

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A. NO.142 OF 2021
AND
C.M.P.NOS.968 OF 2021 & 4273 OF 2022

The Branch Manager,
M/s.IFFCO TOKIO General Insurance Co. Ltd.,
No.357/230, Gandhi Road,
Kanchipuram.

...Appellant / 2nd Respondent

Vs.

1.Padmini
2.Minor Gokulakrishnan
3.Minor Kaviya
(Minors rep. by their mother, Padmini)

4.Rathakrishnan
5.Ratharukumini
6.A.Yesu

...Respondents 1 to 5 / Petitioners
...6th Respondent / 1st Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2019, made in M.C.O.P. No.240 of 2015, on the file of the Additional District Court- Fast Track Court, (Motor Accident Claims Tribunal), Kanchipuram.

For Appellant : Mr.J.Michael Visuvasam

For RR1 to 5 : Mr.G.Anabaya Chozhan

For R6 : No appearance

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, to set aside the judgment and decree dated 27.11.2019, made in M.C.O.P. No.240 of 2015, on the file of the Additional District Court - Fast Track Court, (Motor Accident Claims Tribunal), Kanchipuram.

2.The appellant is the 2nd respondent in M.C.O.P. No.240 of 2015, on the file of the Additional District Court - Fast Track Court, (Motor Accident Claims Tribunal), Kanchipuram. The respondents 1 to 5/claimants filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one R.Arul, who died in the accident that took place on 09.11.2014.

3.According to the respondents 1 to 5, on the date of accident, at about 6.30 p.m., when the deceased R.Arul was travelling in his Hero Honda Splendor Plus Bike bearing Registration No.TN-25-S-3792, on the northern side of the road, near Nelvai Village, Pukkathurai road, ACT College, Madhuranthakam, the 6th respondent, rider-cum-owner of the Splendor NXG I Smart Motorcycle bearing Registration No.TN-21-AQ-9561 drove the same in a rash and negligent manner and dashed against the Hero Honda Splendor and caused the accident. In the accident, the said R.Arul sustained fatal injuries. The accident occurred only due to rash and negligent riding of Motorcycle by the 6th respondent and hence, the respondents 1 to 5 filed claim petition against the 6th respondent and appellant as rider-cum-owner and insurer of the Motorcycle respectively.

4.The 6th respondent, rider-cum-owner of the Motorcycle, remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 5 in the claim petition. According to the appellant-Insurance Company, as per FIR, some unknown Two Wheeler hit against the Hero Honda Splendor driven by the deceased R.Arul and thereby sustained fatal injuries. Further, at the time of accident, the deceased, without valid driving license and without wearing helmet, was riding the Hero Honda Splendor in a rash and negligent manner and invited the accident. The 6th respondent, in order to claim compensation illegally, colluding with the respondents 1 to 5 and the Police officials, on the advice of legal Advisor, has voluntarily surrendered before the Judicial Magistrate Court, stating that he hit the deceased vehicle along with his daughter. The 6th respondent and his daughter has not sustained any injuries, while the deceased sustained fatal injuries. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 5. The 6th respondent also did not possess valid driving license to ply the vehicle at the time of accident. In any event, the total compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Yokesh, eye-witness was examined as P.W.2, Murali,

Assistant Executive Officer, TNEB, Kancheepuram was examined as P.W.3 and 22 documents were marked as Exs.P1 to P22. On the side of the appellant-Insurance Company, one Khadharbee, Junior Assistant, RTO Office, Kancheepuram was examined as R.W.1, Nithiyanandham, Sub Inspector of Police was examined as R.W.2 and Naveen, Chief Legal Advisor of appellant-Insurance Company was examined as R.W.3 and 8 documents were marked as Exs.R1 to R8.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the 6th respondent, rider-cum-owner of Motorcycle and directed the appellant as insurer of the said vehicle to pay a sum of Rs.32,43,040/- as compensation to the respondents 1 to 5 at the first instance and recover the same from the 6th respondent.

8.Against the said award of the Tribunal dated 27.11.2019, made in M.C.O.P. No.240 of 2015, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that the accident occurred due to negligent riding of the 6th respondent. The Tribunal erred in holding that the appellant failed to controvert the evidence let in by the respondents 1 to 5, without considering the oral and documentary evidence let in by the appellant. In the FIR, it has been stated that the accident has occurred when an unknown vehicle dashed on the Hero Honda Splendor in which the deceased R.Arul travelled and it is only a 'hit and run' case. The Tribunal failed to note that the Police were unable to trace the accused i.e., rider of Hero Honda Splendor for more than 40 days of road accident. The Tribunal failed to appreciate that the 6th respondent surrendered before the Police after 40 days of the alleged accident. The respondents 1 to 5, in collusion with the 6th respondent and Police officials, made the 6th respondent surrender before the Judicial Magistrate, Uthiramerur and thereafter, the Police filed Final Report before the Judicial Magistrate, Uthiramerur. The Tribunal failed to appreciate the collusion between the respondents. The Tribunal failed to take into consideration the judgment in the Criminal Court, wherein the 6th respondent was acquitted as none of the witness was able to substantiate that 6th respondent was responsible for the accident. The evidence of P.W.2 is unworthy of acceptance. The Tribunal erroneously relied on the evidence of P.W.2. The accident, as alleged by the respondents 1 to 5, would not have happened in view of the damages noted down by the Motor Vehicle Inspector in Exs.R2 and R3. The deceased also contributed to the accident by not possessing driving license and not wearing helmet at the time of

accident. In any event, the monthly income of Rs.16,789/- fixed by the Tribunal relying on Ex.P22 was not reflected in bank accounts. The deceased was aged 40 years at the time of accident. The Tribunal erroneously granted 40% enhancement towards future prospects of the deceased, instead of granting 25%. The total compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 to 5 submitted that the accident occurred due to the negligent driving by the 6th respondent. The respondents 1 to 5 proved the involvement of the vehicle owned by the 6th respondent and negligence of the 6th respondent, by examining P.W.2. The deceased was working in the Tamil Nadu Electricity Board as E.B. Mazdoor and was earning a sum of Rs.19,390/- per month. It is a permanent job. He was aged 39 years at the time of accident. The respondents 1 to 5 produced Ex.P8 - Identity Card, issued by the Tamil Nadu Electricity Board, to prove the age and avocation of the deceased. The Tribunal, without considering Ex.P8, erroneously fixed the age of the deceased as 40 years and granted 40% enhancement towards future prospects, instead of granting 50% enhancement. The total compensation granted by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 6th respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 5 and perused the entire materials available on record.

