



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 30-04-2021

Judgment delivered on : 01-06-2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Civil Miscellaneous Appeal No. 272 of 2020

1. Panneerselvam @ Panneer
2. Deepak .. Appellants/Claimants

Versus

1. I Two Distribution
No.22/32, Journalist Colony
Srinivasapuram
Thiruvannamiyur
Chennai - 600 041

2. HDFC ERGO General Insurance Co., Ltd.,
No.94/95, RR Towers 2nd Floor
Guindy Industrial Estate
Guindy, Chennai - 600 032 .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and decree dated 02.12.2019 in M.C.O.P. No. 4734 of 2018 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants : Mr. R. Nalliyappan

For Respondents : Mr. R. Ilanchizhiyan for R1
Mr. N. Somasundar for R2

JUDGMENT

R. SUBBIAH, J

This Civil Miscellaneous Appeal has been filed as against the dismissal of the Claim Petition filed by the appellants



herein in MCOP No. 4734 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai on 02.12.2019.

WEB COPY

2.The appellants herein are the father and brother of the deceased Dinesh. It is the case of the appellants that on 01.06.2018 at about 10.30 am, while the deceased was riding the Motor Cycle bearing Registration No. TN 01 AV 6417 on Chetpet-Harrington Road on the top of the subway, from the West to East direction, a car bearing Registration No. TN 07 CA 0014 came from the East to West direction. According to the appellants, the driver of the Car had driven it in a rash and negligent manner and dashed against the two wheeler, as a result of which, the deceased fell down and sustained grievous injuries. Since the accident had occurred due to the rash and negligent driving of the car bearing Registration No. TN 07 CA 0014, the appellants have filed a Claim Petition in MCOP No. 4734 of 2018 claiming a sum of Rs.86 lakhs as compensation.

3.Before the Tribunal, the owner of the Car filed a counter statement contending that the manner in which the accident is said to have taken place in the claim petition, is totally false. On 01.06.2018 at about 10.30 am, the first respondent's car was driven by its driver one N. Arumugam in a normal speed from East to West direction on the Southern side portion of the Harrington Subway. The deceased Dinesh was riding the two wheeler bearing Registration No. TN 01 AV 6417 from the opposite direction, i.e. from the West to East on the Northern portion of the subway at a very high speed. The deceased, without noticing a plastic cover containing fruit juice lying on the corner of the road, rode over it, skidded and fell down from the two wheeler. In that process, he rolled over on the road and came near the car driven by the driver of the first respondent. The driver of the car got down and helped the deceased along with three more persons. They helped the deceased to have water, made him sit on the side of the sub way, called the ambulance and sent him to the nearby hospital. On account of this incident, there was heavy traffic snarl witnessed in the area. Due to continuous blowing of horn by the vehicle users, the driver of the car moved from that place to facilitate vehicle movement. Thereafter, on 07.06.2018, after six days from the date of occurrence, the father of the deceased has given a complaint to the R-4, Pondy Bazaar Police Station as if the driver of the car had hit the deceased. The father of the deceased was not an eye witness to the occurrence. Furthermore, the Motor Vehicle Inspector's report reveals that the deceased did not possess a valid driving licence and there



is no damage caused to the two wheeler. There is no insurance coverage available to the two wheeler as well. Thus, it was contended by the first respondent that the car owned by him, was not involved in the accident and it was falsely implicated. Therefore, the first respondent sought for dismissal of the claim petition.

4.The Insurance Company also resisted the claim petition by filing a counter statement denying the involvement of the car in the accident. It is the specific stand of the Insurance Company that the Car insured with them, had been falsely implicated in this case. Thus, they sought for dismissal of the claim petition.

5.In order to prove the averments in the claim petition, the father of the deceased was examined as PW1 before the Tribunal. One Kannan, said to be an eye witness, was examined as PW2 and one Thiagarajan, Proprietor, Bright Property Services, employer of the deceased was examined as PW3. Exs. P1 to P17 were marked as documents on the side of the claimants. On the side of the respondents, one K.Chellappan, Police personnel from Pondy Bazaar Traffic Investigation Wing was examined as RW1 and Exs. R1 to R3 were marked.

