

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.876 of 2009

1.Uma Rani @ Uma Vijayan
2.Minor Bhavisialakshmi
3.Minor Srinithi
(Minors rep. by their mother and
natural guardian 1st appellant) .. Appellants/Petitioners/
Claimants

Vs.

1.P.Padmanabhan
2.P.Jaganathan
3.The Oriental Insurance Company Ltd.
Namakkal.
4.The National Insurance Company Ltd.
16 State Bank Road
Coimbatore-641 018.
5.Thirumalaisamy .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2007 made in M.C.O.P.No.222 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

For Appellants : Ms.D.Sathya for
Mr.T.Muruga Manickam

For R3 : Mr.K.Vinod for
Mrs.Elveera Ravindran

For R4 : Mrs.N.B.Surekha
Respondents 1 & 2 : Not ready in notice

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 30.03.2007 made in M.C.O.P.No.222 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

2.The appellants are claimants in M.C.O.P.No.222 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Vijayan Babu, who died in the accident that took place on 05.11.2002.

3.According to the appellants, on the date of accident i.e., on 05.11.2002 at about 2.00 a.m., while the deceased Vijayan Babu, the appellants and parents of the 1st appellant were returning from Tirupathi to Bhavani via Kuppam in a car, which was driven by the deceased towards Vellore, with moderate speed, the 1st respondent, driver of the lorry belonging to the 2nd respondent, who drove the same in a rash and negligent manner in front of the car suddenly stopped the lorry without any red signal near Natrampalli railway gate and due to sudden stopping of the lorry, the deceased tried to apply the brake, but the car dashed on the back side of the lorry. Due to the accident, the deceased Vijayan Babu died on the spot. Therefore, the appellants filed the said claim petition claiming compensation against the respondents 1 to 4.

4.The respondents 1 and 2, who are the driver and owner of the lorry respectively, remained exparte before the Tribunal.

5.The 3rd respondent/Oriental Insurance Company being insurer of the lorry filed counter statement denying the averments made in the claim petition and stated that the lorry was parked on the road as the Natrampali railway gate was closed and at that time, the deceased drove the car with high speed and hit on the back side of the lorry. The deceased, who is an accused, died and the criminal case was closed as abated as per the order dated 23.12.2002 made in RCS.No.35 of 2002 on the file of the Judicial Magistrate No.IV, Thirupathur. After the accident, the appellants have not lodged the complaint immediately. The deceased was solely responsible for the accident and therefore, the 4th respondent/National Insurance Company being insurer of the said car, alone is liable to pay compensation to the appellants. The 3rd respondent has also denied the age, avocation and income of the deceased. The 5th respondent, father of the deceased is not the dependant of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.The 4th respondent/National Insurance Company being insurer of the car filed counter statement denying the averments made in the claim petition and stated that the 1st respondent drove the lorry in a rash and negligent manner and due to sudden stopping of the lorry, the accident has occurred. After the

accident, the deceased/driver of the car became unconscious and taking advantage of the same, the 1st respondent, driver of the lorry lodged the complaint against the deceased. The 1st appellant, who was also an victim clearly narrated the manner of accident to the Police officials and the negligence on the part of the driver of the lorry, which caused the accident. The 4th respondent denied that the car was insured with them. Therefore, the respondents 1 to 3 alone are liable to pay compensation to the appellants. If at all, negligence has to be fixed on both the drivers of the lorry and car in the ratio 90 : 10. The 4th respondent has also denied the age, avocation and income of the deceased. The appellants have to prove that they are the dependants and legal heirs of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

7.The 5th respondent, father of the deceased Vijayan Babu, filed counter statement denying that he has source of income and he is not the dependant of the deceased and prayed for grant of compensation for the death of his son.

8.Before the Tribunal, the 1st appellant, wife of the deceased, one of the eye-witness, examined herself as P.W.1, her parents, eye-witness to the accident, were examined as P.W.2 & P.W.3, Dr.Krishnasamy was examined as P.W.4 and 63 documents were marked as Exs.P1 to P63. On the side of the 3rd respondent, the judgment dated 24.02.2003 made in RCS.No.6 of 2003 on the file of the Judicial Magistrate No.IV, Tirupathur, was marked as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the accident has occurred only due to negligence on the part of the deceased.

10.Against the said order of dismissal dated 30.03.2007 made in M.C.O.P.No.222 of 2003, the appellants have come out with the present appeal.

