IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21-04-2021

Judgment Delivered on : 30-04-2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Civil Miscellaneous Appeal No. 3978 of 2019

Margaret Elizabeth Rani .. Appellant/Claimant

Versus

1. S. Kannan

2. New India Assurance Company
Third Party Cell
Door NO.45, 5th Floor, Moore Street
Chennai - 600 001 .. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 18.01.2019 passed in M.C.O.P. No. 4769 of 2015 on the file of Motor Accident Claims Tribunal/II Court of Small Causes, Chennai.

For Appellant : Dr. C. Ravichandran for Mr. P. Duraisamy

For Respondents: Mr. J. Chandran for R2
First respondent set ex-parte before the Tribunal

JUDGMENT

R. SUBBIAH, J

This appeal has been filed as against the Judgment and Decree dated 18.01.2019 partly allowing the claim petition by the appellant/claimant in M.C.O.P.No.4769 of 2016 on the file of II Small Causes Court, Chennai.

2. The appellant is the claimant before the Tribunal. She is the mother of the deceased S.Saxon Roy. It is the case of the claimant that on 08.11.2014, the deceased was driving his car bearing Registration No. TN 07 0999 on the Maduravoyal to Tambaram by-pass road. One Issac Jeba Stalin, friend of the deceased, was an occupant of the car. When the car was nearing Tambaram Kalkuttai HP Petrol Bunk, a Ashok Leyland Multi Axle Goods Vehicle (container) lorry bearing Registration No. TN 05 AD 2534, which was proceeding in front of the car, had suddenly

applied brake. The deceased who did not expect this sudden act, dashed on the rear side of the lorry and thus got himself injured. He was taken to the hospital, but on the way to hospital, he died. According to the claimant, the accident had occurred only due to the negligent act of the driver of the lorry. Thus, the mother of the deceased has made a claim for a sum of Rs.1,50,00,000/- as compensation.

3. The claim petition was resisted by the Insurance Company by filing a counter statement contending that the accident had occurred due to the rash and negligent driving of the car by the deceased himself. He drove the car in a rash and negligent manner and rammed the ongoing lorry, which resulted in the accident. In any event, the deceased has contributed to the accident and therefore, the Insurance Company need not pay any compensation to the claimant. Thus, the Insurance Company prayed for dismissal of the claim petition.

4. In order to prove the averments in the claim petition, on the side of the claimant, the claimant examined herself as PW1, besides two other witnesses as PWs 2 and 3 and marked 18 documents as Exs. P1 to P18. On the side of the respondents in the claim petition, the Insurance Company examined one Mr.C.N.Gajendran as R.W.1 and marked 4 documents as Exs. R1 to R4.

5. The Tribunal, on an appreciation of the oral and documentary evidence concluded that the First Information Report and the charge sheet, marked as Exs P1 and P2 respectively, show that the lorry was only parked on the side of the road and it was stationary. It was the deceased who had driven the car in a rash and negligent manner and rammed on the rear side of the lorry. Therefore, the Tribunal concluded that a false claim was made by the claimant as if the lorry was proceeding in front of the car and applied sudden brake. While so, the Tribunal only awarded a sum of Rs.50,000/- as compensation under Section 140 of The Motor Vehicles Act with interest at the rate of 9% per annum from the date of claim petition.

6. Dr.Ravichandran, learned counsel appearing for the appellant/claimant submitted that on the fateful day, due to sudden and unwarranted brake applied by the on-going lorry, insured with the second respondent/Insurance Company, the deceased, who was driving the car from behind the lorry, hit the rear side of the lorry and died. PW3 examined on the side of the claimant was the occupant in the car, who had also sustained injuries in the said accident. He had deposed that the container lorry was proceeding in front of the car and the driver of the said lorry, had suddenly applied brake. According to him, the deceased was caught unawares, owing to such sudden and abrupt brake applied by the lorry, due to which, the car rammed on the rear side of the lorry. However, in the First Information Report, it was recorded as if the lorry was stationary and the deceased had hit the stationary

