



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.11.2021	Delivered on: 14.03.2022
----------------------------	-----------------------------

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1462 of 2018

1.M.Ranjitham

2.R.Manoharan

.. Appellants / Petitioners

Vs.

1. K.M.S.Ansari

2. United India Insurance Company Limited,
New. No.134,
Old. No.40-45, Greams Road,
Chennai - 600 006.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.04.2015 made in M.C.O.P.No.3583 of 2012 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

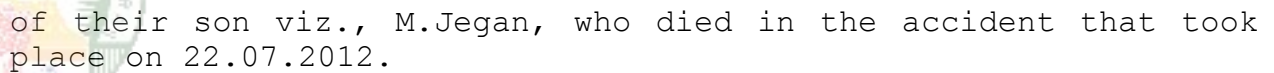
For Appellants : Ms.Ramya V.Rao
For R1 : Mr.K.Varadha Kamaraj
For R2 : Mr.D.Bhaskaran

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed against the award dated 27.04.2015 made in M.C.O.P.No.3583 of 2012 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

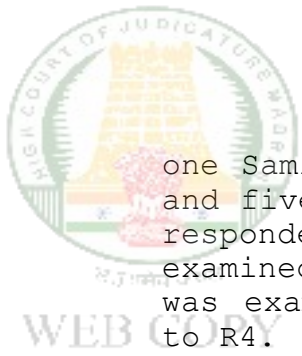
2.The appellants are the claimants in M.C.O.P.No.3583 of 2012 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death



4. The 1st respondent-owner of the car filed counter statement and contended that the deceased only drove the motorcycle in a rash and negligent manner at a high speed, came from behind and dashed on the car and invited the accident. The F.I.R. was also registered against the deceased only. Therefore, the deceased was only responsible for the accident. The car belonging to 1st respondent was insured with the 2nd respondent on the date of accident. The quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition as against the 1st respondent.

5. The 2nd respondent-Insurance Company, being the insurer of the car filed separate counter statement and denied all the allegations made by the appellants in the claim petition. According to the 2nd respondent, the accident has occurred only due to rash and negligent riding by the deceased without observing the traffic rules. The F.I.R. is also registered only against the deceased and hence, the claim petition filed under Section 166 of the Motor Vehicles Act is liable to be dismissed. The accident has not occurred due to the negligence on the part of the driver of the car. Further, the driver of the car was not possessing valid and effective driving license on the date of accident. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. The 2nd respondent denied the age, avocation and income of the deceased. The quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined examined herself as P.W.1, the 2nd appellant examined himself as P.W.2 and



one Saminathan, eyewitness to the accident was examined as P.W.3 and five documents were marked as Exs.P1 to P5. On behalf of the respondents, one R.Muthuselvi, Junior Assistant, RTO was examined as R.W.1, one N.Sampathkumar, Sub Inspector of Police was examined as R.W.2 and four documents were marked as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellants have failed to prove their case.

8.To set aside the said award dated 27.04.2015 made in M.C.O.P.No.3583 of 2012 and for granting compensation, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal erroneously dismissed the claim petition holding that F.I.R. was registered against the deceased. The complainant while registering the F.I.R. has stated that the accident occurred only due to sudden application of brake by the car, which was proceeding ahead of the motorcycle. Since the rider of the motorcycle died, the F.I.R. was closed as action dropped. There are two vehicles involved in the accident and hence, contributory negligence has to be fixed on both the vehicles. F.I.R. is not the only proof for fixing negligence. The Tribunal ought to have considered the case in proper perspective and awarded compensation. The Tribunal ought to have given more importance to the deposition of eyewitness, who has seen the accident rather than relying on the F.I.R. to fix the negligence. In support of her contention, the learned counsel relied on the following judgments and prayed for granting compensation:

- (i) Judgment of Division Bench of this Court dated 28.04.2016 made in C.M.A.No.527 of 2015, [The Oriental Insurance Company Limited Vs. K.Parthiban and another];
- (ii) Judgment of the Hon'ble Apex Court dated 15.04.2009 made in C.A.No.2538 of 2009, [Bimla Devi & Ors. Vs. Himachal Road Transport Corpn. & Ors.];
- (iii) Judgment of Division Bench of this Court dated 10.02.2021 made in C.M.A.No.49 of 2021, [K.Vahidha Begam Vs. The Commissioner, Corporation of Chennai, Chennai and another];
- (iv) Judgment of the Hon'ble Apex Court in the case of [National Insurance Company Limited Vs. Chamundeswari & Ors.] and



from behind and dashed on the car which was going ahead of him and invited the accident. To prove their case, the respondents marked the F.I.R. as Ex.R2, which was registered against the deceased based on the complaint given by the pillion rider, who was travelling in the motorcycle along with the deceased at the time of accident. Further, the respondents examined two witnesses as R.W.1 & R.W.2 and marked Ex.R1 / letter from RTO, Ex.R3 / copy of rough sketch & Ex.R4 / copy of charge sheet.

14.From Ex.R2/F.I.R., it is seen that the complainant has stated that the deceased only dashed on the backside of the car which was going ahead of them, when the driver of the car applied sudden brake. Had the deceased maintained sufficient distance between the motorcycle and the car, the accident could have been avoided. Further, from Ex.R3/rough sketch also it is evident that there was no sufficient distance between two vehicles. P.W.3, who is an eyewitness to the accident, in his chief examination has deposed that while he was waiting in the East Coast Road, a motorcycle which was proceeding in front of him, at that time, a car bearing Registration No.TDG 2692 overtook the motorcycle and while turning to right side, dashed on the motorcycle and caused the accident. But, P.W.3 in his cross examination by 2nd respondent has deposed that the motorcycle was not proceeding in front of him and it was only going near him. Further, the pillion rider of the motorcycle at the time of accident who gave complaint to the Police, who is the best eyewitness to the accident was not examined by the appellants and the appellants have not given any explanation for not examining the pillion rider. F.I.R. was registered against the deceased and the charge sheet laid against the deceased was closed as 'action dropped'.

15.In view of the above, the facts in the judgment of the Hon'ble Apex Court reported in 2018 (1) TNMAC 745 (SC), cited supra, relied on by the learned counsel appearing for the 2nd respondent-Insurance Company is squarely applicable to the facts of the present case. As per the said judgment, the appellants are entitled to relief under Section 140 of the Motor Vehicles Act. Therefore, the appellants are entitled to a sum of Rs.50,000/- as compensation for the death of their son under Section 140 of the Motor Vehicles Act.

16.In the result, this Civil Miscellaneous Appeal is partly allowed and the appellants are entitled to a sum of Rs.50,000/- as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount now determined by this Court, along with interest and costs 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.3583 of



2012 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw the award amount equally along with interest and costs, by filing necessary applications before the Tribunal. It is made clear that the appellants are not entitled to any interest for the delay period as per the order of this Court dated 28.06.2018 made in C.M.P.No.22164 of 2017 in C.M.A.SR.No.99734 of 2017. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

krk

To

Motor Accidents Claims Tribunal,
The IIIrd Judge,
Small Causes Court, Chennai.

Copy to
The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.K.Varadha Kamaraj, Advocate, Sr.17362
+lcc to Mr.D.Bhaskaran, Advocate, Sr.17255

C.M.A.No.1462 of 2018

JPL[co]
NSK 26/04/2022