



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.668 of 2014

1.Shanthi
2.Minor. Karthigeyan
3.Minor. Ayyappan
4.Minor. Muthumari
(Minor appellants 2 to 4 are represented
by their next friend and mother, Shanthi)
5.Unnamalai
6.Thangavelu ... Appellants/Petitioners

Vs.

1.Balakrishnan
2.United India Insurance Company Limited,
No.48, Arcot Road,
Saligramam, Chennai - 600 093. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.08.2012 made in M.C.O.P.No.279 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee, Tiruvallur.

For Appellants : Mr.K.Varadha Kamaraj

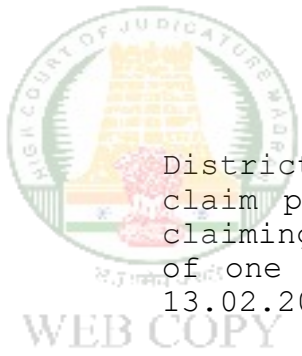
For R2 : Mr.J.Chandran

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 03.08.2012 made in M.C.O.P.No.279 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee, Tiruvallur.

3.The appellants are the claimants in M.C.O.P.No.279 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional



District Court, Poonamallee, Tiruvallur. They filed the said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.10,00,000/- as compensation for the death of one Jaishankar, who died in the accident that took place on 13.02.2010.

4. According to the appellants, on 13.02.2010 at about 09.45 P.M., while the said Jaishankar was proceeding in his motorcycle bearing Registration No. TN 20 AJ 8816 on Velappanchavadi - Maduravoyal road near Kumar Theater at Vanagaram village, the driver of the Container Lorry bearing Registration No. TN 28 L 6784, without giving any signal, reversed the lorry and dashed against the said Jaishankar and caused the accident. In the accident, the said Jaishankar sustained fatal injuries on his head and he died on the way to Hospital. Therefore, the appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents, being the owner and insurer of the lorry respectively.

5. The 1st respondent-owner of the lorry remained ex parte before the Tribunal.

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. According to the 2nd respondent, the deceased only rode his motorcycle rashly and negligently in an inebriated condition, skidded and fell down due to imbalance, darted and hit against the rear side of the 1st respondent's lorry which was parked in the mud portion of the road with blinking lights. Therefore, the deceased was a tortfeasor and 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. Before the Tribunal, the 1st appellant examined herself as P.W.1, examined one Rajamohamed as P.W.2 and marked six documents as Exs. P1 to P6. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.50,000/- as compensation to the appellants under no fault liability and



directed the 2nd respondent-Insurance Company to pay the compensation.

9. Against the said award dated 03.08.2012 made in M.C.O.P.No.279 of 2010, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the Tribunal erred in awarding only a sum of Rs.50,000/- under no fault liability, holding that accident occurred due to negligence on the part of the deceased. The appellants filed claim petition under Section 163(A) of the Motor Vehicles Act. The appellants need not plead and prove the negligence. The Tribunal ought to have awarded compensation as prayed by the appellants. The Tribunal erred in fixing entire negligence on the part of the deceased without any basis. The Tribunal ought to have fixed negligence on the part of the driver of the lorry belonging to 1st respondent considering the evidence of P.W.2/eyewitness, who lodged a complaint before the Police with regard to manner of accident. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry when there is no contra evidence by the respondents and allowed the claim petition and prayed for allowing the appeal.

11. Per contra, the learned counsel appearing for the 2nd respondent contended that the deceased was a tortfeasor and hence, the 2nd respondent is not liable to pay any compensation to the appellants. The accident has occurred only due to negligence on the part of the deceased. The award of the Tribunal directing the 2nd respondent to pay a sum of Rs.50,000/- under no fault liability as compensation to the appellants is without merits. The appellants are not entitled to any compensation as claimed for and prayed for dismissal of the appeal.

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

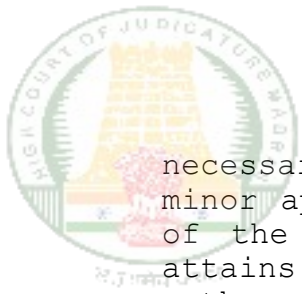
13. From the materials available on record, it is seen that the appellants filed claim petition under Section 166 of Motor Vehicles Act claiming that accident has occurred only due to rash and negligent reversing of the lorry by the driver of the first respondent. The appellants claimed that deceased was working as Mason and was earning a sum of Rs.14,000/- per month. The 2nd respondent filed counter statement stating that accident



has occurred only due to rash and negligent riding by the deceased, who dashed on the backside of the stationary lorry. Subsequently, the appellants amended the claim petition substituting to Section 163(A) instead of Section 166 and claimed that deceased was earning a sum of Rs.3,300/- per month by doing Mason work. The 1st appellant examined herself as P.W.1 and examined Rajamohamed as P.W.2, who is an eyewitness based on whose complaint, F.I.R. was registered.

14.From the award of the Tribunal, it is seen that the Tribunal has extracted the F.I.R. The F.I.R. was registered against the deceased and it was mentioned that deceased rode his motorcycle in a rash and negligent manner and dashed on the backside of the parked lorry and caused the accident and suffered injuries. P.W.2, who has given complaint retracted his statement in the complaint and deposed that lorry came in reverse and dashed on the motorcycle rode by the deceased and caused the accident. In the cross examination he has stated that he did not give any complaint. The Police asked him to sign the statement and he did not know the contents of complaint and he did not read the same. He also deposed that he did not take any action against Police. The Tribunal considering the total denial of the contents in the F.I.R. by P.W.2 and giving a new version in the evidence, held that evidence of P.W.2 is not reliable or believable as to the manner of accident. The appellant has also not given any complaint to the Police with regard to contents of F.I.R. and not given any complaint against the driver of the lorry. Considering all the materials in its entirety, this Court is of the considered view that there is no error in the said reasoning of the Tribunal for granting compensation at Rs.50,000/- under no fault liability and the appellants have not made out any case for interfering with the award of the Tribunal.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.50,000/- as compensation to the appellants together with interest and costs is hereby confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount, along with interest and costs, less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.279 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee, Tiruvallur. On such deposit, the appellants 1, 5 and 6 are permitted to withdraw the respective share of the award amount as per the ratio of apportionment made by the Tribunal along with proportionate interest and costs, after adjusting the amount if any already deposited, by making



necessary applications before the Tribunal. The share of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 to 4 attains majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 to 4. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee,
Tiruvallur.

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

+lcc to Mr.K.Varadha Kamaraj, Advocate Sr.42349
+lcc to Mr.J.Chandran, Advocate Sr.42331

C.M.A.No.668 of 2014

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