



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3752 of 2011

and

M.P.No.1 of 2011 & C.M.P.No.15348 of 2017

The Commissioner,
The Arcot Municipality,
Municipal Office,
Arcot,
Vellore District.

.. Appellant / 2nd Respondent

Vs.

1.Marimuthu Nadar
2.Pethammal
3.Subramani
4.The United India Insurance Company Limited,
Divisional Office,
No.4 & 5, Kandasamy Mudali Street,
Ranipet.

.. Respondents / Petitioners 1 & 2 /Respondent 1 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2010 made in M.C.O.P.No.60 of 1992 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet, Vellore District.

For Appellant : Mr.B.Anand

For RR 1 & 2 : Mr.M.Sivakumar
for Mr.C.Prabakaran

For R3 : No appearance

For R4 : Mr.Sankaranarayanan

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 28.06.2010 made in M.C.O.P.No.60 of 1992 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet, Vellore District.



3.The appellant is the 2nd respondent in M.C.O.P.No.60 of 1992 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet, Vellore District. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.70,000/- as compensation for the death of their son viz., Ramakrishnan, who died in the accident that took place on 18.09.1985.

4.According to respondents 1 and 2, on 18.09.1985 at about 09.30 A.M., while the deceased was riding his bicycle on Kalavai Road, near Darga at Arcot at the edge of the road, the 3rd respondent drove the lorry bearing Registration No.MDJ 4526 in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the said Ramakrishnan sustained fatal injuries and died. Therefore, the respondents 1 and 2 filed the said claim petition claiming a sum of Rs.70,000/- as compensation against the respondents 3, 4 and appellant, being the driver, insurer and owner of the lorry respectively.

5.The 3rd respondent-driver of the lorry filed counter statement and denied various averments made by the respondents 1 and 2. According to the 3rd respondent, the appellant's lorry was insured with M/s.United India Insurance Company, Ranipet under a valid policy bearing No.090702/511/25/100527/84, Certificate No.1835/163698 covered for the period from 22.11.1984 to 21.11.1985 and the United India Insurance Company is necessary party. The deceased only rode the bicycle in the opposite direction and dashed against the stationery lorry, sustained injuries in the rear wheel and died. The accident has occurred only due to rash and negligent riding by the deceased. The 3rd respondent denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 and 2 is excessive and prayed for dismissal of the claim petition.

6.The appellant-owner of the lorry, filed separate counter statement and denied all the averments made by the respondents 1 and 2. According to the appellant, the 3rd respondent drove the lorry very carefully and there was no negligence on the part of the 3rd respondent. The lorry was insured with M/s.United India Insurance Company, Ranipet under a valid policy bearing No.090702/511/25/100527/84, Certificate No.1835/163698 covered for the period from 22.11.1984 to 21.11.1985 and the United India Insurance Company is necessary party. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 and 2 is highly excessive and prayed for dismissal of the claim petition.

7.The 3rd respondent-driver of the lorry filed additional counter statement and denied all the averments made by the



respondents 1 and 2. The Criminal Court has acquitted the 3rd respondent and declared that the deceased himself had dashed against the lorry voluntarily by himself and died. Hence, there was no negligence on the part of the 3rd respondent. The 3rd respondent and appellant are not liable to pay any compensation and only the Insurance Company is liable to pay the compensation if any granted and prayed for dismissal of the claim petition.

8.The 4th respondent-Insurance Company filed counter statement and denied all the averments made by the respondents 1 and 2. This claim petition is barred by limitation since the alleged accident has taken place on 18.09.1985, which is prior to the amendment Act - 59 of 1988. The 4th respondent is impleaded only on 19.10.2006 and the 3rd respondent has not submitted relevant papers with regard to the accident to the 4th respondent. The 3rd respondent had no valid permit or tax insurance at the time of accident. The appellant's lorry was not insured with the 4th respondent. The 4th respondent denied the age, avocation, nature of accident and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 and 2 are exorbitant and prayed for dismissal of the claim petition.

