

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1696 of 2017

and

C.M.P.No.9095 of 2017

The Manager

National Insurance Company

KRT building No.33

Bharathidasan road

Promenade road cantonment

Trichy-1.

... Appellant/2nd Respondent

Vs.

1.Santhi

2.Suganya

3.Tamilvendhan

4.Minor.Tamilvani

(Rep. by next friend

guardian mother 1st respondent Shanthi)

5.Kalyani

... Respondents 1 to 5/

Petitioners

6.Shanmugam

...6th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.03.2016 made in M.C.O.P.No.209 of 2013 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Ariyalur.

For Appellant : Mr.J.Chandran

For R1 to R3, R5: No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 03.03.2016 made in M.C.O.P.No.209 of 2013 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Ariyalur.

2.The appellant is 2nd respondent/Insurance Company in M.C.O.P.No.209 of 2013 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Ariyalur. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Dharman, who died in the accident that took place on 16.06.2013.

3.According to the respondents 1 to 5, on the date of accident i.e., on 16.06.2013 at about 9.45 p.m., while the deceased Dharman was riding in his motorcycle near new street, Trichy old road, Udayarpalayam, on the left side of the road from South to North direction, the driver of the lorry belonging to the 6th respondent, which was parked on the left extreme side of the road without parking signal, suddenly reversed the lorry in a rash and negligent manner, dashed against the motorcycle of the deceased and caused the accident. In the accident, the deceased Dharman sustained grievous injuries and died on the way to hospital. Therefore, the respondents 1 to 5 filed the above claim petition claiming compensation against the 6th respondent and the appellant/Insurance Company.

4.The 6th respondent, owner of the lorry, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the lorry belonging to the 6th respondent was parked on the left extreme side of the road with red signal. The accident occurred on the double road. The deceased rode his motorcycle from South to North direction in a rash and negligent manner, dashed on the back side of the parked lorry and invited the accident. The deceased did not possess valid driving license at the time of accident. After investigation, the Police has closed the F.I.R. as 'mistake of fact'. The deceased was solely responsible for the accident and the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 5. In any event, the compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Selvarasu, eye-witness to the accident, was examined as P.W.2 and marked sixteen documents as Exs.P1 to P16. On the side of the appellant/Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and two documents were marked as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligent act of both the deceased as well as the driver of the

lorry belonging to the 6th respondent, fixed 20% and 80% contributory negligence on the part of both the deceased & driver of the lorry belonging to the 6th respondent respectively, awarded a sum of Rs.17,22,000/- as compensation to the respondents 1 to 5 and directed the appellant/Insurance Company being insurer of the said lorry to pay a sum of Rs.13,77,600/- being 80% of the award amount as compensation to the respondents 1 to 5.

8. Against the said award dated 03.03.2016 made in M.C.O.P.No.209 of 2013, granting compensation to the respondents 1 to 5, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the accident occurred solely due to rash and negligent act of the deceased. The appellant examined the Investigation Officer as R.W.2, who deposed that after due investigation, F.I.R. was closed as 'mistake of fact' and the charge against the driver of the lorry was abated. The Tribunal having held that if the deceased would have driven the motorcycle with care and caution, he could have avoided the accident, erred in fixing 80% contributory negligence on the part of the driver of the lorry belonging to the 6th respondent and fastening liability on the appellant/Insurance Company. The learned counsel further contended that in the absence of any material evidence to prove the income of the deceased, the Tribunal erred in fixing a sum of Rs.12,000/- per month as notional income of the deceased and deducted 1/5th towards personal expenses. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. Though notice was served on the respondents 1 to 5 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

11. Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials available on record.

12. It is the case of the respondents 1 to 5 that while the deceased Dharman was riding in his motorcycle on the left side of the road, the driver of the lorry belonging to the 6th respondent, who parked the lorry on the left extreme side of the road without parking signal, suddenly reversed the lorry in a rash and negligent manner, dashed against the motorcycle of the deceased and caused the accident. The respondents 1 to 5 examined the 1st respondent as P.W.1 and eye-witness to the

accident as P.W.2 to prove the said contention. On the other hand, it is the contention of the appellant that the accident has occurred solely due to negligent act of the deceased. The appellant examined the Investigation Officer as R.W.2, who deposed that after due investigation, F.I.R. was closed as 'mistake of fact' and the charge against the driver of the lorry was abated. The Tribunal considering the oral and documentary evidence let in by both sides, found that the lorry belonging to the 6th respondent was standing without parking light and if the deceased would have driven the motorcycle with care and caution, he could have avoided the accident and fixed 20% & 80% contributory negligence on the part of the deceased & the driver of the lorry belonging to the 6th respondent respectively and directed the appellant/Insurance Company to pay 80% of the compensation to the respondents 1 to 5. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the respondents 1 to 5 have claimed that the deceased was working as a Junior Assistant in Tahsildar office, Jayankondam as well as agriculturist and was earning a sum of Rs.15,000/- per month. He was also elected as Vice-President of his village. To prove the same, the respondents 1 to 5 marked Ex.P5/Panchayat President certificate, Ex.P6//Identity Card of ward member and Exs.P15 & 16/patta copies. The Tribunal considering those documents, fixed a sum of Rs.12,000/- per month as notional income of the deceased. The Tribunal fixed age of the deceased as 45 years as per Ex.P2/post-mortem certificate and applied multiplier 14. The Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 25% enhancement towards future prospects. There are five dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/5th towards personal expenses. Thus, the Tribunal has awarded a sum of Rs.16,12,000/- towards loss of dependency. Further, the Tribunal has not awarded any compensation towards loss of estate. In such circumstances, the total compensation awarded by the Tribunal is not interfered with and the same is hereby confirmed.

14.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.17,22,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit 80% of the award amount i.e., Rs.13,77,600/- along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 & 5 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal,

along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/4th respondent is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st respondent being mother of the minor/4th respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge
Motor Accidents Claims Tribunal
Ariyalur.

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

C.M.A.No.1696 of 2017
and
C.M.P.No.9095 of 2017

GP (CO)
RMP (22/04/2021)



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