IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HON'BLE MR JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1887 of 2017

1. Vasantha
2. Selvaraju ... Appellants/Petitioners

Vs.

1. R.Manickam
2. M/s Royal Sundaram Alliance Insurance Company Limited, Rep by its Manager, Bus Plaza, 3rd floor, No.5G, Lawson's road, Cantonment, Tiruchirapalli - 01. ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 06.01.2017 made in M.C.O.P.No.512 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Mr.C.Sangamithirai

For Respondent No.1 : No such Addressee

For Respondent No.2 : Mr.G.Vasudevan

J U D G M E N T

Challenging the findings on negligence fixed at 50% on the deceased himself (Pandian) as well as the quantum awarded by the Tribunal, the legal representatives of the deceased (claimants / appellants) are before this Court by way of this Civil Miscellaneous Appeal.

2. The case of the claimants / appellants is that on 17.11.2013, at about 11.00 pm, while the deceased Pandian was riding Yamaha Gladiator two wheeler bearing Registration No.TN48-V-4384 on the extreme side of Ootathur Padalur Main Road from South to North, near Dhandapani Nagar, the Ashok Leyland Multi Axle Goods Vehicle bearing Registration No.TN32-AX-2259 belonging to the first respondent herein and insured with the

second respondent herein, came from the opposite direction in a rash and negligent manner, suddenly went to the wrong side and dashed against the deceased, as a result of which, the deceased sustained fatal injuries and in spite of the best treatment given, he succumbed to the injuries. Claiming that the accident had happened due to the rash and negligent driving of the driver of the Goods Vehicle, the claimants have filed a claim petition claiming a sum of Rs.20,00,000/- under various heads.

3. The claim was resisted by the Insurer on the ground that the deceased himself was the tort-feasor, which is evident from the criminal case filed by the Police against the deceased himself; neither the deceased nor the driver of the Goods Vehicle (first respondent) had driving licence at the time of the accident to drive the respective vehicles; however did not dispute the insurance coverage with the Insurer, but taken a stand that since the driver of the Goods Vehicle (first respondent) did not possess valid driving licence, it is a clear violation of the policy conditions and hence the Insurer is not liable to pay any compensation to the claimants; the age, occupation and income of the deceased are denied.

4. The Tribunal, after framing issues, has examined P.Ws.1 to 3 and marked Exs.P-1 to P-10 on the side of the claimants and examined R.W.1 and marked Exs.R-1 to R-3 on the side of the Insurance Company / respondents herein. Based on the evidence and documents on record, the Tribunal fixed 50% contributory negligence on the part of the deceased himself and 50% on the driver of the Goods Vehicle (first respondent), which is liable to be compensated by the second respondent herein (Insurer / Insurance Company) and quantified the compensation at Rs.7,30,000/- and deducting 50% on that, awarded Rs.3,65,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, as total compensation payable. Challenging such findings, the appellants / claimants are before this Court.

5. Heard the learned counsel for both sides.

6. The learned counsel for the claimants / appellants submitted that the Tribunal has erred in fixing 50% contributory negligence on the deceased himself based on FIR alone, eschewing the evidence of P.W.1; that the Tribunal has erred in not fixing the monthly income of the deceased at Rs.12,000/-, as he was self-employed; the Tribunal has erred in not considering his future income; and in any event, the award of the Tribunal is very low and meager and it is liable to be enhanced.

7.Per contra, the learned counsel for the Insurance Company / Insurer / second respondent submitted that the

Tribunal has taken into consideration all the evidence and documents on record and has rendered findings on negligence as well as the quantum. He also submitted that the accident had not happened as projected by the claimants and the same had happened due to the fault on the part of the deceased himself; even assuming that the case projected by the appellants to be true, it is borne out from records that the deceased was not having valid driving licence and was not wearing helmet at the time of accident and hence fixing 50% contributory negligence on the deceased himself is wrong, since he contributed 100% for the accident.

8.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

9.At the outset, it has to be pointed out that Ex.P-1-FIR is registered against the deceased himself. The evidence of P.W.2-brother of the deceased was to the effect that though FIR has been registered against the deceased (rider of the Hero Honda), the accident had happened due to the negligence of the driver of the Goods Vehicle, since he has parked the Goods Vehicle, by obstructing free flow of traffic. P.W.2 further stated that the deceased died on the spot and taking advantage of that situation, the first respondent's driver has preferred a complaint before the Police on the basis of which FIR has been registered against the deceased. When there are ample and clear evidence on record, apart from Ex.P-1, that the first respondent's driver had parked the lorry in the road and therefore the accident had happened, the negligent parking of the Goods Vehicle by the driver of the first respondent without any danger light or signal could be the cause for the accident. Apart from this, the accident had happened on 17.11.2013 at about 11.00 pm, but the FIR was registered only on the next day and the postmortem was conducted on 17.11.2013 at about 11.30 am itself. Further, a perusal of Ex.P-1-FIR clearly shows that the driver of the first respondent has preferred a complaint to the Police Station on the next day at 06.00 hrs, after the death of the deceased and therefore, the Tribunal held that the driver of the lorry would not give statement incriminating himself and no plausible explanation is given by the Insurer as to why there is a delay in preferring complaint when the accident had happened on 17.11.2013 at about 11.00 pm. When that be so, fixing contributory negligence at 50% on the deceased himself may not be proper. One important aspect, at this point to be considered is, had the deceased rode the vehicle with little care and caution, the accident could have been averted. Hence, this Court is of the view that fixing 25% contributory negligence on the deceased would be proper instead of 50%. Accordingly, the findings on negligence by the Tribunal is modified by fixing 75%

negligence on the driver of the Goods vehicle and 25% on the deceased himself.

10.As far as the quantum of compensation arrived at by the Tribunal is concerned, the Tribunal, taking into consideration Ex.P-3-death certificate, Ex.P-4-Legal Heirship certificate and Ex.P-5-family card of the deceased, has taken the age of the deceased as 25 years and adopted the multiplier of 18 and in the absence of any documentary evidence on the income of the deceased has taken Rs.6,000/- as monthly income, deducted 50% for his personal and living expenses (since he was bachelor at the time of accident) and ultimately awarded Rs.6,48,000/- under the head loss of dependency. The Tribunal has awarded Rs.50,000/- towards loss of love and affection, Rs.20,000/- towards funeral expenses, Rs.10,000/- towards transportation expenses and Rs.2,000/- towards damage to clothes. The sums awarded by the Tribunal under each and every heads are based on settled principles of law, weightage of evidence and probabilities of case and hence the same are confirmed as such.

11.In the result, the Civil Miscellaneous Appeal filed by the claimants / appellants is partly allowed, by fixing negligence at 75% on the driver of the Goods Vehicle (first respondent herein) to be compensated by the Insurer / second respondent and 25% on the deceased himself. Out of the total amount of compensation of Rs.7,30,000/- a sum of Rs.5,47,500/- (75%) along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit amount is payable by the second respondent herein (Insurer). The second respondent shall deposit the said compensation amount as arrived by this Court now along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants/appellants, within one week thereafter, through RTGS, in the ratio of apportionment as done by the Claims Tribunal. Needless to state that the appellants shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To

1.The Principal District Court,
Perambalur.

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

+1cc to Ms.C.Sangamithirai, Advocate Sr.27679
+1cc to Mr.G.Vasudevan, Advocate Sr.27943

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