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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.288 of 2021

1.Nachammal

2.Mekala

3.Selvaraj

.. Appellants/Claimants

Vs.

1. P.Krishnakumar

2. M/s.Reliance General Insurance Company Ltd.,
South Wing, 4th Floor,
Off. Weatern express highway,
Sanacruz (East), Mumbai,
branch at
Sri Lakshmi Complex, 1st floor,
Bharathi Street, Omalur main Road,
Swarnapuri, Salem - 636 211.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.03.2020 made in M.C.O.P.No.437 of 2017 on the file of the Motor Accident Claims Tribunal/ Additional District Court (FAC), Namakkal.

For Appellants : Mr.A.Sathishkumar

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the portion of the award fixing 25% negligence on the part of the deceased by the award dated 02.03.2020 made in M.C.O.P.No.437 of 2017 on the file of the Motor Accident Claims Tribunal/ Additional District Court (FAC), Namakkal.

2.The appellants are the claimants in M.C.O.P.No.437 of 2017 on the file of the Motor Accident Claims Tribunal, Additional



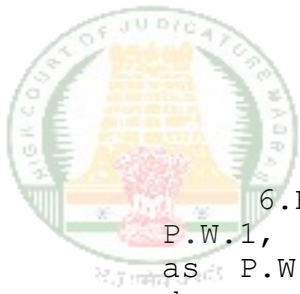
District Court (FAC), Namakkal. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Ramasamy, who died in the accident that took place on 16.01.2017.

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3. According to the appellants, on 16.01.2017 at about 10.15 A.M., while the deceased Ramasamy was standing on the left side of the Jankamanaickenpatty road with his TVS 50 XL bearing Regn.No.TN-34-7597 near opposite to Muthu Hotel, the 1st respondent drove the Yamaha motorcycle bearing Regn.No.TN-28-AQ-3918, insured with the 2nd respondent, in a rash and negligent manner and hit the said Ramasamy along with the TVS 50 XL motorcycle and caused the accident. In the accident, the said Ramasamy sustained grievous multiple injuries all over his body including head injury. Immediately after the accident, the said Ramasamy was taken to CM Hospital at Namakkal for first aid treatment and then shifted to Royal Care Super Specialty Hospital Ltd., at Coimbatore. In spite of the treatment, the said Ramasamy succumbed to injuries on 20.03.2017. Therefore, the appellants being the wife, daughter and son of the deceased filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents, being the owner and insurer of the Yamaha motorcycle respectively.

4. The 1st respondent being the owner of the Yamaha motorcycle remained exparte before the Tribunal.

5. The 2nd respondent Insurance Company, being the insurer of the Yamaha motorcycle filed counter statement and denied all the averments made by the appellants. The 2nd respondent denied the manner of accident. The 2nd respondent denied the age, occupation, previous health condition, nature of injuries, period of treatment and monthly income of the deceased. The 2nd respondent also denied the validity of the insurance policy, RC, Permit and FC of the Yamaha motorcycle and driving license of the person who drove the vehicle at the time of the accident. According to the 2nd respondent, rider of the motorcycle belonging to the 1st respondent was driving the Yamaha motorcycle with all care and caution on the proper side of the road at slow speed. The deceased only drove his motorcycle in a rash and negligent manner and dashed against the motorcycle belonging to the 1st respondent and caused the accident. The charge sheet has been filed only against the deceased. Hence, the 2nd respondent is not liable to pay the compensation. The deceased was a tortfeasor and hence, the claim petition is not maintainable. The appellants have to prove that they are the legal heirs of the deceased by producing valid document. The 2nd respondent denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the appellants is highly excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st appellant examined herself as P.W.1, one Ponnusamy, eye witness to the accident was examined as P.W.2 and Dr. Renukadevi, was examined as P.W.3 and 20 documents were marked as Exs.P1 to P20. On behalf of the 2nd respondent Insurance Company two witnesses were examined as R.W.1 and 2 and copy of final report was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held both the deceased as well as the 1st respondent-driver of the Yamaha motorcycle are responsible for the accident, fixed 75% negligence on the part of the rider of the Yamaha motorcycle belonging to the 1st respondent and 25% on the part of the deceased and awarded a sum of Rs.11,24,327/- as compensation to the appellants and directed the 2nd respondent to pay a sum of Rs.8,43,225/- being 75% of the award amount as compensation to the appellants.

8. Challenging the portion of the award fixing 25% contributory negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the accident occurred due to the rash and negligent driving of the rider of the motorcycle owned by 1st respondent. The Tribunal erroneously fixed contributory negligence on the deceased. The deceased was 64 years at the time of accident, he was an agriculturist and earning Rs.10,000/- per month. The Tribunal ought to have applied multiplier '7' and awarded compensation. The deceased has taken treatment as inpatient from 16.01.2017 to 20.03.2017. The Tribunal ought to have granted Rs.1,00,000/- towards mental agony and Rs.30,000/- towards attendant charges and prayed for setting aside the 25% of negligence fixed on the deceased and for enhancement of compensation.

