



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1080 of 2014

1.D.Santhamma
2.Prasanna Kumari
3.Shylashree
4.Sathish Babu

.. Appellants/Claimants

Vs.

1.K.Thirupathy
2.The Branch Manager,
National Insurance Company Limited,
Branch Office,
Bangalore Road,
Krishnagiri.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.03.2010, made in M.C.O.P. No.2049 of 2003, on the file of the Principal District Court, (Motor Accidents Claims Tribunal), Krishnagiri.

For Appellants : Mr.Mukund R. Pandiyan
for M/s.M.Sriram

For Respondents : No appearance (For R1)
Mr.D.Bhaskaran (For R2)

J U D G M E N T

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

This appeal has been filed challenging the liability fixed on the 1st respondent and for enhancement of the compensation granted by the Tribunal in the award dated 22.03.2010, made in M.C.O.P. No.2049 of 2003, on the file of the Principal District Court, (Motor Accidents Claims Tribunal), Krishnagiri.



2.The appellants/claimants, filed M.C.O.P.No.2049 of 2003, on the file of the Principal District Court, (Motor Accidents Claims Tribunal), Krishnagiri, claiming a sum of Rs.10,00,000/- as compensation for the death of one Venkateshaiah, who died in the accident that took place on 13.03.2003.

3.According to the appellants, on the date of accident, the deceased Venkateshaiah was travelling as a pillion rider in a TVS Champ bearing Registration No.TN-29-S-3670 from Bukkasagaram to his house, which was driven by one Munisamy, slowly and cautiously, observing the rules of the road. At that time, the rider of the Yamaha Crux bearing Registration No.TN-29-P-9122 owned by the 1st respondent drove the same in a rash and negligent manner and came from backside and forcibly hit against the TVS Champ and caused the accident. In the accident, the said Venkateshaiah sustained fatal injuries. The accident occurred only due to rash and negligent riding by the rider of the Yamaha Crux. Hence, the appellants filed the said claim petition, claiming compensation for the death of Venkateshaiah against the respondents as owner and insurer of the vehicle respectively.

4.The 1st respondent, owner of the Yamaha Crux, remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 2nd respondent, the accident occurred due to rash and negligent driving by rider of the TVS Champ, without valid driving license, in which the deceased traveled as a pillion rider. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. In any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, 1st appellant examined herself as P.W.1, examined one Pichandi and Yellappa, eye-witnesses to the accident as P.W.2 and P.W.3 respectively and marked 8 documents as Exs.P1 to P8. The 2nd respondent examined one Rajan, employee in R.T.O, at Hosur as R.W.1, one Thirupathy was examined as R.W.2 and one Surendiran, Head Constable at Hosur Traffic Investigation Section was examined as R.W.3 and copy of the charge sheet was marked as Ex.R1.



7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of Yamaha Crux owned by the 1st respondent and directed the 1st respondent to pay a sum of Rs.8,21,143/-, as compensation to the appellants. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company.

8.Questioning the liability fixed on the 1st respondent and not being satisfied with the amounts awarded by the Tribunal in the award dated 22.03.2010, made in M.C.O.P. No.2049 of 2003, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal, having rightly fixed the negligence on the part of the rider of the Yamaha Crux, erred in fixing entire liability on the 1st respondent, owner of the vehicle on the ground that the rider of the Yamaha Crux did not possess effective driving license at the time of accident. In the absence of any evidence by the 2nd respondent-Insurance Company to prove that the rider of the Motorcycle did not possess effective driving license, the Tribunal ought to have directed the 2nd respondent to pay the compensation at the first instance and recover the same from the 1st respondent. The deceased was the only bread winner of the family. The Tribunal failed to grant any amount towards loss of love and affection. Considering the fact that the deceased was the only bread winner of the family, the total compensation awarded by the Tribunal under different heads is meagre and prayed for enhancement of the compensation.

10.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for them either in person or through counsel.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, on perusal of Ex.P8-charge sheet, found that the rider of the Yamaha Crux did not possess valid and effective driving license to drive the two wheeler at the time of accident, rightly fixed the liability on the 1st respondent, owner of the vehicle and dismissed the claim petition as against the 2nd respondent-Insurance Company. There is no error in the finding of the Tribunal and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the



materials available on record.

