

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3044 of 2017

1.Parvathi

2.Sivakumar ... Appellants /Petitioners

Vs.

1.A.Raja

2.Reliance General Insurance Company Ltd.

Rai's tower, 2nd floor

No.2054, 2nd avenue

Anna nagar, Chennai-600 040. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.08.2017 made in M.C.O.P.No.2502 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellants : Mr.K.Suryanarayanan

For R1 : No appearance

For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 23.08.2017 made in M.C.O.P.No.2502 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

2.The appellants are claimants in M.C.O.P.No.2502 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., Dilipkumar, who died in the accident that took place on 17.11.2010.

3. According to the appellants, on the date of accident i.e., on 17.11.2010 at about 19.30 hours, while the deceased Dilipkumar was travelling as a passenger in an auto near Athiyurar kinaru from Kalamaruthu to T.Orathur road, Ulundurpet Taluk, the 1st respondent, owner-cum-driver of the auto drove the same in a rash and negligent manner, dashed against the tractor, which came in the opposite direction and caused the accident. Due to the accident, the deceased Dilipkumar succumbed to his injuries on 21.11.2010. Therefore, the appellants have filed the above claim petition claiming compensation against the respondents.

4. The 1st respondent, owner-cum-driver of the auto, remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred due to rash and negligent driving by the driver of the tractor, which came in the opposite direction. F.I.R. was registered only against the driver of the tractor. The respondents have not made the owner and insurer of the tractor as parties and hence, the claim petition is bad for non-joinder of necessary parties. The 1st respondent did not possess valid driving license at the time of accident and therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellants. The 2nd respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 2nd appellant, father of the deceased, examined himself as P.W.1, one Manjunathan, eye-witness to the accident, was examined as P.W.2 and marked eight documents as Exs.P1 to P8. The respondents did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence let in by the appellants, dismissed the claim petition holding that the appellants have not proved that the accident occurred due to negligence on the part of the driver of the auto/1st respondent and therefore, the 2nd respondent being insurer of the said auto is not liable to pay any compensation to the appellants.

8. Against the said order of dismissal dated 23.08.2017 made in M.C.O.P.No.2502 of 2012, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the appellants have proved that the accident has occurred

only due to rash and negligent driving by the driver of the auto/1st respondent. The appellants have examined the eye-witness to the accident as P.W.2, who travelled in the auto as passenger along with the deceased and P.W.2 has deposed that the accident has occurred due to rash and negligent driving by the 1st respondent, driver of the auto. Nothing elicited in the cross-examination by the counsel for the 2nd respondent/Insurance Company that the accident did not occur due to rash and negligent driving by the driver of the auto. The Tribunal failed to see that the 2nd respondent has filed M.P.No.2793 of 2015 to implead the owner and insurer of the tractor bearing Registration No.TN23 AX 3206 as respondents in the M.C.O.P. filed by the appellants. The Tribunal dismissed the said M.P. by its order dated 29.06.2016. The 2nd respondent/Insurance Company did not challenge the said order passed in M.P.No.2793 of 2015 and thereby accepted that the appellants are entitled to maintain the claim petition as against the owner and insurer of the auto alone. The Tribunal failed to see that the appellants have proved that the accident occurred due to rash and negligent driving by the driver of the auto in the manner known to law by examining the eye-witness, a co-passenger, who travelled in the same auto. The Tribunal failed to appreciate that F.I.R. was registered only to set the law in motion, the contents of F.I.R. is not a conclusive proof and evidence of the witness on oath has to be given more weightage. The Tribunal without considering the same, erred in dismissing the claim petition. The appellants have proved their contention and prayed for allowing this appeal and granting compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident has occurred only due to rash and negligent driving by the driver of the tractor. The driver of the auto was not responsible for the accident. The complaint was given by the father of the deceased against the driver of the tractor, based on which F.I.R. was registered. In F.I.R., it was mentioned that the accident has occurred only due to rash and negligent driving by the driver of the tractor. But the evidence of P.W.2 is contrary to the contents of F.I.R. and it is an after thought. The Tribunal has given valid reason for dismissing the claim petition and prayed for dismissal of the appeal.

11.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of the 1st respondent either in person or through counsel.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

13. It is the contention of the appellants that the accident has occurred due to rash and negligent driving by the driver of the auto, in which their son was travelling as a passenger. To substantiate the said contention, the appellants examined the co-passenger, an eye-witness, as P.W.2. On the other hand, it is the contention of the 2nd respondent/Insurance Company that the accident has occurred only due to rash and negligent driving by the driver of the tractor. To substantiate this contention, they relied on F.I.R., which was marked as Ex.P1. It is seen from the award that the complaint was lodged by the father of the deceased against the driver of the tractor. The 2nd appellant, father of the deceased was not an eye-witness to the accident. It is well settled that the contents of F.I.R. is not a conclusive proof to decide the factor to fix the negligence. The Tribunal has to independently come to the conclusion based on the materials placed before it. The appellants examined the co-passenger of the deceased, an eye-witness as P.W.2, who deposed that the accident has occurred only due to rash and negligent driving by the driver of the auto. The respondents have not let in any contra evidence and not examined any independent witness to prove their contention that the accident has occurred only due to rash and negligent driving by the driver of the tractor. It is pertinent to note that M.P.No.2793 of 2015 filed by the 2nd respondent/Insurance Company to implead the owner and insurer of the tractor was dismissed by the Tribunal holding that in case of composite negligence, the claimant can file claim petition against any one of the drivers, who caused the accident. Apart from that, the appellants have examined P.W.2/eye-witness and proved that the accident has occurred only due to rash and negligent driving by the driver of the auto/1st respondent. In view of the same, the award of the Tribunal dismissing the claim petition is set aside. The negligence is fixed on the part of the 1st respondent, owner-cum-driver of the auto. The 2nd respondent/Insurance Company has not denied that the said auto is not insured with them at the time of accident. In view of the same, the 2nd respondent being insurer of the said auto is liable to pay compensation to the appellants.

14. As far as quantum of compensation is concerned, the appellants claimed that the deceased was aged 17 years at the time of accident. He was doing centering work and was earning a sum of Rs.300/- per day. As per Ex.P2/post-mortem certificate, the deceased was aged 17 years at the time of accident. The appellants have not filed any document to prove the avocation and income of the deceased. Taking into consideration the date

of accident and age of the deceased, a sum of Rs.6,000/- per month is fixed as notional income of the deceased. The multiplier applicable is 18. The appellants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and hence, 1/2 has to be deducted towards personal expenses. Thus, a sum of Rs.9,07,200/- (Rs.6,000/- + 2400 (Rs.6,000/- X 40/100) X 12 X 18 X 1/2) is awarded towards loss of dependency. The sum of Rs.40,000/- each, Rs.15,000/- and Rs.15,000/- are awarded towards loss of love & affection to the appellants, funeral expenses and loss of estate respectively.

15.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. Thus, the appellants are entitled to the following compensation:

Sl. No.	Description	Amount awarded by this Court (Rs)
1.	Loss of dependency	9,07,200
2.	Loss of love and affection	80,000
3.	Funeral expenses	15,000
4.	Loss of estate	15,000
	Total	10,17,200

16.In the result, the Civil Miscellaneous Appeal is allowed. A sum of Rs.10,17,200/- is awarded as compensation to the appellants together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any on the compensation awarded by this Court. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the award amount equally among themselves along with proportionate interest and costs. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.K.Suryanarayanan, Advocate Sr.15069
+1cc to Mr.S.Arunkumar, Advocate Sr.15351

C.M.A.No.3044 of 2017

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