

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1979 of 2014 &
M.P.No.1 of 2014

The Manager,
ICICI Lombard General Insurance
Company Limited,
No.15-A, PLA Kanagu Towers,
ICICI Lombard House,
414, Veer Savarkar Marg,
Near Siddhi Vinayaka Temple,
Prabhadevi, Mumbai. ... Appellant/2nd Respondent

...Vs...

1. Subramani
2. Vasantha ... Respondents/Claimants
3. Saranarayanan Transport,
No.25/2011, Kuppu Gounder Street,
Panruti,
Cuddalore District. ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2013 in M.C.O.P.No.179 of 2012, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur.

For Appellant : Mrs.K.Sreevidhya

For Respondents : R1 - Died
Mr.Saravana
For Mr.T.Anbu - R2
R3 - Notice served - No appearance

J U D G M E N T

(This Appeal has been taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company, challenging the award dated 17.12.2013 passed by the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur in MCOP.No.179 of 2012.

Brief facts leading to the filing of the instant appeal are as follows: 2. A person, by name, Murugesan, died on 19.11.2011 as a result of an accident caused due to the collusion between his motor-cycle bearing Registration No.TN 46 K 0633 and the insured lorry bearing Registration No.TN 31 AD 9682. The legal representatives of the deceased Murugesan are his parents, who are the respondents 1 and 2 in this appeal. They preferred a claim petition seeking compensation for the death of their son Murugesan. The Motor Accident Claims Tribunal, by its award dated 17.12.2013 passed in MCOP. No.179 of 2012 directed the appellant to pay a sum of Rs.8,98,800/- together with interest and cost to the respondents 1 and 2. Aggrieved by the said award dated 17.12.2013 passed by the Motor Accident Claims Tribunal, the Appellant/Insurance Company has preferred this appeal.

3. Heard Mrs.R.Sree Vidhya, learned counsel for the appellant and Mr.T.Anbu learned counsel appearing for the second respondent.

4. The main ground raised in this appeal is that the rider of the two-wheeler (deceased) is also equally responsible for the cause of the accident along with the driver of the insured lorry. According to the Appellant, the findings of the Tribunal that contributory negligence at the rate of 70% on the part of the insured vehicle is erroneous. It is their contention that the deceased who was travelling in the motor cycle bearing registration No.TN 46 K 0633 had collided from backside of the stationary lorry bearing registration No.TN 31 AD 9682 (insured vehicle) which stood parked at the left end of the road and hence, the fixation of 70% contributory negligence by the Tribunal is erroneous. The appellant has also questioned the quantum of compensation awarded by the Tribunal, as according to them, it is excessive.

5. The Tribunal has considered the defences raised by the appellant which is also raised by them in this appeal. The Tribunal, while rejecting the contention of the appellant that the rider of the two-wheeler is also equally responsible for the

cause of the accident, has observed that the rough sketch marked as Ex.P9 through P.W.3 shows that the insured lorry was not parked on the left side of the mud road, but on the main road itself. The Tribunal has also observed that contents of the FIR, which was marked as Ex.P1, would reveal that as soon as the driver of the lorry stopped his vehicle, he heard a sound behind the lorry and thereafter, he got down from the lorry and saw the rider of the two-wheeler dead with head injury.

6. Since the Tribunal has also found that the two wheeler which came from behind and collided with the insured lorry is also responsible for the cause of the accident, fixed the contributory negligence of the deceased who was the rider of the motor cycle at 30%. In the considered view of this Court, the Tribunal has given sound and plausible reasons for fixing the contributory negligence between the driver of the insured lorry and the rider of the motor cycle (deceased) in the ratio 70 : 30.

7. The Tribunal has considered the rough sketch Ex.P19 which was marked through PW3, an eye witness to the accident. As seen from the rough sketch, Ex.P19, the location of the lorry at the time of the accident is found to be in the middle of the road. Therefore, the contention of the Appellant that the insured lorry was parked in the left end of the road cannot be believed. The Tribunal has also considered the evidence of RW1, the driver of the insured lorry and has observed that the statement made by RW1 during his cross examination contradicts the contents of the FIR. The contents of the FIR would reveal that the driver of the insured lorry stopped the vehicle, after he heard a sound behind the lorry and therefore he got down from the lorry and saw that the rider of the two wheeler died with head injury. However, the same driver (RW1) during his cross examination has deposed that he stopped the lorry (insured vehicle) at request of the cleaner of his lorry to pass urine on the left side mud road and that after five minutes, the accident had happened. In view of the contradictory statements, the Tribunal observed that the driver of the insured vehicle (RW1) is not a trustworthy witness. After giving due consideration to the evidence available on record, the Tribunal held that the driver of the insured lorry was at major contributory to the cause of the accident and fixed the contributory negligence at 70%. Hence, the ground raised by the appellant that the rider of the two-wheeler is equally responsible for the cause of the accident is unsustainable.