13. From the materials on record, it is seen that it is the case of the appellants that on the date of accident, while the deceased Venkateshaiah was travelling as a pillion rider in the TVS Champ from Bukkasagaram to his house, the rider of the Yamaha Crux owned by the 1st respondent drove the same in a rash and negligent manner at an uncontrollable speed, without minding the rules of the road and without sounding horn and came from back side and forcibly hit against the TVS Champ and caused the accident. P.W.3 - eye witness deposed to that effect. The evidence of P.W.3 corroborated with F.I.R-Ex.P1. The Tribunal considering the evidence of P.W.3 and Ex.P1-FIR, rightly held that the accident occurred only due to rash and negligent riding by rider of Yamaha Crux owned by the 1st respondent.

14. It is the case of the 2nd respondent-Insurance Company in the claim petition that the rider of the Yamaha Crux did not possess driving license to ride the two wheeler at the time of accident. In support of their contention, the 2nd respondent examined R.W.1, who was working in R.T.O, Hosur and K.Thirupathy, R.W.2 - rider of the Yamaha Crux. On perusal of Ex.P8 - charge sheet, it is seen that on the date of accident, Yamaha Crux was driven by one Ravikumar @ Thirupathy and not by R.W.2 and the said two wheeler rider did not hold any driving license to drive the two wheeler at the time of accident. R.W.1, who was working in R.T.O, Hosur deposed that Ravikumar @ Thirupathy has not obtained driving license from the R.T.O., Hosur. The Tribunal considering the evidence of R.W.2 and Ex.P8, directed the 1st respondent to pay the compensation to the appellants and dismissed the claim petition against the 2nd respondent-Insurance Company, as the rider of the Yamaha Crux did not possess valid driving license. Even if rider of the Motorcycle did not possess driving license to drive the Motorcycle, the 2nd respondent-Insurance Company cannot be exonerated absolutely from its liability. A Three Judges Bench of the Hon'ble Apex Court, in the judgment reported in (2004) 3 SCC 297 [National Insurance Co. Ltd., Vs. Swaran Singh and others], held that non-possession of driving license by the person who caused the accident will not exonerate the Insurance Company absolutely from its liability. The Insurance Company must be directed to pay the compensation at the first instance and recover the same from the owner of the vehicle, as the Motor Vehicles Act is beneficiary legislation and the victim/claimants are third parties and they must enjoy the fruits of the award. In view of the judgment of the Hon'ble Apex Court, the award of the Tribunal is modified, directing the 2nd respondent-Insurance Company to pay the compensation to the



appellants at the first instance and recover the same from the 1st respondent.

15.As far as the quantum of compensation is concerned, the Tribunal considering all the materials on record in proper perspective, awarded compensation under different heads, which are not meagre, warranting interference by this Court. The Tribunal has granted compensation along with interest at the rate of 6% per annum. Considering the raise in cost of living, the appellants are entitled to interest at the rate of 7.5% per annum. The accident is of the year 2003. In view of passage of 17 years, the 2nd respondent-Insurance Company need not be fastened with interest payable on the compensation awarded. Considering the fact that award of the Tribunal dismissing the claim petition against the 2nd respondent-Insurance Company is set aside in the present appeal today, the 2nd respondent-Insurance Company is directed to pay the interest on the compensation awarded at the rate of 7.5% per annum, from the date of filing of the appeal and the 1st respondent is liable to pay interest from the date of claim petition till the date of filing of the appeal.

16.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,21,143/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount, along with interest and costs from the date of filing of the appeal, 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.2049 of 2003, at the first instance and recover the same from the 1st respondent. The 1st respondent is directed to deposit the interest payable on the amount awarded by the Tribunal from the date of petition till the date of filing of the appeal to the credit of M.C.O.P.No.2049 of 2003. On such deposit, the appellants are permitted to withdraw their respective 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. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar



gsa

To

1.The Principal District Judge,
(Motor Accidents Claims Tribunal),
Krishnagiri.

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

C.M.A. No.1080 of 2014

RSV(CO)
CB(12/01/2022)