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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.987 of 2021
and C.M.P.No.5480 of 2021

The New India Assurance Company Limited,
No.232, NSC Bose Road,
Bombay Mutual Building, 6th floor,
Broadway, Chennai - 600 001.

.. Appellant/2nd
Respondent in Tribunal

Vs.

1.Vinothini

2.Indirani

3.Manickam

4.The Commissioner,
Corporation of Chennai,
Chennai - 600 016.

.. Respondents/Petitioner 1 to 3
and 1st Respondent in Tribunal

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2020 made in M.C.O.P. No.6254 of 2018, on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : M/s.A.Salomi
for Mr.C.Ramesh Babu

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 19.03.2020 made in M.C.O.P. No.6254 of 2018, on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.



2.The appellant is the 2nd respondent in M.C.O.P.No.6254 of 2018, on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Ponnurangam @ Rajesh who died in the accident that took place on 22.10.2017.

3.According to the respondents 1 to 3, on the date of accident, when the deceased Ponnurangam @ Rajesh was traveling as a pillion rider in the Motorcycle (for Registration) at Arumbakkam, EVR Salai, opposite to Sivasakthi Timber Depot, Door No.621, the driver of the Mini Lorry bearing Registration No.TN-22-CF-5835 owned by the 4th respondent was cleaning the vehicle on the road without showing any signal or flash light. Due to the same, the rider of the Motorcycle hit against the Lorry, sustained multiple and grievous injuries and died in the Hospital. The accident occurred only due to the negligent act of the driver of the Mini Lorry owned by the 4th respondent. Hence, the respondents 1 to 3 filed claim petition, claiming compensation against the 4th respondent as owner and appellant as insurer of the Mini Lorry respectively.

4.The 4th respondent, owner of the Mini Lorry, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition, including the manner of accident. According to the 4th respondent, the accident occurred only due to rash and negligent riding by rider of the Motorcycle without following the traffic rules and invited the accident. The respondents 1 to 3 have to prove that the rider of the Motorcycle possessed valid driving license to ply the vehicle at the time of accident. In any event, the vehicle was insured with the appellant-Insurance Company. Hence, the appellant is liable to pay compensation to the respondents 1 to 3. The respondents 1 to 3 also have to prove the age, avocation and income of the deceased. The compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition as against the 4th respondent.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition, including the manner of accident. According to the appellant, the accident did not occur due to the negligence of the driver of the Mini Lorry owned by the 4th respondent. Hence, the appellant is not liable to pay compensation to the respondents 1 to 3. In any event, the claim petition is bad for non-joinder of owner and insurer of the Motorcycle. The respondents 1 to 3 also have to prove the age, avocation and income of the deceased, to claim compensation. The total compensation claimed by the respondents 1 to 3 is



excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Kavikumar, eye witness as P.W.2 and marked 7 documents as Exs.P1 to P7. The appellant did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to negligence of both the rider of the Motorcycle in which the deceased traveled as pillion rider as well as the driver of the Mini Lorry and fixed 30% contributory negligence on the driver of the Motorcycle and 70% negligence on the driver of the Mini Lorry. The Tribunal awarded a sum of Rs.21,31,000/- and directed the respondents to jointly and severally pay a sum of Rs.14,91,700/- being 70% of the award amount, as compensation to the respondents 1 to 3.

8. To set aside the said award of the Tribunal dated 19.03.2020 made in M.C.O.P. No.6254 of 2018, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought to have considered the manner of accident which occurred only due to rash and negligent riding of Motorcycle in which the deceased traveled as pillion rider. The Tribunal having found that the accident occurred due to negligence of both the driver of the Mini Lorry and rider of the Motorcycle, erred in fixing 70% contributory negligence on the part of the driver of the Mini Lorry which was stationed and only 30% contributory negligence on the rider of the Motorcycle who's negligence caused the death of his pillion rider viz., Ponnuram @ Rajesh. At the time of accident, the deceased Ponnuram @ Rajesh was aged 25 years. He was born on 21.05.1992 and has completed 25 years as on the date of accident viz., 22.10.2016 and hence, the proper multiplier applicable is '17' for the age group above 25 years and not exceeding 30 years. The Tribunal erroneously applied multiplier '18', instead of applying multiplier '17'. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

11. It is the case of the respondents 1 to 3 that when the deceased Ponnuram @ Rajesh was traveling as a pillion rider in the Motorcycle (for Registration), the driver of the Mini Lorry bearing Registration No.TN-22-CF-5835 owned by the 4th respondent was cleaning the vehicle on the road without showing



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any signal or flash light. Due to the same, the rider of the Motorcycle hit on the backside of the Mini Lorry, sustained multiple and grievous injuries and died in Hospital. To substantiate their case, they examined 1st respondent as P.W.1, one Kavikumar, eye-witness to the accident as P.W.2 and marked FIR which was registered against the driver of the Mini Lorry as Ex.P1. On the other hand, it is the case of the appellant that the accident occurred only due to rash and negligent riding by rider of Motorcycle in which the deceased traveled as pillion rider. They did not let in any evidence to substantiate their contention. P.W.2 eye-witness deposed that while he was walking on the road at about 1.15 a.m, due to negligent parking of the Mini Lorry by its driver without any indicator or signal, the rider of the Motorcycle hit on the backside of the Mini Lorry and thus, the accident occurred. The Tribunal considering the evidence of P.W.2, Ex.P1 - FIR, in the absence of any contra evidence to the evidence of respondents 1 to 3 and objection to the FIR being registered against the driver of the Mini Lorry, held that had the rider of the Motorcycle been cautious, he would have avoided the accident and fixed 30% contributory negligence on the part of the rider of the Motorcycle and 70% contributory negligence on the part of the driver of the Mini Lorry. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as contention of the learned counsel appearing for the appellant that the deceased Ponnurangam @ Rajesh has completed 25 years at the time of accident and the Tribunal ought to have taken the age of deceased as 26 years and applied multiplier '17' is concerned, the Tribunal fixed age of the deceased as 25 years taking into consideration Ex.P2 - death certificate. Hence, the Tribunal has rightly applied the multiplier '18', taking into consideration the death certificate and fixed age of the deceased as 25 years. The Tribunal considering the age, avocation and income of the deceased, has awarded compensation under different heads which are not excessive, warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.21,31,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the sum of Rs.14,91,700/-, being 70% of the award amount, along with interest and costs, 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.6254 of 2018. On such deposit, the respondents 1 to 3 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after



adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.The Chief Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
at Chennai.

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

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.19045

C.M.A.No.987 of 2021

and

C.M.P.No.5480 of 2021

NK(CO)

CB(24/09/2021)