

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2363 of 2014

Rajendran .. Appellant/ Respondent
Vs.

1.K. Savithiri

2.K. Deepa

3.K. Mohana

4.K. Veda Nandhini (Minor)
rep. By her mother and next friend, Savithiri

5.Karuppayammal .. Respondents/ Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 17.06.2013, made in M.C.O.P. No.314 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari.

For Appellant : Mr. K.V. Muthuvisakan
For Respondents: Mr. C. Ramaraj
for M/s. M. Guruprasad

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the award dated 17.06.2013, made in M.C.O.P. No.314 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari.

2.The appellant is the respondent in M.C.O.P. No.314 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari. The respondents filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Karuppanna Gounder who died in the accident that took place on 25.11.2006.

3. According to the respondents, on the date of accident viz., 25.11.2006, the deceased was riding his Bajaj Motorcycle bearing Registration No.TN-28-V-3322 at Edapaddi-Poolampatti main road, in a slow and cautious manner, while crossing Kannankaadu bus stand, the appellant who is a rider-cum-owner of the Suzuki Motorcycle bearing Registration No.TN-27-W-5407, rode the same in a rash and negligent manner and dashed against the Bajaj Motorcycle, driven by the deceased and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident has occurred due to rash and negligent driving by the appellant/rider-cum-owner of the Suzuki Motorcycle and hence, the respondents filed the claim petition, claiming compensation against the appellant, as rider-cum-owner of the Suzuki Motorcycle.

4. The appellant filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant, the accident did not occur due to his rash and negligent riding of the Suzuki Motorcycle but the deceased himself contributed to the accident. The respondents have to prove that they are the legal heirs of the deceased. The respondents also have to prove the age, avocation and income of the deceased at the time of accident, by documentary evidence to claim compensation. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined Aasaithambi, eye-witness as P.W.2 and marked 13 documents as Exs.P1 to P13. The appellant/rider-cum-owner of the Suzuki Motorcycle examined himself as R.W.1 and marked two documents as Exs.R1 & R2.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding of the Suzuki Motorcycle by the appellant and directed the appellant to pay a sum of Rs.5,32,000/- as compensation to the respondents.

7. Challenging the negligence and liability fixed on him as well as questioning the quantum of compensation granted by the Tribunal in the award dated 17.06.2013, made in M.C.O.P. No.314 of 2007, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the deceased was under the influence of alcohol at the time of accident and accident has occurred only due to negligence on the part of the deceased. The accident has occurred only on the left hand side of the appellant and it has been wrongly mentioned that the accident occurred on the left hand side of

the deceased. The deceased was not wearing helmet and it was a head on collision. In the accident, both the appellant as well as deceased suffered injuries and both of them were under treatment. Taking advantage that the appellant was in Hospital for 10 days, the respondents have given false complaint against the appellant. After discharge, the appellant went to Police Station to give a complaint where he was informed that a case was registered against him as rider of the other vehicle died. The respondents have failed to prove the income of the deceased and total compensation awarded by the Tribunal is excessive. The learned counsel appearing for the appellant further contended that the appellant was acquitted in criminal case as the deceased was cause for the accident. The Tribunal on erroneous ground, rejected the judgment of the Criminal Court. In the accident, the appellant also sustained injuries, both the appellant and deceased were taken to Hospital for treatment. The appellant filed Exs.R1 and R2 to prove that he has taken treatment as in-patient and prayed for setting aside the award of the Tribunal.

9.Per contra, the learned counsel appearing for the respondents-claimants contended that the deceased was riding his Bajaj Motorcycle on the left hand side. The appellant while trying to overtake a Bullock-cart, came to the right hand side and dashed against the Motorcycle driven by the deceased. The respondents have proved the same by examining P.W.2 - an independent eye-witness and marked the FIR as Ex.P1. The appellant has not examined any independent witness to prove that the deceased was responsible for the accident. The compensation awarded by the Tribunal are not excessive and prayed for dismissal of the appeal.

10.Heard learned counsel appearing for the appellant as well as the respondents and perused the materials available on record.

11.From the materials on record, it is seen that it is the contention of the respondents that while the deceased was riding his Motorcycle on left hand side of the road, the appellant drove his Motorcycle in a rash and negligent manner and dashed against the Motorcycle driven by the deceased. The deceased died due to the injuries sustained in the accident. To substantiate this contention, the 1st respondent examined herself as P.W.1 and marked FIR as Ex.P1 and other documents, including Rough Sketch. They also examined P.W.2 - eye-witness. On the other hand, it is the contention of the appellant that deceased under the influence of alcohol, drove the Motorcycle in a rash and negligent manner and dashed against the Motorcycle in which the appellant was riding and caused the accident. In the accident,