13.From the materials on record, it is seen that the appellant-Insurance Company is challenging the award of the Tribunal on the ground that the accident was caused by 'unknown vehicle' and it is a 'hit and run' case. The respondents 1 to 5, in collusion with the 6th respondent and Police officials, filed claim petition to get compensation from the appellant on false allegations. The vehicle of the 6th respondent was not at all involved in the accident. In addition to that, the appellant is challenging the quantum of compensation awarded to the respondents 1 to 5. According to the respondents 1 to 5, one R.Arul, the husband of the 1st respondent, on 09.11.2014, while riding a Hero Honda Splendor bearing Registration No.TN-25-S-3792 on the northern side of the Pukkathurai Road, ACT College, Madhuranthakam, 6th respondent, rider of the Motorcycle bearing Registration No.TN-21-AQ-9561, drove the same in a rash and negligent manner, dashed against the Hero Honda Splendor driven by the deceased R.Arul and caused the accident. In the accident,

the said R.Arul sustained severe injuries and died, due to the injuries. To substantiate their claim, they examined P.W.2, eye-witness to the accident and marked FIR and Charge Sheet as Exs.P1 & P12, which was laid against the 6th respondent. On the other hand, it is the case of the appellant that vehicle of the 6th respondent was not at all involved in the accident and claim petition is collusive and made on false allegations. To substantiate their claim, they examined R.W.2, Sub-Inspector of Police, Salavakkam, relied on the FIR and marked two Motor Vehicle Inspector's report, Charge Sheet and judgment of the Criminal Court, wherein the 6th respondent was acquitted, as Exs.R2, R3, R5 & R6 respectively. It is the case of the appellant that in the FIR, it has been stated that the accident was caused by unknown vehicle and it is a 'hit and run' case.

14.It is well settled that contents of FIR and Criminal Court proceedings are not sole criteria for fixing negligence and are not binding on the Tribunal. The Tribunal has to come to conclusion with regard to negligence based on the materials placed before it and taking into consideration the evidence let in before the Tribunal. In the present case, the respondents 1 to 5 have examined P.W.2/eye-witness, who deposed that accident occurred due to rash and negligent driving of Motorcycle by the 6th respondent. The appellant has not examined any witness to controvert the evidence of P.W.2. Except stating that the evidence of P.W.2 is unworthy and not reliable, the appellant has not filed any materials to show as to how the evidence of P.W.2 should not be accepted. The appellant examined the Sub-Inspector of Police as R.W.2. The evidence of R.W.2 reveals that 6th respondent surrendered before the Judicial Magistrate, Uthiramerur, Charge Sheet was laid against the 6th respondent and 6th respondent was acquitted in the Criminal case. The evidence of R.W.2 no way advances the case of the appellant. The Tribunal, considering the evidence of P.W.2, concluded that the accident has occurred only due to the negligence of the 6th respondent. We find there is no error in the said finding of the Tribunal, warranting interference by this Court.

15.As far as the quantum of compensation is concerned, it is the contention of the learned counsel appearing for the appellant-Insurance Company that the Tribunal, relying on Ex.P22, erroneously fixed a sum of Rs.16,789/- per month as income of the deceased. The respondents 1 to 5 produced Exs.P9 - P11, computer generated pay slips issued by the Tamil Nadu Electricity Board to show that the deceased was earning a sum of Rs.15,780/- per month as salary and relied on Ex.P22-salary certificate on letter head. In view of the same, the income fixed by the Tribunal is not correct. The respondents 1 to 5 claimed that the deceased was aged 39 years at the time of accident. They have filed Ex.P8 - Identity Card of the deceased,

in which the Date of Birth of the deceased is mentioned as 30.07.1975. The accident occurred on 09.11.2014. On the date of accident, the deceased has completed only 39 years. The Tribunal erroneously fixed the age of the deceased as 40 years and granted only 40% enhancement towards future prospects. The deceased was working as E.B. Mazdoor in the Tamil Nadu Electricity Board, which is a permanent job. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the respondents 1 to 5 are entitled to 50% enhancement towards future prospects. If a sum of Rs.15,780/- per month is fixed as income of the deceased and 50% is granted towards future prospects, the amount arrived towards loss of dependency would be more than the amount awarded by the Tribunal. In view of the same, we are not interfering with the amount fixed by the Tribunal as monthly income and the total compensation awarded by the Tribunal is not excessive.

16. For the above reason, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.32,43,040/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, 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.240 of 2015, at the first instance and recover the same from the 6th respondent. On such deposit, the respondents 1, 4 and 5 are permitted to withdraw their 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. The share of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

gsa

To

1.The District Judge,
The Additional District Court,
Fast Track Court,
(Motor Accident Claims Tribunal),
Kanchipuram.

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

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.No.34709

+1cc to M/s.G.Anabayachozhan, Advocate Sr.No.35050 (26/07/2022)

C.M.A.No.142 of 2021

VBM(CO)
RVM(25/07/2022)