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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA No.2446 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
National Insurance Company Ltd.,
Cuddalore

... Appellant/2nd Respondent

..VS..

1.S.Ganga Devi,
W/o S.Sivaguru,

2.M.Sundaram,
S/o Maligarjunan,

3.Revathi,
W/o Sundaram,

... 1 to 3 Respondents/Claimants

Respondent 1 to 3 residing at:
Old No.9, New No.9,
Surasamharam Street,
New Vandipalayam,
Cuddalore.

4.J.Arikrishnan,
S/o Jayaram,

...4th Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2014 made in M.C.O.P.No.2556 of 2011, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) , Cuddalore.

For Appellant : Mr.D.Bhaskaran

For Respondent No.1,2, & 3 : Mr.A.K.Velan

For Respondent No.4 : Notice unserved

J U D G M E N T

Dissatisfied with the judgment and decree, dated 24.01.2014, passed by the tribunal awarding compensation of



Rs.8,18,000/- along with interest at the rate of 6% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimants/Respondents No.1 to 3 herein that on 05.11.2011 at about 12.30 a.m, when the deceased-Sivaguru was traveling from office to his home in his motorcycle bearing Reg.No. PY-01-AP-5105, keeping extreme left on the Keppar road near Uthukattu Mariyamman Koil at New Vanndipalayam, a Tractor bearing no. TN-31-A-4573 along with water tank trailer heading was parked negligently in the middle of the road without any parking lamp or blinking light to show/communicate others to indicate the parked vehicle in the dark late night. Moreover there was no person near the parked vehicle to indicate the parked vehicle, despite of the best effort of the deceased-Sivaguru to stop the motor cycle but swerved and hit the Tractor and sustained fatal injuries. The deceased was immediately taken to the Govt. Head quarters Hospital, Cuddalore, where he declared died. The Claimants/Respondents No.1 to 3 filed petition before the tribunal, claiming compensation of Rs.50,00,000/- for the death of Sivaguru. After analyzing both oral and documentary evidences, the Tribunal has fixed the liability on the insurance company and awarded Rs.8,18,000/- as total compensation along with interest at the rate of 6% p.a from the date of petition till realization, payable by the Insurance Company.

3. The compensation awarded by the tribunal under various heads are as follows;

Heads	Amount in Rs.
Loss of Dependency (Rs.6,000/- x 12 - 1/3 x 16 Multiplier)	7,68,000/-
Loss of consortium to 1st Petitioner	10,000/-
Loss of Love & Affection to 2nd & 3rd Petitioner(each Rs.10,000/-)	20,000/-
Transportation	10,000/-
Loss of estate	2,000/-
Funeral Expenses	10,000/-
Total	8,18,000/-

4.The learned counsel appearing for the appellant/Insurance Company has submitted that due to brake failure the alleged vehicle was stationed in the place of accident. The deceased drove his motor cycle rashly and negligently at a high speed and without observing the parked



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vehicle, hit against the stationed vehicle. Therefore, the accident had caused purely for the negligence on the part of the deceased. The learned counsel appearing for the appellant/Insurance Company has further submitted that the tribunal failed to note that vicarious liability will not arise when the claim is made by the tortfeasor and the claimants cannot claim compensation from the owner of the vehicle or from the Insurance company.

5. On the other hand, the learned counsel appearing for the Claimants denied the negligence on the part of the deceased and further contented that the accident happened only because of the vehicle parked negligently in the middle of the road without any parking lamp or blinking light to show/communicate others to indicate that the vehicle is parked, that too in the dark late night. The learned counsel for respondents 1 to 3/claimants further submitted that based on the documents and evidence, the tribunal has granted reasonable compensation under various heads, therefore, the same does not require any interference by this Court.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

7. The points for consideration in the appeal are;

i. whether the tribunal has rightly fixed the negligence on the part of the driver of the Tractor bearing no. TN-31-A-4573 by relying upon the FIR and the evidence of RW1 to RW3.

ii. If so, the compensation awarded by the tribunal is fair or require any modification.

