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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2927 of 2014

1.P.Vijaya
2.P.Nesamani
3.P.Jabamani
4.P.Lilly
5.P.Jeevamani
6.P.Jaisen
7.Thangammal

... Appellants/Petitioner

Vs.

1.K.Sekar
(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2.The United India Insurance Company Limited,
No.52, General M.M.Street,
Sowcarpet, Chennai.

3.R.Ramakrishnan

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.07.2013 made in M.C.O.P.No.4868 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants :	Mr.P.D.Selvaraj
For R1 :	No appearance
For R2 :	Mr.S.Arunkumar
For R3 :	Mr.S.Muthukumar

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 15.07.2013 made in M.C.O.P.No.4868 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.



3.The appellants are the claimants in M.C.O.P.No.4868 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Perumal, who died in the accident that took place on 14.12.2006.

4.According to the appellants, on 14.12.2006 at about 12.30 hours, while the deceased Perumal was travelling as pillion rider in the motorcycle bearing Registration No.TN 07 A 7086 on GST road near Mamandoor, the rider of the motorcycle rode the same in a rash and negligent manner and dashed against another motorcycle which was coming in the opposite direction and caused the accident. In the accident, the said Perumal sustained fatal injuries and died on the spot. Therefore, the appellants filed the said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.10,00,000/- as compensation against the respondents, being the owner, insurer and owner of the motorcycle respectively.

5.The 1st respondent-owner of the motorcycle filed counter statement and denied various averments made by the appellants. According to 1st respondent, he was the previous owner of the Motorcycle bearing Registration No.TN 07 A 7086 which was insured with the 2nd respondent-Insurance Company vide policy No.010802/31/05/06859 for the period from 14.01.2006 to 13.01.2007. Thereafter he sold the said motorcycle to the 3rd respondent on 09.12.2006 and the 3rd respondent has given delivery note to him on the same day. Therefore, the 1st respondent is not responsible for the accident and not liable to pay any compensation. Only the respondents 2 and 3, being the insurer and owner of the motorcycle are liable to pay compensation to the appellants. The appellants in the F.I.R. has not impleaded the 3rd respondent as necessary party and the 1st respondent was falsely impleaded in the claim petition. In any event, the 1st respondent is not liable to pay any compensation to the appellants and prayed for dismissal of the claim petition as against the 1st respondent.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants. The 2nd respondent denied the manner of accident. The 1st respondent has not intimated about the accident to the 2nd respondent and also not furnished the details of driving license, registration certificate, insurance policy and other vehicular records. The motorcycle belonging to 1st respondent was not insured with the 2nd respondent and the rider of the motorcycle belonging to 1st respondent was not possessing driving license at the time of accident. The accident has occurred only



due to the contributory negligence on the part of the deceased, who did not sit properly on the motorcycle while travelling. It is the duty of the pillion rider to catch hold of the hand railings to avoid falling down in the event of sudden application of brakes. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. The appellants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

7.The 3rd respondent filed separate counter statement and denied various averments made by the appellants. According to 3rd respondent, the accident has not occurred due to rash and negligent riding by the rider of the motorcycle, whereas the accident has occurred only due to negligent act of the deceased by sitting carelessly in the motorcycle and the deceased ought to have caught hold of the motorcycle. The appellants have not mentioned any details about the rider, owner and insurer of the motorcycle which was dashed by the motorcycle, in which the deceased was travelling as pillion rider. The motorcycle belonging to 3rd respondent was insured with the 2nd respondent and there was valid insurance policy at the time of accident. The appellants have to prove that they are the legal heirs of the deceased by producing valid documents. The appellants also have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the appellants is exorbitant and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st appellant examined herself as P.W.1, one Selvam, eyewitness was examined as P.W.2 and one Gnanasekaran was examined as P.W.3 and 17 documents were marked as Exs.P1 to P17. On behalf of the respondents 2 and 3, the rider of the motorcycle bearing Registration No.TN 07 A 7086 was examined as R.W.1 and 4 documents were marked as Exs.R1 to R4.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that since the claim petition is filed under Section 163(A), negligence need not be proved and holding that at the time of accident, the motorcycle bearing Registration No.TN 07 A 7086 was insured with the 2nd respondent, directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.3,82,834/- as compensation to the appellants and dismissed the claim petition as against the 3rd respondent.

10.The appellants have come out with the present appeal seeking enhancement of compensation granted in the award dated 15.07.2013 made in M.C.O.P.No.4868 of 2008.



11.The learned counsel appearing for the appellants contended that the deceased was working as Mid-day-meal Organizer and was earning a sum of Rs.3,000/- per month. In addition to that he was earning a sum of Rs.7,000/- per month by doing Electrical motor rewinding and Refrigeration and Air Conditioning work, totally he was earning a sum of Rs.10,000/- per month. The appellants examined P.W.1 & P.W.3 and proved the avocation and income of the deceased. The Tribunal erroneously granted a meagre sum of Rs.3,73,334/- as compensation towards loss of dependency. The amounts awarded by the Tribunal towards funeral expenses and loss of estate are meagre. The Tribunal failed to award any amount towards transportation. The Tribunal ought to have awarded more compensation and prayed for enhancement of compensation.

12.Though the 1st respondent entered appearance through counsel, on the date of hearing there was no representation on behalf of the 1st respondent.

13.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the claim petition was filed under Section 163(A) of the Motor Vehicles Act and the appellants are not entitled to compensation more than the amounts specified in the structural formula in II Schedule and relied on the judgment of the Hon'ble Apex Court reported in 2013 (1) TNMAC 481 (SC) [Reshmakumari & Others Vs. Madan Mohan and another] and prayed for dismissal of the appeal.

14.The learned counsel appearing for the 3rd respondent made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

15.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and the learned counsel appearing for the 3rd respondent and perused the entire materials on record.

16.It is the contention of the appellants that while the husband of the 1st appellant was travelling as pillion rider in the motorcycle bearing Registration No.TN 07 A 7086 on GST road near Mamandoor, due to rash and negligent riding by the rider of the motorcycle, the said Perumal, sustained fatal injuries and died. The appellants filed claim petition under Section 163(A) of the Motor Vehicles Act against the respondents. The Tribunal considering the materials placed before it, held that respondents 1 and 2 are liable to pay the compensation to the appellants and awarded compensation as per II Schedule of the Motor Vehicles Act, as the claim petition was filed under Section 163(A) of the Motor Vehicles Act. It is well settled that Courts can award compensation as per the II Schedule for



the claim petition filed under Section 163(A) of the Motor Vehicles Act. As per II Schedule, while calculating the compensation by adopting multiplier method, 1/3rd has to be deducted irrespective of the number of dependants in case of death and Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses has to be awarded under conventional heads. The Tribunal considering the fact that claim petition was filed under Section 163(A) of the Motor Vehicles Act, granted compensation as per II Schedule. The judgment relied on by the learned counsel appearing for the 2nd respondent reported in 2013 (1) TNMAC 481 (SC), cited supra is squarely applicable to the facts of the present case.

17. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.3,82,834/- awarded by the Tribunal as compensation to the appellants, along with interest and costs is confirmed. The respondents 1 and 2 are jointly and severally directed to deposit the award amount along with interest and costs, less the amount already deposited if any, 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.4868 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio 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. This appeal is dismissed as against the 3rd respondent. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.



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

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+1cc to Mr.S.Muthukumar, Advocate Sr.40650
+1cc to M/s.S.Arunkumar, Advocate Sr.40459

C.M.A.No.2927 of 2014

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srg 27/08/2021