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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18 .02.2021

CORAM

THE HONOURABLE Mr. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A. No.4757 of 2019

1. Kutti

S/o.Chinnakannu

2. Vijaya

W/o.Kutti

.. Appellants 1 & 2/ Petitioners 1 & 2

Versus

1. Parameswaran

2. Royal Sundaram Alliance Insurance Co. Ltd.,

Door No.1, 2nd Floor,

Subramanian Building,

Club House Road,

Annasalai,

Chennai 600 002.

.. Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.01.2019 made in MCOP. No.366 of 2017 on the file of the III Additional District Judge, Vellore at Thirupattur.

For appellants : M/s.Karan and Uday

For respondents

for R1

: Set ex-parte before the Tribunal

for R2

: Mr.E.Rajadurai,

for M/s.M.B.Gopalan Associates

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. This appeal has been filed as against the award dated 29.01.2019 passed by the Motor Accident Claims Tribunal / III Additional District Judge, Vellore at Thirupattur, in MCOP. No.366 of 2017, in and by which, the claim petition filed by the appellants / claimants herein was dismissed.



3. The appellants / claimants are the parents of the deceased Murali. It is the case of the claimants that on 10.05.2017, while the deceased Murali was riding a Bajaj Pulsar Motorcycle bearing Registration No.TN 23 BP 0049 on Jolarpettai-Tirupattur Main Road, a Lorry bearing Registration No.TN 52 F 6968 owned by the first respondent and insured with the second respondent / Insurance Company, was driven by its driver in a rash and negligent manner and hit on the rear side of the two wheeler. Due to the impact, the deceased Murali sustained grievous head injuries and lost his consciousness. Immediately, he was taken to the Government Hospital, Tirupattur and in spite of the treatment given to him, he died on the same day.

4. It is the further case of the claimants that the deceased was 20 years at the time of the accident and he was a Mason by avocation and earning Rs.20,000/- per month. Hence, they made a claim for a sum of Rs.25,00,000/-.

5. The case of the claimants was resisted by the Insurance Company by taking a defence that it is incorrect to state that the accident had occurred due to the rash and negligent driving of the Lorry bearing Registration No.TN 52 F 6968. The fact is that the deceased Murali while attempting to overtake the Lorry at a hectic speed, lost balance and fell under the Lorry tyre and sustained fatal injuries. Therefore, the Insurance Company is not liable to pay compensation amount to the claimants.

6. In order to prove the claim on the side of the appellants / claimants, the first appellant / father of the deceased was examined as PW1, besides two other witnesses were examined as PW2 and PW3 and 9 documents were marked as Exs.P1 to P9. On the side of the second respondent / Insurance Company, 3 witnesses were examined as RW1 to RW3 and Exs.R1 to R11 were marked.

7. The Tribunal after analysing the entire evidence, came to the conclusion that the accident is the result of rash and negligent driving of the two wheeler driven by the deceased Murali and the driver of the Lorry was no way responsible for the accident. Thus, the Tribunal dismissed the claim petition. Aggrieved over the same, the present appeal has been filed by the claimants.

8. The learned counsel for the appellants / claimants submitted that in order to prove that the accident is the result of rash and negligent driving of the Lorry, claimants examined two eye witnesses PW2 and PW3. However, the Tribunal totally rejected their evidence stating that their presence in the accident spot, is doubtful. Thus, the Tribunal by neglecting the evidence of PW2 and PW3 and by accepting the Insurance Company's



version that the accident had occurred when the deceased made an attempt to overtake the Lorry, had dismissed the claim petition in toto. But the Tribunal has failed to note that had the driver of the Lorry been more vigilant, he could have applied the brake and averted the accident, which he failed to do. Therefore, certain percentage of negligence may be fixed on the part of the Lorry driver and compensation could be awarded in proportion to the percentage of negligence.

9. Per contra, the learned counsel for the respondent / Insurance Company made his submissions supporting the award passed by the Tribunal.

10. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

11. On a perusal of the records, it is seen that the accident had occurred while the deceased Murali tried to overtake the Lorry. But as contended by the learned counsel for the appellants, if the driver of the Lorry had been vigilant, he would have averted the accident by applying brake. Hence, there is certain percentage of negligence on the part of the Lorry driver also. Therefore, the finding of the Tribunal that the deceased was solely responsible for the accident, is set aside, instead, liability is fixed equally on both the deceased and the Lorry driver, i.e., 50% on the part of the deceased and 50% on the driver of the Lorry.

12. Insofar as quantum of compensation is concerned, it is the case of the claimants that the deceased was working as a Mason and earning Rs.20,000/- per month, but no documentary evidence was produced to prove the same. Hence, considering the avocation of the deceased and also taking note of the cost of living prevalent at the time of the accident, a sum of Rs.9,000/- is fixed as monthly income of the deceased. Hence, if Rs.9,000/- is fixed as monthly income, and 40% of the same is added towards future prospects, the amount works out to Rs.12,600/- [9,000 + 3,600]. If 1/2 of the amount is deducted towards personal expenses, the amount works out to Rs.6,300/- [12,600 - 6,300]. Resultantly, the annual loss of income comes to Rs.75,600/- [6,300 x 12]. Considering the age of the deceased being 20 years at the time of the accident, the correct multiplier to be applied is "18". If multiplier "18" is applied, the amount works out to Rs.13,60,800/- [75,600 x 18]. Accordingly, a sum of Rs.13,60,800/- is awarded under the head "Loss of Dependency".

13. Since the claimants lost their son at their advanced age, a sum of Rs.80,000/- is awarded under the head "Loss of



Love and Affection" by awarding a sum of Rs.40,000/- to each of the claimants.

14. It is reasonable to award a sum of Rs.20,000/- under the head "Funeral Expenses" and another sum of Rs.20,000/- under the head "Loss of Amenities".

15. The break-up details of the amounts awarded by this Court under various heads are as follows:

S.No.	Head under which the amount is awarded	Amount in Rs.
1.	Loss of Dependency	13,60,800/-
2.	Love and Affection	80,000
3.	Funeral Expenses	20,000
4.	Loss of Amenities	20,000
	Total	14,80,800 (rounded off to 15,00,000)
	(-) 50% contributory negligence	7,50,000
	Compensation payable	7,50,000

16. Thus, this Court hereby award a sum of Rs.15,00,000/- as compensation for the death of the deceased Murali. Since 50% negligence is fixed on the part of the deceased, out of the compensation amount of Rs.15,00,000/-, the claimants are entitled only for half share, i.e. Rs.7,50,000/-.

17. Thus, the total sum of Rs.7,50,000/- is awarded as compensation to the claimants, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The claimants shall pay necessary Court fee, on the compensation now awarded. The claimants are entitled for equal share in the above award. The Insurance Company is directed to deposit the total compensation before the Tribunal, after adjusting the amount if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the amount of their share as indicated above.

18. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar



pvs

To

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1. The III Additional District Judge, Vellore at Thirupattur
2. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to M/s.Karan & Uday, Advocate, S.R.No.9870

C.M.A. No.4757 of 2019

BR(CO)
SB(07/12/2021)