8. Before the Tribunal, two witnesses P.W.1 & P.W.2 were examined and Exhibits P1 to P11 were marked on the side of the claimants, whereas R.W.1 to R.W.3 were examined and exhibits R1 to R3 were marked on the side of the respondents.

9. A perusal of FIR/EX.P1, clearly establish the fact that on the date of accident, the 4th respondent's vehicle was standing on the middle portion of the road without any blinking signal. Due to such negligent manner of the 4th respondent's vehicle driver, the said accident was happened. Ex.P2/MVI Report shows that the accident had happened not due to any mechanical defects and due to the negligence on the part of the driver alone, the accident was happened.

10. It is also seen from the records that to disprove the claimants case, before the tribunal, the appellant/insurance company has examined three witnesses namely owner of the vehicle/RW1, Official Witness of the Insurance company/RW2 and



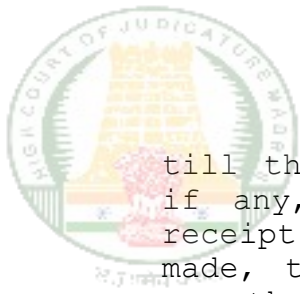
the Sub Inspector of Police, Cuddalore OT Police Station/RW3. From the above witnesses, RW1 & RW2 have given contrary statements, therefore the said evidence were not helped to disprove the negligence on the part of the driver of the vehicle. As far as the evidence of RW3/ Sub Inspector of Police, Cuddalore OT Police Station is considered, he has stated that he has not investigated the said case and he did not know about the case. Therefore RW3's evidence was also not helped to case of the appellant/insurance company before the tribunal. Therefore the tribunal by relying upon the above evidence and documents has fixed the negligence on the part of the driver of the 4th respondent's vehicle and at the time of accident the said vehicle was insured with the appellant/insurance company and the same was in force, hence directed the owner of the vehicle/4th respondent here in and insurance company/appellant herein to pay the compensation jointly and severally. This Court find no error in fixing the negligence and liability by the tribunal and the same is confirmed. The Point No.1 is answered accordingly.

11. Insofar as quantum of compensation awarded by the tribunal is concerned, the tribunal by considering the mark sheets viz., Ex.P4 & P8, has rightly fixed the age of the deceased as 32 years at the time of the accident. Though the mothly income at Rs.15,000/- claimed made by the claimants not corroborated with the contents of Ex.P10/Salary Slip, the tribunal by consideration the avocation of the deceased as Medical representative, has taken monthly income at Rs.6000/- and deducted 1/3 of income towards personal and living expenses and by adopting multiplier 16, has calculated a sum of Rs.7,68,000/- towards Loss of Dependency. The calculation is correct as per the principles laid down by the Hon'ble Supreme Court in Sarala Verma's Case, therefore nothing warrants interference by this Court. Further the sum awarded under other heads viz., Loss of consortium, loss of love and affection, Transport expenses and Funeral expenses are also reasonable and proper, therefore no modification is required in the above compensation. In total the compensation awarded by the tribunal at Rs.8,18,000/- to the claimants is confirmed. The Point No.2 is answered accordingly.

12. Considering the facts and cirucmstnaces of the case and in view of the above discussion, this Court finds no merits in the appeal and the same is liable to be dismissed.

13. In the result, this Civil Miscellaneous Appeal is dismissed. The compensation awarded by the tribunal at Rs.8,18,000/- along with interest at the rate of 6% per annum from the date of petition till the date of deposit is confirmed.

14. The appellant /Insurance Company shall deposit the entire compensation amount awarded by the tribunal, along with interest at the rate of 6% per annum from the date of petition



till the date of deposit, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the amount as per the ratio of the apportionment made by the Tribunal by filing appropriate applications before the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1. The Principal District Judge
(Motor Accidents Claims Tribunal)
Cuddalore
2. The Section Officer,
VR Section,
High Court, Madras.

CMA.No.2446 of 2014
and M.P.No. 1 of 2014

JP II (CO)
GN (27/09/2021)