BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	23.02.2021
Date of Judgment	08.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1180 of 2018
and
CMP(MD)No.12140 of 2018

The Divisional Manager,
Royal Sundaram Alliance Insurance Company Limited,
Vishranthi Melaram Towers,
No.2/319, Rajiv Gandhi Salai (OMR),
Karapakkam. : Appellant/2nd Respondent

Vs.

1.Nathiya
2.Minor Sri Vidhya
3.Minor Kaviya
(2nd and 3rd Minor respondents are rep. by their mother and guardian 1st Respondent)
4.Lakshmi : R1 to R3/Petitioners
5.Kishore Kumar : 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 18.07.2018 made in MCOP No.1025 of 2017 on the file of Motor Accident Claims Tribunal (Special District Judge for MCOP Cases), Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R4 : Mr.A.Senthilkumar
For 5th Respondent : No appearance

J U D G M E N T

Challenge made in this appeal is to the award, dated 18.07.2018 made in MCOP No.1025 of 2017 on the file of Motor Accident Claims Tribunal (Special District Judge for MCOP Cases), Thanjavur.

2.The short facts of the case is that on 08.05.2016 at about 6.45 pm, the deceased Muthukumar was proceeding in a two wheeler TN-55-AP-2693 on Gandarvakkottai-Thanjavur main road and when he was nearing Vidhya Vikas School, at that time, the Maruthi Car TN-63-AY-7272 came in a rash and negligent manner and hit against the two wheeler. Due to the accident, the said Muthukumar sustained severe injuries on his head and immediately, he was taken to Thanjavur Medical College Hospital, where he died on the next day. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.30,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.In the counter filed by the appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 20 documents. On the side of the Insurance Company, 1 witness was examined and 4 documents were marked.

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.16,76,500/- together with interest @ 7.5% p.a. Aggrieved by the award of the tribunal. The appellant Insurance Company is before this court with this appeal.

6.Heard both sides and perused the materials available on record.

7.In this case, the dispute is with regard to negligence. The learned counsel appearing for the appellant/2nd respondent Insurance Company argued that there was no negligence on the part of the driver of the offending vehicle and the police authorities closed the investigation as ''Mistake of Fact'' and the findings of the tribunal relating to the relevancy of the final report filed by the prosecution are not correct and the tribunal ought to have relied upon the same for the purpose of adjudication of negligence and the findings of the tribunal relating to the negligence and liability are not correct and prays that the Civil Miscellaneous Appeal has to be allowed.

8.On the side of the respondents 1 to 4/claimants, it is argued that only due to the negligence on the part of the offending vehicle, the accident occurred and there was no negligence on the part of the deceased and hence, tribunal has correctly fastened the liability on the driver of the offending vehicle and the Insurance Company is liable to pay the compensation to the claimants and prays for dismissal of the Civil Miscellaneous Appeal.

9.In this case, in respect of the accident, FIR was registered as against the driver of the offending vehicle. But the learned counsel appearing for the appellant/2nd respondent submitted that after investigation, the criminal case was closed as ''Mistake of Fact'' and hence, there was no negligence on the part of the driver of the offending vehicle and the Insurance Company is not liable to pay the compensation.

10.The contention of the appellant/2nd respondent is that at the time of accident, the deceased was in drunken mood and he only invited the accident. To prove that the accident was happened only due to the deceased, on the side of the appellant/2nd respondent, RW1 was examined. RW1 stated that from the AR copy of the deceased, they came to understand that the accident happened only due to the rash and negligent driving on the part of the deceased and at the time of accident, the deceased was in drunken mood and further, on perusal of the rough sketch shows that the deceased went to the wrong side and dashed against the Maruthi Car. Hence, they are not liable to pay the compensation.

11.In this case, Ex.P20 Postmortem Certificate and Ex.R1 AR copy of the deceased were carefully perused. On perusal of the Exs.P20 and R1, it was not stated that the deceased consumed alcohol. Further, no blood or urine test were taken to prove the intoxicated mood of the deceased. When the appellant/2nd respondent took defence that at the time of accident, the deceased was in intoxicated condition, it must be proved by them.

12.The learned counsel for the respondents 1 to 4/claimants argued that the Insurance Company failed to prove that at the time of accident, the deceased was in drunken mood and it should be proved by the Insurance company and they failed to prove the intoxicated mood of the deceased and hence, the Insurance Company is liable to pay the compensation to the claimants.

