.Sasikumar

(R6 was set exparte before the Tribunal)

.. Respondents/Petitioner 1 to 5/ in
1st Respondent C.M.A.No.565/2009

1.M.Venkatesan

2.Sasikumar

(R2 was set exparte before the Tribunal)

.. Respondents/Petitioner/
1st Respondent in C.M.A.No.566/2009

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.02.2007 made in M.C.O.P.Nos.269 and 272 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Ponneri.

For Appellant : Mr.S.Arunkumar
in both CMAs.

For R1 to R4 in : Mrs.A.Subadra
C.M.A.No.565/2009 for Ms.M.Malar
R5 : died
R6 : Exparty before the Tribunal
For R1 in : Mrs.A.Subadra
C.M.A.No.566/2009 for Ms.M.Malar
R2 : Exparte before the Tribunal

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

This matter is heard through "Video-Conferencing".

These Civil Miscellaneous Appeals are filed against the common award dated 03.02.2007 made in M.C.O.P.Nos.269 and 272 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Ponneri.

2.Both the appeals arise of the same accident and common award and hence, they are disposed of by this common judgment. Parties are referred to as per their respective ranks in the claim petitions.

3.The appellant is the 2nd respondent/Insurance Company in M.C.O.P.Nos.269 and 272 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Ponneri. The claimants in M.C.O.P.No.269 of 2003 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Meenakshi Sundaram, who died in the accident that took place on 24.09.2002. The claimant in M.C.O.P.No.272 of 2003 filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.09.2002.

4.According to the claimants, on 24.09.2002 at about 24.00 hours, while the deceased Meenakshi Sundaram was riding in his Hero Honda motorcycle bearing Registration No.TN-20-W-7060 along with the claimant in M.C.O.P.No.272 of 2003 as pillion rider from his work spot Padi to Alamathi, near B.V.K.Kalyana Mandapam, GST Road, Puzhal, the lorry belonging to the 1st respondent driven by its driver in a rash and negligent manner, which came in the opposite direction, dashed against the motorcycle and caused the accident. After the accident, the driver of the lorry did not stop the lorry and ran away from the place of occurrence. Due to the accident, the deceased Meenakshi Sundaram sustained fatal injuries and died in the hospital on the next day and the claimant in M.C.O.P.No.272 of 2003 sustained grievous injuries. Therefore, the claimants have

filed the above claim petitions claiming compensation against the respondents.

5.The 1st respondent, owner of the lorry, remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company, insurer of the lorry filed separate counter statements in both the claim petitions denying the averments made by the claimants and stated that the accident did not occur due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The accident has occurred during the course of employment and therefore, the claimants can claim compensation from the employer. The 1st respondent, owner of the lorry did not report the alleged accident to the 2nd respondent along with vehicular records. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimants. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased and injured claimant. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petitions.

7.Before the Tribunal, the 1st claimant in M.C.O.P.No.269 of 2003, wife of the deceased, examined herself as P.W.1, the claimant in M.C.O.P.No.272 of 2003 examined himself as P.W.2, one Karuppaiya was examined as P.W.3, Dr.Thiagarajan, was examined as P.W.4 and marked 13 documents as Exs.P1 to P13. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.7,70,000/- and Rs.88,000/- as compensation to the claimants in M.C.O.P.Nos.269 and 272 of 2003 respectively.

9.Against the said common award dated 03.02.2007 made in M.C.O.P.Nos.269 and 272 of 2003, the 2nd respondent/Insurance Company has come out with the present appeals challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal failed to see that the claimants have not proved the involvement of the lorry in the accident and delay in lodging the complaint. The Tribunal ought to have seen that there was contradiction in the version in the claim form and the claim petition. The claimants

have not examined any independent eye-witness, P.W.2, the alleged eye witness is only an interested witness. Though P.W.2 has deposed that he was conscious at the time of accident, he has not given the number of the lorry to the hospital authority. A reading of the F.I.R. leads to presumption that the accident has occurred when the rider of the motorcycle applied brake in order to avoid hitting cattle, fell down and sustained injuries. If really the accident has occurred by rash and negligent driving by the driver of the lorry, P.W.2, the pillion rider would have sustained grievous injuries and the deceased and pillion rider would have been thrown out from the motorcycle. The Tribunal ought to have seen P.W.2, the pillion rider of the motorcycle would not have seen the number of the lorry as the accident has occurred during night 12.00 hours. P.W.3 in his evidence has deposed that one Neeladharan, informed P.W.3 and family members of the deceased. The said Neeladharan was not examined. The Tribunal ought to have taken adverse inference against the claimants. The confession given by the lorry driver to the Police shows that the Police is interested in implicating the driver of the lorry and lorry in the accident.

10(i) The learned counsel appearing for the 2nd respondent/Insurance Company further contended that the Tribunal erred in fixing notional income of the deceased at Rs.5,000/- and applied multiplier '18' for awarding compensation towards loss of dependency. A sum of Rs.35,000/- awarded by the Tribunal under conventional heads are excessive. As far as the compensation granted by the Tribunal to the claimant in C.M.A.No.566 of 2009 is concerned, the claimant has not proved the nature of injuries and loss of earning capacity by examining the doctor who treated him and prayed for allowing both the appeals.