lorry. In this context, the learned counsel for the appellant/claimant placed reliance on the decision in National Insurance Company vs. P. Rajalakshmi and others reported in (2019) 1 TN MAC 545 (Mad) to contend that when there is contradiction in the deposition of witnesses and the First Information Report, the statement on oath alone has to be given evidentiary value and the First Information Report, cannot be given much credence. According to the learned counsel for the appellant/claimant, the Tribunal ignored the deposition of PW3, who himself suffered injuries as an occupant of the car and erroneously concluded that the accident had occurred when the lorry was stationary. The Tribunal failed to note that the statement was given by P.W.3 when he was getting treated in the hospital, based on which, the First Information Report was registered. But in the First Information Report, it was stated that one W.Jinohans, brother of PW3 has given the complaint, but he was not examined before the Tribunal by the Insurance Company to disprove the averments made in the claim petition. Therefore, the learned counsel for the appellant/claimant contended that the Tribunal ought not to have ignored the deposition of P.W.3, while placing heavy reliance on the First Information Report, to disposing of the claim petition. At the same time, the trial court relied on the decision of the Supreme Court in the case of Nishan singh and others vs. Oriental Insurance Company Limited and others reported in 2018 (1) TN MAC 745 (SC) and rejected the claim of the appellant on the ground that the deceased had not kept safe distance while following the lorry. Thus, the Tribunal, on the one hand concluded that the lorry was stationary at the time of accident, but on the other hand, it has concluded that the deceased failed to keep sufficient distance behind the ongoing lorry to avoid the accident while driving the car. The Tribunal failed to note that, on completion of the investigation, the charge- sheet was filed only as against the driver of the lorry. In such circumstances, the Tribunal, by rejecting the case of the Insurance Company, ought to have awarded a reasonable amount as compensation, or in the alternative, by fixing contributory negligence on the part of the deceased as well as on the part of the driver of the lorry, apportioned the compensation amount.

7. Countering the said submission, Mr.J.Chandran, learned counsel for the second respondent/Insurance Company contended that the First Information Report indicates that the lorry was parked on the road. Contrary to such evidence, P.W.3 had given evidence as if the accident had occurred when the driver of the lorry applied sudden brake. Therefore, the Tribunal has rightly disbelieved the averments in the claim petition and such a well- considered Award of the Tribunal need not be interfered with by this Court.

8. We have heard the learned counsel for both sides and perused the materials placed on record.

9. It is no doubt, that, there are two contrary versions with regard to the manner of the accident. In the First Information Report, it was stated that the lorry was stationary. But P.W.3, before the Tribunal, deposed that the car had hit the on-going lorry. He reiterated in his cross-examination that the lorry was not stationary. According to P.W.3, when he was in the hospital, his statement was recorded by the Police, based on which, the First Information Report came to be registered. However, it was stated that the complaint was not given in writing and his thumb impression alone was affixed in the complaint when he was taking treatment in the hospital. In his cross-examination he has denied having stated to the Police that the lorry was stationary. Thus, he remained firm in his cross-examination in asserting that the lorry was proceeding in front of the car driven by the deceased and due to the sudden and abrupt brake applied by the driver of the lorry, the accident had occurred. Further, we find that the charge sheet has been filed only as against the driver of the lorry. We are also at a loss to understand that if really the car had rammed the stationary lorry, the complaint ought to have been given by the driver of the lorry. But the evidence on record suggests that, soon after the accident, the driver of the lorry ran away from the spot. The Insurance company did not examine the driver of the lorry before the Tribunal. Even in the counter statement, the Insurance Company made an alternative plea of contributory negligence on the part of the deceased. While so, it cannot be said that the averments made in the claim petition have to be disbelieved in-toto. Therefore, we are of the view that this is a fit case to fix contributory negligence on the part of the deceased as well as the driver of the lorry. Accordingly, having regard to the totality of the facts and circumstances, we fix 75% negligence on the part of the deceased and 25% on the part of the lorry.