6.The Tribunal, after analysing the evidence on record has come to the conclusion that the manner of accident has not been proved by the claimants through proper oral and documentary evidence and consequently, the Insurance Company cannot be mulcted with any liability to pay compensation to the claimants. On the basis of such conclusion, the Tribunal dismissed the claim petition. Aggrieved by the same, the present appeal is filed.

7.The learned counsel appearing for the appellants submitted that, in order to prove the involvement of the car owned by the first respondent in the accident, 17 documents were marked. That apart, eye witness to the occurrence was examined as PW2. PW2 had categorically stated in his evidence that due to rash and negligent driving of the car by its driver, the accident had occurred. PW2 also specifically stated in his evidence that immediately after the accident, the deceased was taken to Prasanth Hospital through an ambulance. Such evidence of PW2 was not properly considered by the Tribunal. On the side of the respondents, the Police official attached to Pondy Bazaar Traffic Investigation Wing was examined as RW1, who in the chief examination, had stated that the charge sheet has not been filed, however, he admitted in the cross-examination that charge



sheet has been uploaded in the website of the Police Department. In this regard, counsel for the appellant invited the attention of this Court to the charge sheet downloaded from the Website of the Police Department and contended that the charge sheet has been filed against the Driver of the Car for the offences under Sections 279 and 304 of IPC and Section 134-A & B of the Motor Vehicles Act. Further, RW1 also accepted that the Motor Vehicle Inspector had submitted a report which has been marked through RW1 as Ex.P17, wherein it was stated that front side bumper of the car has been damaged. This, according to the counsel for the appellants, indicates that it was the driver of the car who, due to his rash and negligent driving, hit the motor cycle driven by the deceased. Further, the learned counsel for the appellant submitted that the deceased was taken to the hospital immediately after the occurrence and admitted for the injuries. The accident register issued by the hospital under Ex.P16 clearly indicates that immediately after admission of the deceased in the hospital, intimation has been given to the Police personnel on 01.06.2018 itself. After receipt of the intimation on the same day, the Police officials have recorded the statement of the first appellant, however, for the reasons best known, First Information Report has not been registered based on such statement. Later, on coming to know about the serious condition of the deceased, the first appellant has given a complaint on 07.06.2018 based on which the First Information Report was registered. While so, the First Information Report ought not to have been rejected by the Tribunal on the ground of delay. The second respondent has not disputed the manner in which the accident had occurred in the counter before the Tribunal. Furthermore, the second respondent has not made any suggestion to the witnesses to contradict the averments in the claim petition relating to the manner in which the accident was said to have occurred. The first respondent has also not chosen to examine the driver who had driven the vehicle to establish their defence. The Tribunal, without taking note of the above aspects, has summarily dismissed the claim petition and it warrants interference by this Court.

8. With regard to quantum of compensation, the learned counsel for the appellants submitted that the deceased was working in the office of PW3 and drawing monthly income of Rs.9000/-. In order to prove that the deceased was working in the concern of PW3, Attendance Register as well as pay slip, provident fund particulars etc., were marked under Exs.P12 to 15. However, the Tribunal totally rejected the deposition of PW3 on the reasoning that the deceased was a minor and deceased ought not to have been employed. Such a reasoning assigned by



the Tribunal is contrary to the employment records produced on behalf of the deceased. Therefore, according to the counsel for the appellant, by setting aside the said judgment and decree of the Tribunal, compensation has to be calculated by taking the monthly income of the deceased at Rs.10,000/-.