11.The learned counsel appearing for the appellants contended that the Tribunal failed to consider the evidence of P.W.1, an eye-witness, who travelled along with the deceased. P.W.1 in her evidence has deposed that the accident occurred only due to rash and negligent driving by the 1st respondent, driver of the lorry belonging to the 2nd respondent. The respondents 1 to 3 did not examine any eye-witness or any contra evidence to the evidence of P.W.1, who has deposed that the driver of the lorry suddenly stopped the lorry in the middle of the road. When there is no contra evidence let in by the respondents 1 to 3, the Tribunal cannot presume that the

deceased was responsible for the accident. The Tribunal erred in holding that the lorry driven by the 1st respondent had effective brake lights, when there is no evidence to prove the same and prayed for setting aside the award of the Tribunal dismissing the claim petition and granting compensation to the appellants.

12.The learned counsel appearing for the 3rd respondent/Oriental Insurance Company being insurer of the lorry contended that the accident has occurred only due to rash and negligent driving of the car by the deceased. The lorry driven by the 1st respondent was parked, as the railway gate was closed. At that time, the deceased drove the car in a rash and negligent manner, hit on the back side of the lorry and invited the accident. F.I.R. was registered against the deceased and the same was closed as abated. The Tribunal considered all the materials available on record and dismissed the claim petition. In other three claim petitions filed by the 1st appellant and her parents, the Tribunal held that the driver of the car alone is responsible for the accident and the said finding was not challenged either by the appellants or 4th respondent/National Insurance Company. In support of his contentions, the learned counsel relied on the judgment of this Court reported in 2007 (2) TNMAC 147 (Mad) (S.Palaniswamy, the New India Assurance Company Limited, Divisional Office, Kumaran complex, Kumaran road, Tiruppur vs. Chinnakali), wherein it is held that in different claim petitions arising out of the same accident, there cannot be different awards holding that the drivers of the different vehicles are responsible for the accident and prayed for dismissal of the appeal.

13.The learned counsel appearing for the 4th respondent/National Insurance Company being insurer of the car contended that the accident has occurred only due to rash and negligent driving by the 1st respondent, who suddenly stopped the lorry without any signal. Due to the injuries sustained by the appellants and death of driver of the car, they could not lodge any complaint against the driver of the lorry. Taking advantage of the situation, the 1st respondent has lodged complaint against the deceased, driver of the car. If at all any negligence is fixed by this Court, it should be fixed on both the drivers of the car & lorry in the ratio 90 : 10 and prayed for dismissal of the appeal against the 4th respondent.

14.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents 3 & 4 and perused all the materials available on record.

15.It is the contention of the appellants that 1st respondent, who was driving the lorry belonging to the 2nd respondent insured with the 3rd respondent, stopped the lorry

without any signal. Due to the said impact, the deceased, who was driving the car behind the lorry, dashed on the back side of the lorry and the accident has occurred. According to the appellants, the accident has occurred solely due to negligent stopping of the lorry by the 1st respondent. To substantiate their claim, the 1st appellant examined herself as P.W.1 and deposed to that effect. Based on the complaint given by the 1st respondent, the driver of the lorry, F.I.R. was registered against the driver of the car. According to the appellants, the deceased and other occupants in the car sustained injuries and due to the same, they could not lodge any complaint. Taking advantage of the same, the 1st respondent lodged the complaint against the deceased, driver of the car. The appellants contended that they sent objection to the Deputy Inspector General, Vellore, Superintendent of Police and Deputy Superintendent of Police, Vaniyambadi and the same was marked as Ex.P21.

16. On the other hand, it is the contention of the learned counsel appearing for the 3rd respondent being insurer of the lorry that the lorry was stopped as the railway gate was closed, the deceased drove the car in a rash and negligent manner and dashed on the back side of the lorry. They relied on F.I.R., which was registered against the deceased, driver of the car, marked as Ex.P1. The 3rd respondent did not examine any witness, especially the 1st respondent, driver of the lorry to substantiate their case. There is no evidence to show that the car dashed on the back side of the lorry.

