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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1737 of 2013

Mahendhiran

...Appellant / 1st Respondent

Vs.

1.Subramanian

...1st Respondent / Petitioner

2.Shri.Ram General Insurance Company Limited,
E.8, E.PIP.RIICO, Sitapura,
Jaipur, Rajasthan - 302 022.

...2nd Respondent / 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.08.2012 made in M.C.O.P.No.50 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Gobichettipalayam, Erode.

For Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For Respondent : NA (R1 & R2)

J U D G M E N T

(The matter is heard through "Video Conferencing".)

This Civil Miscellaneous Appeal has been filed against the award dated 08.08.2012 made in M.C.O.P.No.50 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Gobichettipalayam, Erode.

2.The appellant is the 1st respondent in M.C.O.P.No.50 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Gobichettipalayam, Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of his son Vijayakumar, who died in the accident that took place on 29.04.2010.



3. According to the 1st respondent, on 29.04.2010 at about 10.20 P.M., while the deceased was riding his motorcycle bearing Registration No. TN 38 P 4097 along with his sister as pillion rider on Kadathur School Diversion - Sundakkampalayam road near one Sarasu's house, the appellant who was driving the tractor-trailor from the opposite direction, came in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the said Vijayakumar sustained fatal injuries and died on the spot. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation against the appellant and 2nd respondent-Insurance Company, being the owner and insurer of the tractor-trailor respectively.

4. The appellant being the owner of the tractor trailer filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the deceased only drove his motorcycle in a rash and negligent manner without turning on the motorcycle's headlight and dashed on the backside of the tractor-trailor and died on the spot. The pillion rider has not suffered any injuries. When the appellant went to the Police Station to lodge a complaint, the Police Officials told him to come in the morning and give a complaint. When the appellant went to the Police Station in the morning, a complaint has been already lodged against the appellant. The age, avocation and income of the deceased as claimed by the 1st respondent is not correct. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

5. The 2nd respondent-Insurance Company, being the insurer of the appellant's tractor-trailor filed counter statement and denied various averments made by the 1st respondent. The 2nd respondent-Insurance Company denied the manner of accident as alleged by the 1st respondent. The 1st respondent violated the terms and conditions of the Insurance Policy by driving the tractor-trailor without possessing driving license at the time of accident. The deceased also contributed negligence to the accident by riding the motorcycle without valid driving license at the time of accident. The owner and insurer of the motorcycle rode by the deceased were not impleaded as parties. The 2nd respondent-Insurance Company denied the age, avocation and income of the deceased as claimed by the 1st respondent. The quantum of compensation claimed by the 1st respondent is exorbitant and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Radhika, who is the eyewitness to the accident was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. On behalf of the appellant and 2nd respondent-Insurance



Company, the appellant examined himself as R.W.1 and one Yuvaraj as R.W.2 and one Rangasamy as R.W.3 and 4 documents were marked as Exs.R1 to R4.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the appellant and directed the appellant, being the owner of the tractor trailer to pay a sum of Rs.5,83,000/- as compensation to the 1st respondent on the ground that the appellant was not possessing valid driving license at the time of accident. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company.

8.Against the said award dated 08.08.2012 made in M.C.O.P.No.50 of 2011, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the entire liability on the part of the appellant and exonerated the 2nd respondent-Insurance Company. At the time of accident, the deceased was under the influence of alcohol which resulted in the accident. There is no negligence on the part of the appellant. Ex.P2/Rough Sketch clearly shows that there is no negligence on the part of the appellant. The Tribunal ought to have seen that even though Motor Vehicles Act is beneficial legislation, it should not be a bonanza and unjust enrichment for the wrong doers.

10.The appeal is filed in the year 2013 and notice to the respondents is not served.

11.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

12.Though the appellant has raised grounds in the grounds of appeal with regard to income of the deceased, at the time of arguments, the learned counsel appearing for the appellant would submit that he is not questioning the quantum of compensation awarded by the Tribunal.

13.According to the 1st respondent, the appellant drove his tractor-trailer in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused the accident. Due to the injuries sustained in the accident, the rider of the motorcycle died. The claim petition filed for the compensation of the death of the son of the 1st respondent who died due to the injuries suffered in the accident. To substantiate his contention, the 1st respondent examined himself as P.W.1 and sister of the deceased as P.W.2, who was a pillion rider at the time of accident. The 1st respondent also marked



F.I.R. as Ex.P1, which was registered against the appellant. On the other hand, it is the contention of the appellant that deceased was under the influence of alcohol at the time of accident and he was riding the motorcycle in a rash and negligent manner and dashed against the tractor trailer and fell down. The deceased alone was responsible for the accident. The Tribunal considering Ex.P4/postmortem report, found that there is no mention about the presence of alcohol. The Tribunal considering Ex.P2/rough sketch found that appellant went to the right hand side of the road, while the deceased was riding his motorcycle on the left hand side of the road and the accident occurred only due to the rash and negligent driving by the appellant. The reason given by the Tribunal in this regard is based on the materials and there is no error in the said finding of the Tribunal warranting interference by this Court.

14.The Tribunal exonerated the 2nd respondent-Insurance Company from its liability on the ground that the appellant was not possessing driving license at the time of accident and violated the terms and conditions of the policy. It is not the case of the appellant that he was possessing valid driving license at the time of accident. The appellant as owner of the tractor-trailer and due to his negligence, the accident has occurred and hence, the award of the Tribunal for not ordering pay and recovery is not interfered with.

15.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.5,83,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.50 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Gobichettipalayam, Erode. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

krk



To

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Gobichettipalayam,
Erode.

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

+1cc to Mr.Ma.P.Thangavel, Advocate. SR.No.32844

C.M.A.No.1737 of 2013

CA(CO)
RVM(13/08/2021)