13.In this case, no urine and blood test was conducted to find out, whether the deceased was in drunken mood or not. The rough sketch was not proved by way of examining the Investigating Officer. To prove that the accident happened due to the negligence on the side of the deceased, the driver of the offending vehicle was not examined. On perusal of Ex.R1, it is stated that the occurrence was narrated by the person, who accompanied with the deceased. The contents found in Ex.R1 was not proved by way of examining the Doctor, who gave first treatment to the deceased. Without examining the above Doctor, the contents found in Ex.R1, cannot be accepted. Further, RW1 admitted during his evidence that there was no endorsement that at the time of accident, the deceased was in drunken mood. Hence, it is held that at the time of accident, the deceased was in drunken mood was not proved.

14.Further, the contention raised on the side of the appellant/2nd respondent is that the criminal case registered as against the driver of the offending vehicle was closed as ''Mistake of Fact.'' Hence, the Insurance Company is not liable to pay the compensation. On the side of the respondents 1 to 4/claimants, it is stated that on the basis of the final report filed in respect of the accident in the criminal case, the negligence cannot be fixed by the tribunal and the tribunal has to take the negligence by way of examination of the witnesses and documents. For that, the learned counsel appearing for the respondents 1 to 4/claimants submitted a unreported judgment made in CMA No.2701 of 2009, dated 03.10.2013 (Baskar Vs. The Superintendent of Police, Nammakkal, Nammakkal District).

15.In the case on hand, the final report in respect of the criminal case was marked as Ex.R4. The final report produced by the Investigating Officer alone was filed. No document was filed to prove that whether the final report was accepted by the court and whether on that basis, the final order was passed. Without filing any document to prove the filing of the final report before the Magistrate Court and it was accepted by the Magistrate, it is not possible for the court to come to the conclusion that in respect of the accident, the case was closed as "Mistake of Fact.'' Further, no steps were taken to prove the final report, rough sketch, observation magazar by way of examining the Investigating Officer. Since it was opposed on the side of the claimants, the investigating officer is the competent person to speak about the criminal case in respect of the accident. Further, to prove that the accident occurred due to the negligence on the part of the deceased, the statement given by the witnesses were not produced on the side of the appellant/2nd respondent. But on the side of the appellant/2nd respondent failed to prove the final report by way of examining the Investigating Officer. Further, the learned counsel appearing for the respondents 1 to 4/claimants submitted that the final report filed in the criminal case will not bind the motor accident case and the tribunal has to conduct enquiry in respect of the negligence and in this case, on the basis of Ex.P1 ad PW2, it reveals that only due to the rash and negligence on the part of the driver of the offending vehicle, the accident occurred and hence, the appellant/2nd respondent Insurance Company is liable to pay the compensation.

16.In this case, at the time of accident, the deceased was proceeding from Gandharvakottai to Thanjavur and offending vehicle came into the opposite direction. PW2 deposed that when the driver of the offending vehicle attempted to over take a vehicle, at that time the offending vehicle dashed against the two wheeler in which the deceased travelled. While cross examining PW2 by the learned counsel appearing for the appellant/2nd respondent Insurance Company, it was questioned that the accident occurred in the middle of the road. Hence, it reveals that the accident occurred in the middle of the road. Therefore, it shows that negligence on the part of the driver of the offending vehicle and the rider of the two wheeler namely the deceased. Hence, the negligence is fixed at 80% on the part of the driver of the offending vehicle and 20% on the part of the deceased.

17.It is to be noted that the learned counsel appearing for the appellant Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal on the basis of the negligence. Hence, this court, while confirming the award passed by the tribunal, fixed the negligence at the ratio of 80% on the side of the driver of the offending vehicle and 20% on the part of the deceased.

18.In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 80% on the part of the Car Driver and 20% on the part of deceased. The appellant Insurance Company is directed to deposit their apportionment of negligence amount as fixed by this court before the tribunal together with interest at the rate of 7.5% p.a. from the date of petition, till the date of deposit. On such deposit, the respondents 1and 4/claimants 1 and 4 are entitled to withdraw the entire amount without filing any formal petition before the tribunal. In so far as the share of the minor claimants 2 and 3, their share shall be deposited in any of the nationalized bank, till they attain majority. The 1st respondent/1st claimant, being the mother and natural guardian of the minors, is permitted to withdraw the interest once in three months for the welfare of the minors. The excess amount if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/ litigant concerned.

To,

The Motor Accident Claims Tribunal/
Special District Judge, Thanjavur.

Copy to

The Record Keeper,(2C)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.1180 of 2018
08.06.2021

SE(CO)
KB(15.07.2021) 5P 4C