9.Before the Tribunal, the 1st respondent examined himself as P.W.1 and one S.Gangadharan, eyewitness to the accident was examined as P.W.2 and 5 documents were marked as Exs.P1 to P5. On behalf of the respondents 3, 4 and appellant, the 3rd respondent was examined as R.W.1, one M.N.Ulaganathan, Deputy Manager, United India Insurance Company Limited, Chennai was examined as R.W.2 and one Chittibabu, Assistant Manager, United India Insurance Company Limited, Ranipet was examined as R.W.3 and 7 documents were marked as Exs.R1 to R7.

10.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 appellant and directed the appellant, owner of the lorry to pay a sum of Rs.95,000/- as compensation to the respondents 1 and 2 and dismissed the claim petition as against the 4th respondent-Insurance Company on the ground that there was no valid insurance policy at the time of accident for the lorry belonging to the appellant.

11.Against the said award dated 28.06.2010 made in M.C.O.P.No.60 of 1992, the appellant has come out with the present appeal.

12.The learned counsel appearing for the appellant contended that the 3rd respondent-driver of the lorry belonging to the appellant is not negligent. He was acquitted in Criminal Court



and the 3rd respondent as R.W.1 has deposed that accident has occurred only due to negligence on the part of the deceased, who rode the bicycle in a rash and negligent manner and dashed against the stationary lorry. The deceased fell on the rear wheel of the lorry and sustained injuries. The accident is only an 'Act of God' and hence there is no fault on the part of the 3rd respondent or liability on the appellant. The respondents 1 and 2 failed to prove the avocation and alleged income of the deceased. The amount of Rs.95,000/- awarded by the Tribunal against claim of Rs.70,000/- is not legally correct and prayed for setting aside the award of the Tribunal.

13.The learned counsel appearing for the respondents 1, 2 and the learned counsel appearing for the 4th respondent separately made their submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

14.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1, 2 and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

15.From the materials available on record, it is seen that it is the contention of the respondents 1 and 2 that the 3rd respondent-driver of the lorry drove the lorry in a rash and negligent manner, dashed against the bicycle in which the deceased was riding. To substantiate their contention, the 1st respondent examined himself as P.W.1 and one S.Gangadharan, who is an eyewitness to the accident was examined as P.W.2 and marked F.I.R. as Ex.P1, which was registered against the 3rd respondent, driver of the lorry belonging to the appellant. On the other hand, it is the contention of the appellant and 3rd respondent that the accident has occurred only due to negligence on the part of the deceased. To substantiate their contention, the appellant examined the 3rd respondent-driver of the lorry as R.W.1 and marked Ex.R1/certified copy of the Judgment in C.C.No.299 of 1985. The Tribunal considering the pleadings, evidence of P.W.2/eyewitness, did not accept the evidence of R.W.1 and held that accident has occurred only due to rash and negligent driving by 3rd respondent. There is no error in the said finding of the Tribunal.

16.As far as quantum of compensation is concerned, the Tribunal considering the age, nature of work done by the deceased and year of accident, fixed notional income of the deceased at Rs.1,000/- per month and awarded a sum of Rs.95,000/- as compensation to the respondents 1 and 2, which is not excessive. The contention of the learned counsel appearing for the appellant that Tribunal has awarded compensation more than the amount claimed by the respondents 1 and 2 is concerned,



WEB COPY

Courts have power to award just compensation more than the amounts claimed by the claimants depending upon the facts and circumstances of the particular case. Hence, the compensation awarded by the Tribunal at Rs.95,000/- to respondents 1 and 2 is not excessive and the same is hereby confirmed.

17. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.95,000/- awarded by the Tribunal as compensation to the respondents 1 and 2, along with interest and costs is confirmed. The appellant is directed to deposit the award amount, along with interest and costs, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.60 of 1992 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet, Vellore District. On such deposit, the respondents 1 and 2 are permitted to withdraw the award amount equally, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. This appeal is dismissed against the 4th respondent-Insurance Company. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Ranipet,
Vellore District.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.37278

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.37653

C.M.A.No.3752 of 2011

VBA(CO)
SB(11/08/2021)