11.The learned counsel appearing for the claimants made her submissions in support of the common award passed by the Tribunal in both the claim petitions.

12.Heard the learned counsel appearing for the 2nd respondent/Insurance Company as well as the learned counsel appearing for the claimants and perused the entire materials on record.

13.It is the contention of the claimants that while the deceased was riding the motorcycle along with the pillion rider, the driver of the lorry belonging to the 1st respondent drove the lorry in a rash and negligent manner, dashed against the motorcycle and did not stop and went away. In the accident, the rider of the motorcycle sustained injuries and died. The pillion rider sustained injuries. To substantiate their contention, the pillion rider, claimant in C.M.A.No.566 of 2009 examined himself as P.W.2 and deposed to that effect. The

claimants also marked F.I.R. as Ex.P1, which was registered against the driver of the lorry. The Police after investigation filed charge sheet, which was marked as Ex.P3. The driver of the lorry pleaded guilty and paid fine. The judgment of the criminal Court was marked as Ex.P6. From the award of the Tribunal, it is seen that the counsel appearing for the 2nd respondent/Insurance Company cross-examined P.W.2 and not elicited anything contrary to the claim of the claimants with regard to nature of accident. The 2nd respondent has not examined the driver of the lorry or any independent witness to prove their contention that the lorry was not involved in the accident and the deceased and P.W.2 fell down from the motorcycle, when the deceased applied brake in order to avoid hitting the cattle. The contention of the learned counsel appearing for the 2nd respondent that a reading of the F.I.R. leads to a presumption that the deceased and P.W.2 fell down, when the deceased applied brake and further, various grounds raised in the appeals with regard to negligence on the part of the deceased and non involvement of the lorry was not proved before the Tribunal by letting in any evidence. In the absence of any evidence by the 2nd respondent/Insurance Company, the Tribunal considering the evidence of P.W.2, Exs.P1, P3 and P6 and in the absence of contra evidence, rightly held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.The learned counsel appearing for the 2nd respondent/Insurance Company contended that on coming to know the fraud played by the claimants, the 2nd respondent filed review petition and lodged complaint to CBCID in the year 2007. The learned counsel appearing for the 2nd respondent has not stated what happened to the review petition and complaint given to the CBCID even after 13 years. In view of the same, the said contention is not accepted and the finding of the Tribunal that lorry involved in the accident and the 2nd respondent is liable to pay compensation is not interfered with. The 2nd respondent is liable to pay compensation to the claimants.

15.As far as quantum of compensation granted by the Tribunal to the claimants in C.M.A.No.565 of 2009 is concerned, the claimants contended that the deceased was working as a Master in Niyaz Apparels and was earning a sum of Rs.9,500/- per month. They filed Ex.P10/salary certificate to prove the income. The Tribunal did not accept the salary certificate on the ground that the same cannot be accepted as such and fixed notional income of the deceased only at Rs.5,000/-. The deceased was aged 28 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. Hence, the notional income fixed by the Tribunal is not interfered with. The

Tribunal applied multiplier '18' as per II Schedule, deducted 1/3rd towards personal expenses and awarded compensation. The total compensation awarded by the Tribunal is not excessive.

16.As far as quantum of compensation granted by the Tribunal to the claimant in C.M.A.No.566 of 2009 is concerned, the claimant examined himself as P.W.2, deposed about the nature of injuries and treatment taken by him. In addition to that, the claimant examined the Doctor as P.W.4, who deposed the nature of injuries, treatment taken by the claimant and marked the disability certificate as Ex.P12. P.W.4/Doctor certified that the claimant suffered 50% partial and permanent disability. The Tribunal considering the evidence of P.W.2, P.W.4/Doctor, nature of injuries, disability and treatment taken by the claimant, awarded compensation under different heads, which are not excessive warranting interference by this Court.

17.In the result, both the Civil Miscellaneous Appeals are dismissed and the sum of Rs.7,70,000/- and Rs.88,000/- awarded by the Tribunal as compensation to the claimants in C.M.A.Nos.565 and 566 of 2009 respectively along with interest and costs are confirmed. The 2nd respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, 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, the claimants 1, 4 and 5 in M.C.O.P.No.269 of 2003 are permitted to withdraw their respective share of the award amount as per the apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share amounts of the minor claimants 2 and 3 in M.C.O.P.No.269 of 2003 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st claimant in M.C.O.P.No.269 of 2003 being mother of the minors is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The claimant in M.C.O.P.No.272 of 2003 is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kj

To
1.The Subordinate Judge
The Motor Accident Claims Tribunal
Ponneri.

Copy To:
The Section Officer
VR Section,High Court
Chennai.

+1 cc to M/s.Arunkumar, Advocate Sr.No. 37629
+2cc to M/s.M.Malar, Advocate, Sr.No. 37603,37604

C.M.A.Nos.565 and 566 of 2009
and M.P.Nos.1 and 1 of 2009
and C.M.P.Nos.4404 and 4405 of 2016

VBA(CO)
RMP(10/06/2021)



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