9.Countering the submissions of the learned counsel for the appellants, the learned counsel for the second respondent/Insurance Company submitted that it is the specific case of the first respondent/owner of the car that the deceased had himself skidded and fallen on the road when his wheels rolled over plastic cover containing fruit juice. The car of the first respondent is no way involved in the accident. The learned counsel for the second respondent also submitted that Ex.P-16, accident report, dated 01.06.2018 issued by Prasanth Multispeciality Hospital, divulges the fact that the injured was brought to hospital by one Mr.Ganesh. But the said Ganesh was not examined before the Tribunal. In the Accident Register, under Ex.P16, there is no mentioning about involvement of any other vehicle in the accident. But on the side of the appellants, one Kannan was examined as PW2, as eye witness to the occurrence. PW2 has stated in his evidence that he admitted the deceased soon after the accident in Prasanth Hospital, whereas, in the Accident Register, the name of the said Ganesh alone was found as the person who admitted the deceased in the hospital. While so, the non-examination of the said Ganesh as a witness before the Tribunal, would falsify the case of the claimants. PW2 has not stated about the model of the car allegedly caused the accident. The Tribunal taking note of the above inconsistencies in the deposition of the witness and the delay in registration of the First Information Report, rightly dismissed the claim petition and he prays for confirmation of the award passed by the Tribunal.

10.Keeping the submissions made by the counsel for both sides, we have carefully gone through the materials on record.

11.It is the case of the claimants that, on 01.06.2018 at about 10.30 am, when the deceased was riding the two wheeler bearing Registration No. TN 01 AV 6417 in Harrington Road subway, a car came from the East to West direction and hit the two wheeler driven by the deceased.

12.But it is the case of the respondents that the accident had occurred due to the rash and negligent driving of the deceased himself. According to them, the deceased rode over a plastic cover containing fruit juice, which made him skid and



he fell on the road. The car driver got down from the car only to help the deceased along with the general public. As soon as the deceased was sent to the hospital he moved away from that place. It is also the contention of the respondents that, had the deceased been hit by the car, the public would not have allowed him to move away from the place. PW1, father of the deceased, gave a complaint to the police station after six days based on which a first information report was registered, which would show the falsity with which the complaint has been given by PW1.

13.The learned counsel for the respondents pointed out that in the Accident Register copy, name of one Ganesh was found as the person who brought the deceased to hospital and admitted him, whereas, it is claimed that PW2 Kannan had brought the deceased to the hospital and admitted him. Thus, the deposition of PW2 is untrustworthy. Further, it is contended that the said Ganesh was not examined before the Tribunal, which goes to the root of the falsity of the case projected by the claimants. It is also stated that the complaint given by PW1 after six days of the accident is only an after-thought to get compensation from the respondents.

14.It is an admitted fact that the deceased died due to the injuries he sustained while driving his two wheeler. The place of accident as well as the fact that the deceased had driven his two wheeler on the fateful day are not disputed even by the respondents. All that the respondents contended is that the deceased, due to his own negligence, fell from the two wheeler and sustained injuries. It is also the defence of the respondents that the Car owned by the first respondent has not at all been involved in the accident. It is also an admitted fact that there was no damage caused to the two wheeler driven by the deceased. Rather, there was damage caused to the car on the front side. The Motor Vehicle Inspector's report clearly indicates that the front portion of the car was damaged. We also find that the charge sheet has been filed only against the driver of the car. In such a situation, the driver of the car ought to have been examined by the respondents to substantiate their defence. However, for the reasons best known, the driver of the Car Arumugam was not examined. When it is the defence of the respondents that the Driver of the car only helped the deceased to have water and facilitated him to reach the hospital, he is the best person to have been examined by the respondents. If the driver of the car was examined, he would have been confronted with the manner in which the accident had occurred as well as the damage caused on the front side of the car. These aspects of the case have not been considered by the



WEB

Tribunal while dismissing the claim petition. Therefore, it cannot be said that the car is not at all involved in the accident. In such circumstances, we are of the opinion that there was involvement of the car in the accident. We also conclude that in the given circumstance, the extent of contribution of the driver of the car appears to be less. At the same time, major portion of the contribution to the accident is on the part of the deceased. This is more so that the deceased did not wear helmet at the time of accident. Further, on the date of accident, the deceased was a minor and not in possession of a driving licence to drive the two wheeler. Therefore, it is appropriate to fix 25% liability on the part of driver of the car and 75% on the part of the deceased himself.

