

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.976 of 2010

1.Poongodi

2.Rajkumar

3.Manickkam

.. Appellants/Claimants

Vs.

1.K.Kannan

2.J.Radhakrishnan

3.The Oriental Insurance Company Limited,
Having office at Suguna Building,
707, Avanashi Road,
Coimbatore - 18.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.04.2009 made in M.C.O.P.No.1649 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Special Court for E.C. Act cases, Coimbatore.

For Appellants : Mr.Bharath Gowtham
for Mr.T.R.Rajaraman

For R3 : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 15.04.2009 made in M.C.O.P.No.1649 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Special Court for E.C. Act cases, Coimbatore.

3.The appellants are the claimants in M.C.O.P.No.1649 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Special Court for E.C. Act cases, Coimbatore. They filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Vairamuthu, who died in the accident that took place on 02.08.2006.

4. According to the appellants, on 02.08.2006 at about 10.45 P.M., while the deceased along with the 2nd appellant as pillion rider was proceeding in a TVS 50 moped bearing Registration No. TN 37 H 4535 from North to South and while he was turning to the western side, the driver of the Tata Sumo belonging to the 2nd respondent, who was driving the vehicle in a rash and negligent manner from South to North, came and dashed against the deceased and caused the accident. In the accident, the deceased sustained grievous fatal injuries and was admitted in the CMC Hospital as in-patient till 10.08.2006. In spite of treatment, the said Vairamuthu succumbed to injuries on 10.08.2006. Therefore, the appellants being the wife, son and father of the deceased filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation against the respondents, being the driver, owner and insurer of the Tata Sumo respectively.

5. The respondents 1 and 2 being the driver and owner of the Tata Sumo remained *ex parte* before the Tribunal.

6. The 3rd respondent-Insurance Company, being the insurer of the Tata Sumo filed counter statement and denied all the averments made by the appellants. According to the 3rd respondent-Insurance Company, the rider of the TVS 50 suddenly came across the road towards West, without any signal or indication and invited the accident. Therefore, the accident occurred only due to negligence on the part of the rider of the TVS 50 and the 1st respondent-driver of the Tata Sumo was not responsible for the accident. The owner and insurer of the TVS 50 were not impleaded as necessary parties in the claim petition. The appellants have to prove that the owner of the Tata Sumo was possessing valid documents, they are the legal heirs of the deceased and also the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as P.W.1 and one Mariappan as P.W.2 and the 3rd appellant examined himself as P.W.3 and seven documents were marked as Exs.P1 to P7. The 3rd respondent-Insurance Company did not let in any oral evidence but marked two documents as Exs.R1 and R2.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent as well as by negligent road crossing of the deceased and fixed negligence in the ratio 50% : 50% and directed the 3rd respondent-Insurance Company, being the insurer of the Tata Sumo to pay a sum of Rs.3,30,000/- towards 50% of the award amount as compensation to the appellants.

9.Challenging the portion of the award fixing 50% contributory negligence on the part of the deceased, the appellants have come out with the present appeal.

10.The learned counsel appearing for the appellants contended that P.W.3, an eye-witness has categorically stated that the accident has occurred only due to rash and negligent driving by the driver of the Tata Sumo belonging to the 2nd respondent. P.W.3 has deposed that deceased shown signal that he was turning but the driver of the Tata Sumo, without seeing the signal, dashed against the TVS 50 and caused the accident. The Tribunal failed to see that accident has occurred 10 feet away from western side which shows the deceased was almost crossing the road. The Tata Sumo was 150 feet, i.e.50 metres away from the accident place and the driver of the Tata Sumo would have easily avoided the accident. The driver of the Tata Sumo is the best person to depose about the manner of accident. The Tribunal ought to have drawn adverse inference for not examining the driver of the Tata Sumo. The Tribunal failed to see that in the F.I.R., P.W.3 has stated that signal was given when the deceased was turning to the west side and Tribunal erroneously fixed 50% contributory negligence on the part of the deceased and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the deceased and for allowing the appeal.

11.Though the 3rd respondent-Insurance Company has entered appearance through counsel, there is no representation on behalf of them, when the matter is taken up for hearing.

12.Heard the learned counsel appearing for the appellants and perused the entire materials on record.

13.From the materials available on record, it is seen that the accident has occurred when the deceased was riding his TVS 50 motorcycle, turning towards West from East. According to the appellants, the accident has occurred only due to rash and negligent driving by the driver of the Tata Sumo belonging to the 2nd respondent. The deceased had almost crossed the road and accident has occurred within 10 feet from the western side. From the materials, it is seen that the F.I.R. was registered against the driver of the Tata Sumo belonging to the 2nd respondent. In the F.I.R., it is stated that while the deceased was turning to the West, he used indicator to show that they are going to turn towards northern side. On the other hand, P.W.3, alleged eye-witness deposed that driver of the Tata Sumo caused accident without seeing his hand used as signal. Further as per Ex.R2/Rough Sketch, the accident has occurred on the middle of the road and not on the western side. The Tribunal considering these materials, held that both deceased and the driver of the

Tata Sumo are negligent and responsible for the accident and fixed negligence equally on both the driver of the Tata Sumo and deceased.

14. It is the contention of the appellants that while the driver of the two wheeler going from East to West turning towards north, accident has occurred. While going from East to West and turning North, the deceased who was riding the TVS 50 ought to have been cautious enough to see whether any vehicle is coming from South to North before turning to North from East to West. The Tribunal considering the above materials, held both the driver of the Tata Sumo and the rider of the TVS 50 motorcycle are equally responsible for the accident. There is no error in the above said findings of the Tribunal warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.6,60,000/- awarded by the Tribunal as compensation to the appellants along with interest and costs is confirmed. The 3rd respondent-Insurance Company is directed to deposit 50% of the award amount i.e., Rs.3,30,000/-, 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 to the credit of M.C.O.P.No.1649 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Special Court for E.C. Act cases, Coimbatore. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Special Court for E.C. Act cases,
Coimbatore.

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

C.M.A.No.976 of 2010

VBA (CO)
GN (05/05/2021)



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