10. Though notice was served on the 2nd respondent Insurance Company and their name has been printed in the cause list, there is no representation for the 2nd respondent, either in person or through counsel.

11. Heard Mr. A. Sathishkumar, learned counsel appearing for the appellant and perused the materials available on record.

12. From the materials on record, it is seen that it is the case of the appellant that while the deceased was standing on the left side of the road, the rider of the Yamaha motorcycle belonging to the 1st respondent drove the same in a rash and



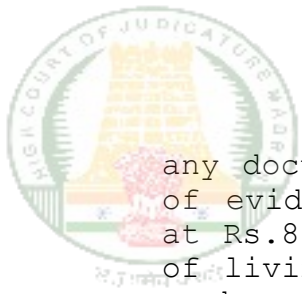
negligent manner and dashed against the deceased and caused the accident. Due to the injuries sustained in the accident, the said Ramasamy died. To substantiate their claim, the 1st appellant examined herself as PW1 and one Ponnusamy, eye witness was examined as PW2 and marked FIR which was registered against the rider of the motorcycle belonging to the 1st respondent.

13. On the other hand, the case of the 2nd respondent is that the accident occurred due to the rash and negligent riding of the deceased and the Tribunal erroneously fixed 25% contributory negligence instead of fixing entire negligence on the deceased. To substantiate their case, the 2nd respondent examined Sub-Inspector of police as RW1. RW1 deposed that after investigation, case was closed as mistake of fact and marked final report as Ex.R1. The 2nd respondent examined their Law Officer as RW2. RW2 deposed that the accident occurred only due to the negligence of the deceased and marked the Final report/Ex.R1, which was closed as mistake of fact.

14. The Tribunal considering the oral and documentary evidence let in by the appellants and 2nd respondent, Motor Vehicle Inspector reports of both the vehicles held that both the deceased and the rider of the yamaha motorcycle belonging to the 1st respondent are responsible for the accident and fixed 25% negligence on the deceased and 75% on the rider of the motorcycle belonging to the 1st respondent.

15. From the materials on record, it is seen that the appellants in the claim petition have stated that the accident has occurred while the deceased was standing on the left side of the road. Whereas, PW2 eye witness has stated that the accident occurred when the deceased almost crossed the road from South to North, the 1st respondent came from South to North in a rash and negligent manner dashed on the TVS motorcycle driven by deceased. The appellants filed and marked the Motor Vehicle Inspector reports as Exs.P19 and P20. The Tribunal considered Exs.P19 and P20 and took note of the damages caused to both the vehicles and considering the materials placed before it, held that both the deceased as well as the rider of the motorcycle belonging to the 1st respondent were responsible for the accident. The Tribunal has considered the entire materials and has given cogent and valid reasons for fixing 25% contributory negligence on the part of the deceased and 75% negligence on the part of the rider of the motorcycle of the 1st respondent and the same is not erroneous.

16. As far as the quantum of compensation is concerned, it is seen that it is the contention of the appellants that the deceased was aged 64 years and he was an Agriculturist and earning a sum of Rs.10,000/- per month. But, they did not file



any document to prove his avocation and income. In the absence of evidence, the Tribunal fixed monthly income of the deceased at Rs.8,000/-. The accident occurred in the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.10,000/- is fixed as monthly income of the deceased as claimed by the appellants. Considering the age of the deceased, the Tribunal rightly applied the multiplier as '7' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]. In view of the above fixing Rs.10,000/- per month as notional income of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.5,60,000/- {Rs.10,000/- x 12 x 7 x 2/3}. The amounts awarded by the Tribunal towards Loss of estate, loss of consortium for the 1st appellant, funeral expenses, medical bills and ambulance bills are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	4,48,056/-	5,60,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
5.	Medical Bills	5,97,971/-	5,97,971/-	Confirmed
6.	Ambulance Bills	8,300/-	8,300/-	Confirmed
	Total	Rs.11,24,327/- Rounded off to Rs.11,24,300/-	Rs.12,36,271/- Rounded off to Rs.12,36,300/-	Enhanced by Rs.84,000/- (Rs.8,43,225/-
	75% of award amount	Rs.8,43,225/-	Rs.9,27,225/-	- Rs.9,27,225/-)

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.11,24,300/- is hereby enhanced to Rs.12,36,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit 75% of the award amount now determined by this Court, i.e., Rs.9,27,225/- along with



interest and costs, less the amount already deposited, if any, 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.437 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court (FAC), Namakkal. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. Additional District Court (FAC),
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
VR Section,
High Court, Madras.

+2ccs to Mr.C. Thangaraju, Advocate, S.R.No.14738

C.M.A.No.288 of 2021

SS(CO)
PM(14/07/2021)