15. So far as the quantum of compensation is concerned, in order to prove the income, PW3, employer was examined through whom, the pay slip of the deceased was marked under Ex.P8 pertaining to April 2018. The copy of the bank passbook of the deceased was also marked under Ex.P10. Ex.P13 is the Attendance Register of the deceased maintained by the employer for the month of May 2018. These documentary evidence do prove that the deceased was in employment and earning atleast a sum of Rs.9,000/- per month. This is also corroborated by the oral testimony of PW3. The Tribunal discarded the evidence of PW3 on the ground that the deceased was a minor and he ought not to have been employed by PW3. The Tribunal also concluded that the evidence of PW3 was purposely introduced by the claimants for the sake of getting compensation. It may be true that the deceased, being a minor, ought not to have been employed by his employer. At the same time, for the purpose of determination of compensation payable to the legal heirs, the correctness or otherwise of the employment of the deceased by PW3, cannot be gone into by this Court in this appeal. It is well settled that The Motor Vehicles Act is a benevolent Legislation which has been enacted with an avowed object of compensating the victims of motor accidents. While dealing with the cases of this nature, strict application of law is not desirable. Applying such principle to this case, we are not inclined to examine as to whether the employment of the deceased, a minor, by PW3 is in violation of law.

16. Thus, the fact that PW3 employed the deceased and he was earning some amount, is well established. It is needless to mention that, even a non-earning member who is a victim of motor accident, is entitled for compensation for the bodily injuries sustained by him and in the event of his or her death, the family members are entitled for compensation. They cannot be



WEB

deprived of the payment of compensation, which would add to their succour to substitute the little earnings the deceased had contributed to the family. Even assuming that there is no proof to show the income of the deceased, the Court has to mandatorily fix a minimum notional income for the purpose of awarding compensation amount. Keeping this in mind, we are inclined to fix a sum of Rs.9,000/- per month as the earnings of the deceased as has been reflected in the salary slip of the deceased produced by PW3. If the sum of Rs.9,000/- is taken as the monthly income and 40% is added towards his future prospectus, the earnings of the deceased would be Rs.12,600/- per month (Rs.9000 + Rs.3600) and for a year, it would be Rs.1,51,200/-. As the deceased died as a bachelor, 50% of the total earnings per annum has to be deducted towards his personal expenses and in such event, the yearly contribution of the deceased to his family could be arrived at Rs.75,600/-. By applying multiplier '18' as per The Second Schedule appended to The Motor Vehicles Act, the loss of income can be determined at Rs.13,60,800/-.

17. The deceased died at the age of 17 years. Therefore, the first claimant, being the father is entitled to a sum of Rs.40,000/- towards filial compensation. Similarly, the second claimant, who is the brother of the deceased, is entitled to a sum of Rs.40,000/- towards loss of love and affection.

18. For Funeral expenses and transportation charges, the claimants are entitled to a sum of Rs.25,000/- each.

19. In the result, the Judgment and decree dated 02.12.2019 made in M.C.O.P.No.4734 of 2018 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai is modified and the claimants are entitled for compensation as determined hereunder:-

Loss of Income	Rs. 13,60,800.00
Filial compensation to 1st claimant	Rs. 40,000.00
Loss of Love and affection to 2nd claimant	Rs. 40,000.00
Transportation expenses	Rs. 25,000.00
Funeral expenses	Rs. 25,000.00

	Rs.14,90,800.00

25% of the compensation amount	Rs. 3,72,700.00

20. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent-Insurance Company is



directed to deposit the sum of Rs.3,72,700/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of MCOP No. 4734 of 2018 before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. The appellants/claimants are also directed to pay the court fee proportionate to the compensation amount determined in this appeal, after adjusting the amount of court fee, if any, already paid. The claimants are also permitted to withdraw the entire compensation amount with accrued interest in equal proportion.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Chief Judge
Court of Small Causes
Motor Accidents Claims Tribunal
Chennai.

CMA No. 272 of 2020

GP(CO)
GN(10/12/2021)