8. The details of the compensation awarded to the claimants are as follows:

Sl. No.	Heads	Award amount in Rs.
1	Loss of Income	12,24,000/-
2	Loss of love and affection	40,000/-
3	Loss of Estate	10,000/-
4	Transportation Charges	5,000/-
5	Funeral Expenses	5,000/-
	Total	12,84,000/-
	Less: Contributory negligence at 30%	3,85,200/-
	Award Amount	8,98,800/-

9. However, since the deceased Murugesan was also responsible for the accident to the extent of 30%, to that extent, the compensation has to be deducted from Rs.12,84,000/-. Therefore, 30% of the compensation comes to Rs.12,84,000/-X 30/100=Rs.3,85,200/-, and the same is accordingly deducted from the total compensation of Rs.12,84,000/-. The balance compensation of Rs.8,98,800/- is liable to be paid by the Appellant, insurance company to the first and second respondents.

10. The deceased, at the time of the accident, according to the claimants, was having a computer centre on his own and earning monthly income of Rs.20,000/-. However, the Tribunal has assessed his monthly income at Rs.12,000/- only. As seen from the exhibits marked before the Tribunal, the deceased is a qualified person to run a computer centre. His certificates which were marked as Exhibits supports the contention of the claimants.

11. Considering all these factors, the compensation awarded by the Tribunal under various heads as indicated earlier, is reasonable, and the same cannot be termed as excessive. Hence, this Court rejects the contention of the appellant/Insurance Company that the award passed by the Tribunal is excessive.

Conclusion:

12. For the forgoing reasons, both the contentions raised by the learned counsel for the appellant in this appeal does not deserve any merit. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Appellant insurance company is directed to deposit 70% of entire award amount i.e., Rs.8,98,800/-, after deducting the amount already deposited, if any, together with interest from the date of claim till the date of deposit and

costs as assessed by the Tribunal to the credit of MCOP.No.179 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the first and second respondents are permitted to withdraw their respective shares of award amount along with accrued interest lying to the credit of MCOP.No.179 of 2012 by filing appropriate applications. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

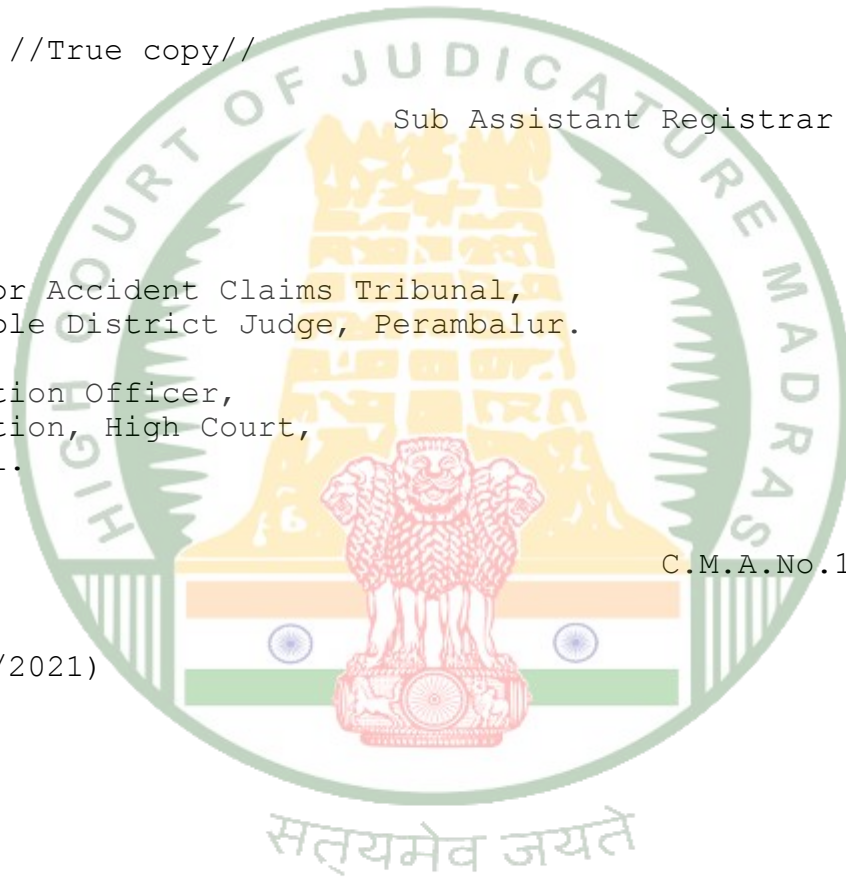
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To

- 1.The Motor Accident Claims Tribunal,
Principle District Judge, Perambalur.
- 2.The Section Officer,
VR Section, High Court,
Chennai.

C.M.A.No.1979 of 2014

RSV (CO)
GMY (12/05/2021)



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