

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 210 of 2018
and C.M.P. No. 2457 of 2018

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
Nos. 45 & 46, Whites Road,
Chennai 600 014.

.. Appellant/3rd Respondent

Vs.

1.K. Sathyanarayanan
2.Padma
3.Prema
4.G. Jothi
5.A. Vijaya

....Respondents 1 to 3/Petitioners
...4th Respondent/1st Respondent
...5th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.02.2015, made in M.C.O.P. No. 649 of 2013, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri

.

For Appellant : Mr. G. Vasudevan

For Respondents: Mr. K. Prasanna (for R1 to R3)
for Mr. Mukund R. Pandiyan

For R4 & R5 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 25.02.2015, made in M.C.O.P. No. 649 of 2013, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 3rd respondent in M.C.O.P. No. 649 of 2013, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents 1 to 3 who are the claimants filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one S. Ashok Kumar, who died in the accident that took place on 21.08.2010.

3. According to the respondents 1 to 3, on the date of accident viz., 21.08.2010, when the deceased was riding a Motorcycle bearing Registration No. TN 21 AB 0762, along with one Sathish Kumar at pillion, in a careful manner, observing the traffic rules, the 4th respondent, driver of the Lorry bearing Registration No. KA 01 C 2814, belonging to the 5th respondent, suddenly stopped the vehicle without any signal or indication in the centre of the National High Way. The deceased did not anticipate the sudden stoppage of vehicle. Due to that, the Motorcycle hit the backside of the Lorry and both the rider and pillion rider succumbed to injuries. The accident has occurred only due to rash and negligent driving and sudden stopping by the 4th respondent, driver of the Lorry. The claimants who are the father, mother and sister of the deceased claimed a sum of Rs.15,00,000/- as compensation from the appellant as well as respondents 4 and 5.

4. The respondents 4 and 5 remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3. The appellant contended that the deceased who rode the Motorcycle without driving license, did not notice the Lorry slowing down, due to his rash and driving and hit behind the Lorry. The accident has occurred only due to negligence on the part of the deceased and not due to negligence of the 4th respondent, driver of the Lorry belonging to the 5th respondent. Hence, the appellant is not liable to pay any compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, on behalf of the respondents 1 to 3, the 1st respondent examined himself as P.W.1 and one eye-witness as P.W.2 and marked 10 documents as Exs.P1 to P10. No oral and documentary evidence was let in on the side of the appellant.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 4th respondent, driver of the Lorry belonging to the 5th respondent and directed the appellant as well as the respondents 4 & 5 to jointly and severally pay a sum of Rs.12,27,000/- as compensation to the respondents 1 to 3.

8. Against the said award dated 25.02.2015, made in M.C.O.P. No. 649 of 2013, the appellant-Insurance Company has come out with the present appeal.

9. Learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to rash and negligent riding of the Motorcycle by the deceased. The Tribunal erred in fixing negligence on the part of the 4th respondent, driver of the Lorry. The deceased who was riding Motorcycle behind the Lorry drove the same in a rash and negligent manner and caused the accident. The Tribunal erred in fixing monthly income of the deceased at Rs.9,000/- without there being any evidence. The multiplier '18' adopted by the Tribunal is not correct. The Tribunal ought to have taken the age of the father and mother of the deceased for applying the multiplier. In any event, the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. Heard learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 3 and perused the materials available on record.

11. It is the contention of the respondents 1 to 3 that the 4th respondent, driver the Lorry proceeding ahead of the Motorcycle driven by the deceased was claimed to have suddenly stopped without any indication and started reversing. Due to the same, the deceased could not anticipate and dashed against the backside of the Lorry. To substantiate this contention, the respondents 1 to 3 examined P.W.2 - eye witness. The appellant did not elucidate any materials in their favour, while cross-examining P.W.2. The appellant has contended that due to negligence of the deceased, the accident has occurred. The appellant or the respondents 4 and 5 have not examined any eye-witness, especially, the 4th respondent/ driver of the Lorry to substantiate their contention, except relying on the contents of FIR. The respondents 1 to 3 contended that after the accident, the 4th respondent tried to escape from the scene of occurrence, but another Lorry driver and rider of the Motorcycle chased the 4th respondent and caught hold of him. FIR is given by the 4th respondent against the deceased. The Tribunal has rightly rejected the contents of FIR to fix the negligence, since the Tribunal has to decide the negligence based on the evidences and materials placed before it. The Tribunal considering the contentions in the claim petition, evidence of P.W.1 and P.W.2 and failure on the part of the appellant-Insurance Company to examine any witness to substantiate their case, held that the accident has occurred only due to rash and negligent driving by the 4th respondent, driver of the Lorry. There is no error in the said finding of the Tribunal warranting interference by this Court.

12. As far as the quantum of compensation is concerned, the respondents 1 to 3 have claimed that the deceased was a Call

Driver and was earning a sum of Rs.10,000/- per month. They failed to substantiate the same by filing documents. In the absence of any material evidence on record, the Tribunal has fixed the notional income of the deceased at Rs.9,000/- per month. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) [National Insurance Company vs. Pranay Sethi & others], the age of the deceased has to be taken into consideration for applying multiplier. The deceased was aged 24 years at the time of accident. The Tribunal has applied the correct multiplier '18'. The Tribunal has granted Rs.1,00,000/- each to the respondents 1 and 2 and Rs.25,000/- to the 3rd respondent towards loss of love and affection and Rs.20,000/- for funeral expenses. In view of the fact that the Tribunal has not granted any enhancement towards future prospects and not awarded any amount towards loss of estate, the amounts awarded by the Tribunal for loss of love and affection and funeral expenses are not interfered with.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.12,27,000/- along with interest and costs is confirmed. The appellant and respondents 4 and 5 are jointly and severally directed to deposit the award amount along with interest and costs, 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. 649 of 2013. On such deposit, the respondents 1 to 3 are permitted to withdraw their share of the award amount on the basis 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

2. The Section Officer,
V.R Section,
High Court, Madras.

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+lcc to Mr.G.Vasudevan, Advocate, S.R.No.5259
+lcc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.5806

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BP (CO)
CB(20/04/2021)



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