17. On the other hand, it is the specific case of the appellants that the 1st respondent, driver of the lorry belonging to the 2nd respondent, suddenly stopped the lorry without any signal and caused the accident. The Tribunal without properly appreciating the evidence of P.W.1, who is an eye-witness, erroneously accepted the contents of F.I.R. and on assumption and presumption, held that the accident has occurred due to rash and negligent driving by the deceased, driver of the car and dismissed the claim petition. The Tribunal failed to see that F.I.R. was registered on the complaint lodged by the 1st respondent, driver of the lorry, who will naturally blame the driver of other vehicle. When there is no evidence that there was a speed breaker and signal to show that the railway gate is ahead, the Tribunal held that there is signal near the railway gate and speed breaker. The Tribunal further presumed that when the vehicle stops by applying brake, red light would be blinking to show that the brake is being applied. The Tribunal has come to the above conclusion, without there being any contra evidence to the evidence of P.W.1/eye-witness, only on assumption and presumption.

17(i). The learned counsel appearing for the 3rd respondent further contended that in respect of different claim petitions arising out of very same accident, negligence cannot be fixed differently on the drivers of the vehicles involved in the accident. According to the 3rd respondent, the appellants and 4th respondent, insurer of the car did not challenge the findings of the Tribunal fixing negligence on the part of the driver of the car. In the present appeal, the appellants have challenged the award of the Tribunal dismissing the claim petition fixing negligence on the part of the driver of the car. From the award of the Tribunal, it is clear that the appellants have let in evidence to show that the accident has occurred only due to rash and negligent driving by driver of the lorry and 3rd respondent did not let in any contra evidence to the evidence let in by the appellants. The 3rd respondent, without there being any evidence let in to substantiate their contention is not entitled to raise the present plea in the appeal. The Tribunal has not properly appreciated the evidence of the appellants and dismissed the claim petition on presumption. Therefore, the contention of the learned counsel appearing for the 3rd respondent is without merits and the judgment relied on by the learned counsel for the 3rd respondent is not applicable to the facts of the present case. For the above reason, award of the Tribunal holding that the accident has occurred due to rash and negligent driving by the deceased, driver of the car, is liable to be set aside and it is hereby set aside.

18. It is to be noted that if the deceased drove the car behind the lorry, which is a heavy vehicle, ought to have been cautious and should have kept reasonable distance between two vehicles. In view of the above, driver of the car is also negligent to the accident. For the same, 25% negligence is fixed on the part of the deceased, driver of the car and 75% negligence is fixed on the part of the 1st respondent, the driver of the lorry. Therefore, the 2nd respondent, owner of the lorry, is vicariously liable to pay compensation to the appellants and the 5th respondent. The lorry was insured with the 3rd respondent and hence, the 3rd respondent/Oriental Insurance Company is liable to pay 75% of the compensation to the appellants & 5th respondent. However, 4th respondent being insurer of the car did not take a stand in their counter statement that the policy issued by them did not cover the risk of owner-cum-driver. The 4th respondent has also not examined any witness to show that they are not liable to pay compensation to the driver of the car. The appellants have contended that the car was insured with the 4th respondent and therefore, the 4th respondent is liable to pay compensation to the appellants. In view of the above, the 4th respondent/National Insurance Company is directed to pay 25% of the compensation to the appellants and 5th respondent.

19.As far as quantum of compensation is concerned, the appellants have claimed that the deceased was doing jewellery business and was earning a sum of Rs.35,000/- per month. To substantiate the said claim, the appellants have marked the receipts for payment of income tax by the deceased as Exs.P14 to 18 paid in the year 1999 and 2000. The appellants have not produced any document to show having filed Income Tax returns to prove that the deceased was earning a sum of Rs.35,000/- per month. Considering the contention of the appellants that the deceased was carrying on jewellery business and has paid advance tax and date of accident, it will be just and reasonable to fix the notional income of the deceased at Rs.12,000/- per month. In Ex.P19/driving license of the deceased, the date of birth of the deceased is mentioned as 14.09.1969. The accident has occurred on 05.11.2002. Therefore, the age of the deceased is fixed as 33 years at the time of accident. The multiplier applicable is '16'. The 5th respondent is the father of the deceased. Therefore, the appellants and 5th respondent are entitled to 40% enhancement towards future prospects. There are four dependants of the deceased including appellants & 5th respondent and 1/4th has to be deducted towards personal expenses. Thus, a sum of Rs.24,19,200/- [Rs.12,000/- + 4800 (Rs.12,000 X 40%) X 12 X 16 X 3/4] is awarded towards loss of dependency. The appellants and 5th respondent are entitled to a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards loss of consortium, funeral expenses and loss of estate respectively. A sum of Rs.25,000/- each is awarded towards loss of love and affection to the minor appellants 2 & 3 and Rs.20,000/- is awarded towards loss of love and affection to the 5th respondent. Thus, the appellants and 5th respondent are entitled to the following compensation:

Sl. No.	Description	Amount awarded by this Court (Rs)
1.	Loss of dependency	24,19,200
2.	Loss of consortium	40,000
3.	Loss of love & affection to the appellants 2 & 3	50,000
4.	Loss of love & affection to the 5 th respondent	20,000
5.	Funeral expenses	15,000
6.	Loss of estate	15,000
	Total	25,59,200

20. In the result, the Civil Miscellaneous Appeal is allowed. A sum of Rs.25,59,200/- 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 are directed to pay necessary Court fee, on the compensation awarded by this Court. Out of the award amount, the 1st appellant being wife of the deceased is entitled to a sum of Rs.10,00,000/-, the appellants 2 & 3 being daughters of the deceased are entitled to a sum of Rs.6,00,000/- each and the 5th respondent being father of the deceased is entitled to a sum of Rs.3,59,200/- as compensation. The 3rd respondent/Oriental Insurance Company is directed to deposit 75% of the award amount now determined by this Court i.e., Rs.19,19,400/-, and the 4th respondent/National Insurance Company is directed to deposit 25% of the award amount now determined by this Court i.e., Rs.6,39,800/-, along with proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant and 5th respondent are permitted to withdraw their respective share of the award amount now determined by this Court, along with proportionate interest and costs. The shares of the minors/appellants 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being mother of the minors/appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-

Asst.Registrar (CS II)

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Sub Asst. Registrar

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To

1.The Subordinate Judge
The Motor Accident Claims Tribunal
Bhavani.

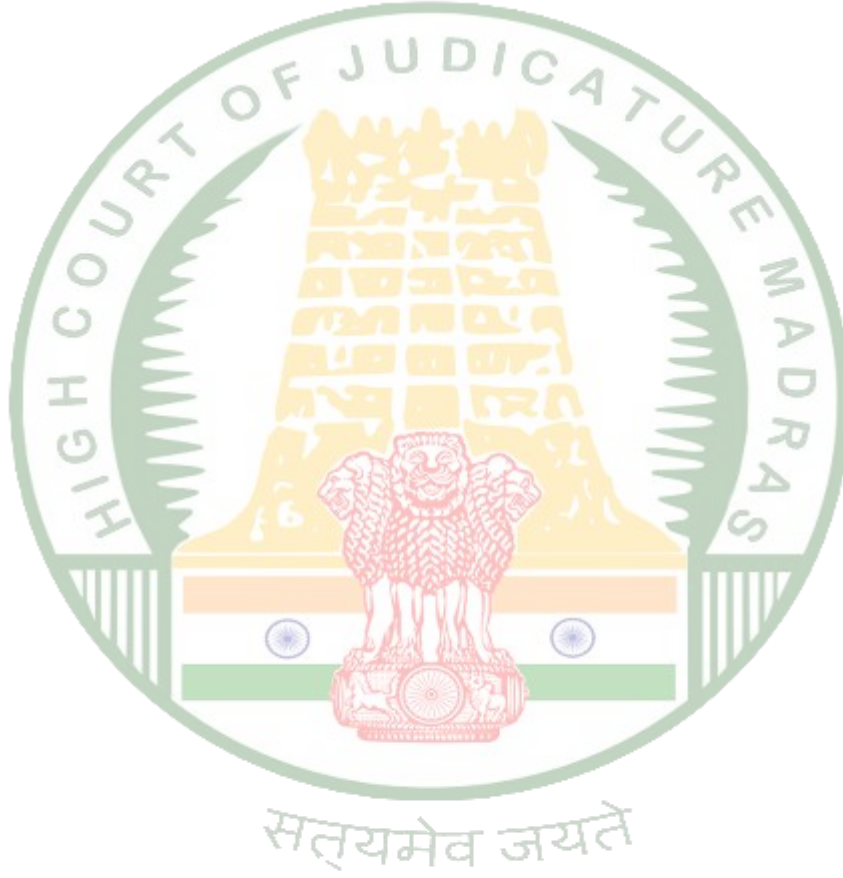
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The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to Mr.V.Rajesh Advocate sr21309
+1 cc to Ms.N.B.Surekha Advocate sr20978
+1 cc to M/s.Elveera Raveendran Advocate sr21017

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