the appellant also sustained injuries. Both the appellant and deceased were taken to Hospital. To substantiate this contention, the appellant examined himself as R.W.1 and marked his discharge summary as Ex.R1 and the documents obtained from the Magistrate Court as Ex.R2. The Tribunal did not accept Exs.R1 and R2, as appellant failed to prove the same as there was no mention about issuing the said documents to the appellant. As far as Ex.R1 is concerned, the appellant did not examine the Doctor who recorded the same. Considering the materials on record, the Tribunal held that the appellant failed to prove that the deceased was under the influence of alcohol. At the same time, it is to be noted that P.W.2, examined on behalf of the respondents, in his cross examination has admitted that accident is head on collision between the two vehicles and both the appellant as well as deceased were taken to the Hospital in the very same vehicle. It is the contention of the learned counsel appearing for the appellant that deceased was not wearing helmet at the time of accident and not possessing driving license. It is an admitted fact that both the appellant as well as deceased did not possess driving license at the time of accident. Considering the above facts and evidence of P.W.2 that it is a head on collision and both the appellant as well as deceased were injured in the accident, this Court is of the view that both the deceased as well as the appellant have contributed to the accident and suffered injuries in the accident. In view of the above, 40% contributory negligence is fixed on the deceased and 60% negligence fixed on the part of the appellant. The Tribunal considering the evidence let in by the respondents, fixed the monthly income and awarded compensation under different heads which are not excessive. Therefore, the compensation awarded by the Tribunal is not interfered with. The appellant is directed to pay 60% of the compensation awarded by the Tribunal.

12. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,32,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The respondents are entitled to Rs.3,19,200/- [60% of the award amount] as compensation. The appellant is directed to deposit Rs.3,19,200/-, now determined by this Court, along with interest and costs, 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.314 of 2007. On such deposit, the respondents 1 to 3 and 5 are permitted to withdraw their respective share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th respondent is directed to be deposited in any one of the

Nationalized Bank, till the minor attains majority. The 1st respondent, mother of the minor 4th respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th respondent. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Motor Accident Claims Tribunal,
Sub Court,Sankari.

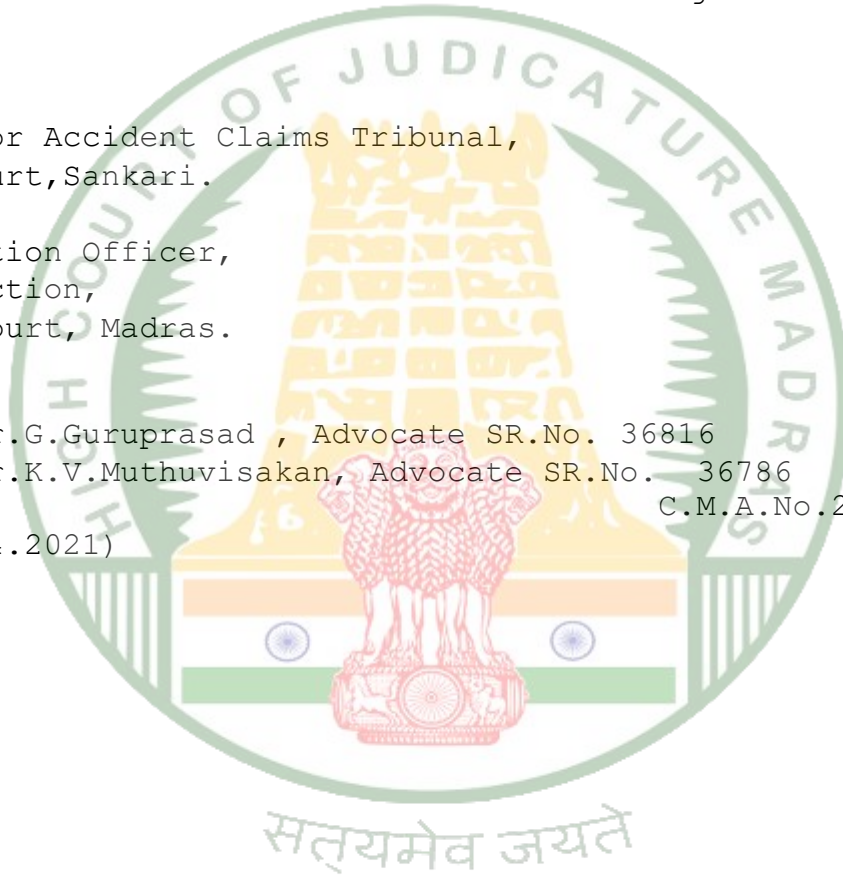
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.G.Guruprasad , Advocate SR.No. 36816

+1cc to Mr.K.V.Muthuvisakan, Advocate SR.No. 36786

C.M.A.No.2363 of 2014

A.SK(07.04.2021)



WEB COPY