10. As we have held that the liability of the deceased as well as the driver of the lorry is in the region of 25% and 75% respectively, we now proceed to determine the quantum of compensation payable to the appellant/ claimant. It is the case of the appellant that at the time of accident, the deceased was working as a Senior Design Engineer (Research and Development) with M/s. Wabco India Limited, Chennai and receiving a sum of Rs.45,000/- as monthly salary. The Deputy General Manager (Human Resources) was examined as PW2 through whom the pay slip of the deceased was marked under Ex.P9. Ex.P11 was the bank passbook of the deceased. Therefore, it is evident that the deceased was earning Rs.45,000/- per month and it was substantiated by documentary evidence. At the time of accident, the deceased was 26 year old. Therefore if 50% of the amount is awarded towards future prospectus, it would work out to Rs.22,500/-. If it is added, the total amount comes to Rs.67,500/- (Rs.45000 + Rs.22500). Thus, the total earning of the deceased per annum works out to (Rs.67,500/- X 12) Rs.8,10,000. Out of this amount, Income Tax payable by the deceased, has to be deducted. During the Year 2014-2015, the Income Tax payable is tabulated as follows:-

For earning upto Rs.2,50,000/- Nil
For earning between Rs.2,50,000/- and Rs.5,00,000 (10%) Rs.25,000.00
For earning between Rs.5,00,000/- and Rs.7,56,000/- (20%) Rs.62,000.00

Rs.87,000.00
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11. Therefore, after deduction of the Income Tax payable by the deceased, the annual income works out to Rs.7,23,000/- (Rs.8,10,000 - Rs.87,000). As the deceased died as a bachelor, 50% of the annual income has to be deducted towards personal expenses, which would take the annual loss of earning of the deceased to (7,23,000 / 2) Rs.3,61,500/-. As the deceased was 26 years at the time of his death, the correct multiplier to be applied is '17'. Accordingly, the total loss of income works out to (Rs.3,61,500 X 17) Rs.61,45,500/-.

12. On the death of the deceased, the claimant, as his mother, is entitled for filial compensation. As per the oft-quoted judgment of the Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases 680, a sum of Rs.40,000/- has to be awarded to the claimant for the death of her son.

13. For funeral expenses and transportation charges, the claimant is entitled to a sum of Rs.25,000/- each and accordingly, a total sum of Rs.50,000/- is hereby awarded.

14. In effect, the appellant/claimant is entitled to a total compensation of Rs.15,58,875/- representing 25% of the total compensation awarded hereunder:-

Loss of income	Rs.61,45,500.00
Filial compensation	Rs. 40,000.00
Transportation charges	Rs. 25,000.00
Funeral Expenses	Rs. 25,000.00
	Rs.62,35,500.00

15. In the result, we modify the Decree and Judgment dated 18.01.2019 passed in M.C.O.P. No. 4769 of 2015 on the file of Motor Accident Claims Tribunal/Small Cause Court, Chennai as mentioned above. The Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed. No costs. The second respondent/Insurance Company is directed to pay the sum of Rs.15,58,875/- representing 25% of the total compensation of Rs.62,35,500.00 determined hereunder, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P. No. 4769 of 2015 on the file of Motor Accident Claims Tribunal/II Small Causes Court, Chennai. The Second respondent/Insurance Company is directed to deposit the compensation amount of Rs.15,58,875/-

together with accrued interest at the rate of 7.5%, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant/appellant herein is entitled to withdraw the entire amount with interest. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

The II Judge, Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.

+2ccs to Mr.J. Chandran, Advocate SR.No.25097, 26865

+1cc to Mr.P. Duraisamy, Advocate SR.No.26496

CMA No. 3978 of 2019

SV(CO)
GMY(01/11/2021)