



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
25.03.2021

Date of Pronouncing Judgment
26.04.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2899 of 2015
and
M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Meenakshi Complex,
Tindivanam.

.. Appellant/ 3rd Respondent

Vs.

1.Pushparaj

2.Arockiyamary ... 1 & 2 Respondents/ Petitioners

3.Tamilnadu State Transport Corporation,
Salem. .. 3rd Respondent/ 1st Respondent

4.Poun Prabu .. 3rd & 4th Respondents/ 1 & 2 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 27.01.2015 made in M.C.O.P.No.1023 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Mr. S. Arun Kumar

For Respondents : R1, R2 & R3 - No Appearance
R4 - Service due

JUDGMENT

The appellant is the Insurance Company, which is challenging the award passed in MCOP.No.1023/2012. This appeal is preferred on the point of negligence and quantum only.

2. The factum of the accident; manner of the accident and the negligence on the part of the driver of the third respondent are not under challenge.

3. The learned counsel for the appellant / Insurance



Company would contend that the deceased was travelling as a pillion rider in the two wheeler and after filling the petrol in the petrol bunk, they came out to the main road. While proceeding further, the transport corporation bus came behind the two wheeler in a rash and negligent manner, hit from the behind whereby, the pillion rider fell down and sustained injuries. Subsequently, succumbed to the injuries and hence, the Tribunal has committed an error in fixing the contributory negligence at 50:50 on the part of the driver of the two wheeler as well as the driver of the Transport corporation bus.

4. On the point of quantum, since the injured was again continuing in the very same employment, the future prospects that too 50% awarded is against the proposition of law laid down by the Hon'ble Supreme Court. Further for a probationer, future prospects need not be added.

5. Further, the learned counsel for the appellant/Insurance Company would contend that the two wheeler driven by its driver came out of the petrol bunk and was travelling on the road and hence, the contributory negligence on the part of the driver of the two wheeler cannot be fixed. Consequently, the Tribunal has erred in fixing the contributory negligence at 50% each and it ought to have been at 25:75.

6. Before the tribunal, Exs.P5 and P14 were marked they are the motor vehicle Inspector's inspection report of the two wheeler and the bus. Both the drivers had valid driving licence and the two wheeler in which the deceased had travelled as a pillion rider was duly covered under Ex.P7 policy issued by the appellant/Insurance Company. Both the vehicles are having fitness namely RC Certificate as could be seen from Exs.P4 and P6. Third respondent herein is the Transport Corporation.

7. In order to make out the contributory negligence on the part of the driver of the two wheeler, before the Tribunal, the driver was examined as RW1-Saravanan, who would depose that while he was driving the Transport Corporation bus near Chrompet Government Hospital, the two wheeler driven by its driver trying to overtake the bus on the left hand side in the process for want of space on the left hand side, he skid on the left hand side and the pillion rider fell down in front of the bus, thereby they have contributed to the accident. Ex.P4 is the rough sketch. The scope of the rough sketch for determination of contributory negligence is kept in mind.

8. As admittedly, it is the position after the accident. The Transport Corporation bus was proceeded from north to south and it is almost near the left hand side of the road. Nearby on the left hand side, the petrol bunk is located and the two wheeler in which the deceased was travelling have come from the



petrol bunk to the main road. At this place, the scene of the crime is fixed. Necessary suggestions have been put to the cross examination of P.W.2, during the cross examination of the occurrence witness. The tribunal has observed that as the two wheeler was coming out of the petrol bunk, the rider of the two wheeler ought to have noticed the on coming on the main road since he is coming from the petrol bunk namely ancillary road and accordingly, came to the conclusion that the rider of the two wheeler has contributed the negligence.

9. Admittedly, the time of the accident is 9.50 am, in the city of Chennai, it is a busy time. At this juncture, the driver of the Transport Corporation bus also ought to have some diligence while driving the bus. Accordingly, I find that based upon the oral evidence of P.W.2 and the answer elicited from the cross examination and coupled with the oral evidence of RW1 and Ex.C4, this Court comes to the conclusion that both driver of the two wheeler and transport corporation bus are at fault and they have contributed to the accident equally and hence, the contributory negligence fixed by the Tribunal at 50:50 does not suffer from any irregularity or illegality, warranting interference by this Court for the above reasoning. Accordingly, the same is hereby confirmed.

10. The learned counsel for the appellant/Insurance Company on the point of quantum would contend that the deceased was only a probationer and hence, future prospects need not be added as income. This Court has given its anxious consideration to the said contention. On perusal of the order passed by the tribunal, it appears that based upon the school certificate and college certificate, the Date of Birth is mentioned as 07.03.1990. Accordingly, the tribunal has taken the age of the deceased at 23 and applied multiplier of 18. Though, he is a probationer as relationship officer in Karur Vysya Bank, as per Ex.C2 letter from the bank and also Ex.C3 Salary certificate, there is no adverse remarks against him for making him permanent.

11. In the absence of any adverse remarks from the employer namely, Karur Vysya Bank, where the deceased was working as Relationship Officer, the Tribunal has rightly applied the concept of future prospects in adding the salary to the deceased. Accordingly, taking note of the age of the deceased as 23 years, the Tribunal has properly added 50% as future prospects and hence, I find that both on the point of quantum and the point of contributory negligence, the Tribunal has rightly applied the correct proposition of law, on the factual situation as elicited by the claim petitioner through the oral and documentary evidence and the same does not warrant any interference in this appeal.



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12. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

The Special District Judge,
The Motor Accidents Claims Tribunal,
Salem.

Copy To:

The Section Officer,
V.R Section, High Court,
Madras.

+1CC to Mr.D.Raghu, Advocate, Sr.No.25174
+1CC to Mr.S.Arunkumar, Advocate, Sr.No.25723

C.M.A.No.2899 of 2015

SSD(CO)
SB(18/11/2021)