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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2021

PRONOUNCED ON : 22.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.832 OF 2018

1. M.Nithyanandham

2. V.Vijayakumar

... Appellants/Respondents
1 & 2

Versus

1. V.Saraswathy

... 1st Respondent/Petitioner

2. M/s.IFFCO TOKIO General

Insurance Co. Ltd.,

No.148, Vinayaga Complex,

2nd floor, Erode - 638 011.

... 2nd Respondent/3rd Respondent

PRAYER:-

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.08.2017 made in M.C.O.P.No.85 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Perunthurai.

For Appellants : Mr.R.Abdul Mubeen

For R1 : Mr.M.Guruprasad

For R2 : Mr.S.Arunkumar

JUDGMENT

This appeal is filed by the appellants, who are the rider and owner of the two-wheeler bearing Registration No.TN-33-AF-5634 respectively. To be precise, the 1st appellant M.Nithyanandham was the rider of the said two-wheeler and second appellant was the owner. The claim petition was filed by the 1st respondent in this appeal namely Saraswathi for the injuries



6. On consideration of the above oral and documentary evidence, the Tribunal exonerated the Insurance Company. The Tribunal concluded that due to the negligent driving of the first appellant the accident had occurred. Accordingly, the Tribunal proceeded to determine the compensation payable by the appellants. For this purpose, the Tribunal has fixed the notional income of the claimant/1st respondent at Rs.4,500/- per month. Taking note of the various period of hospitalization, the Tribunal awarded a total sum of Rs.3,26,000/- as compensation as follows:

Partial permanent disability	1,50,000/-
Loss of income	18,000/-
Transportation, nourishment and attendant charges	15,000/-
Pain and sufferings	25,000/-
Loss of future prospects	25,000/-
Medical Expenses	93,000/-

	Rs.3,26,000/-

7. The learned counsel for the appellants would vehemently contend that in connection with the accident in question, the son of the claimant had given a complaint two days after the accident, based on which the case in Crime No.253 of 2012 was registered for the offence under Sections 279 and 337 IPC on the file of the Inspector of Police, Perundhurai Police Station. After investigation, a charge sheet was filed and it was taken on file as C.C.No.5 of 2014 on the file of the learned Special Judicial Magistrate, Perundhurai. The learned counsel invited the attention of this Court to the judgment passed in C.C.No.5 of 2014 dated 27.03.2014 and contended that the Criminal Court after extensive consideration of the evidence had acquitted the first appellant herein, which would stand testimony to the fact that the accident had occurred only due to the negligent driving of the husband of the claimant. Before the Criminal Court, the son of the claimant by name Jaganathan was examined as P.W.1 who deposed that on that date he was also riding a two-wheeler bearing Registration No.TN-33-AX-3988 and he has saw his parents falling down from the two-wheeler after being hit by the first appellant herein. He has stated that after admitting the claimant/his mother in the hospital, he has given the complaint only after two days of the accident. He was also extensively cross examined before the Criminal Court. Further, the claimant



herself was examined before the Criminal Court as P.W.2. The husband of the claimant was examined as P.W.3, the Special Sub-Inspector of Police was examined as P.W.4. The Judicial Magistrate upon considering the oral testimony of the prosecution witness doubted the credibility of the testimony as to the manner in which the accident had taken place. One of the findings rendered by the learned Judicial Magistrate is that if the version of the claimant is true, the two-wheeler driven by her husband could have been damaged on the rear side. On the contrary, the two-wheeler driven by the husband of the claimant had been damaged in the front side. To arrive at this conclusion the learned Judicial Magistrate relied upon the inspection report of the Motor Vehicle Inspector in respect of the two-wheeler driven by the husband of the claimant as well as the first appellant herein. In the Motor Vehicle report relating to the first appellant, it was stated that there was no damages at all. In respect of the two-wheeler driven by Vengadachalam, husband of the injured claimant/1st respondent, it was specifically mentioned in Column 9 thereof "front mud-guard damaged". Therefore, by relying upon the judgment of the Criminal Court in C.C.No.5 of 2014, which was also marked as Ex.R1, the learned counsel would contend that the claimant has failed to prove the manner in which the accident had taken place and therefore the claimant is not entitled for any compensation payable by the appellants. Further, it was brought to the notice of this Court that the first information report was registered two days after the occurrence. Even though, the son of the claimant in his deposition has stated that the police station is located within one furlong from the accident spot, he did not give the complaint immediately.

8. The learned counsel for the appellants also invited the attention of this Court to paragraph 9 of the judgment of the Criminal Court in which reference was made to the deposition of the son of the claimant. It was specifically stated in the cross-examination that he did not witness the occurrence. He also feigned the ignorance as to which portion of the vehicle driven by his father was damaged in the accident. This was specifically referred to by the learned Judicial Magistrate to acquit the first appellant herein. Therefore, the learned counsel for the appellants submitted that based on the weak evidence adduced by the claimant, her son and her husband before the learned Judicial Magistrate, it is very clear that the accident did not occur in the manner as projected in the claim petition. Taking note of the above, the learned Judicial Magistrate acquitted the first appellant. Therefore, the learned counsel for the appellants prayed for setting aside the award passed by the Tribunal.



9. Per Contra, the learned counsel for the 1st respondent/claimant would submit that the 1st respondent was 55 years at the time of accident. Due to the injuries she sustained she could not take up her avocation, as before. Before the Tribunal, documents have been marked to show the injuries sustained by her in the accident. Based on the same, the Tribunal has passed a reasonable award and it does not call for any interference by this Court.

10. The learned counsel for the 2nd respondent would contend that the Insurance Company was rightly exonerated by the Tribunal in as much as there was no valid insurance coverage for the two-wheeler driven by the first appellant at the time of accident. The learned counsel for the appellants therefore prayed for passing for appropriate order in this appeal.

11. Heard the learned counsel on both sides and perused the materials available on record.

12. The learned counsel for the appellants placed heavy reliance on the judgment of acquittal recorded by the Criminal Court to contend that the accident did not take place, as portrayed in the claim petition. Therefore, whether the Judgment passed by the Criminal Court can be taken note of by this Court in this appeal and accept the plea of the appellants is to be examined.

13. It is no doubt true that the first appellant was acquitted by the learned Judicial Magistrate, Perundhurai, by disbelieving the evidence of prosecution witnesses. The witnesses examined before the Criminal Court are (i) son of the claimant (ii) claimant (iii) husband of the claimant and (iv) Special Sub-Inspector of Police attached to Perundhurai Police Station, Erode. The son of the claimant has given the complaint, based on which the case in Crime No.253 of 2012 was registered. Before the Criminal Court, the son of the claimant has stated that at the time of accident, he was riding the two wheeler 100 meters away and he has clearly witnessed the accident. However, in his cross examination, he has stated that he do not know which portion of the vehicle driven by his father got damaged. The claimant and their husband have however reiterated what they have deposed in the chief examination and therefore much credence could not be given to their testimony.

14. Before the Criminal Court, the Motor Vehicle Reports were marked and they were also marked as Exs.P4 and P5 before the Tribunal. This Court has gone through the Motor Vehicle Reports signed by the Motor Vehicle Inspector, Perundhurai. The Motor Vehicle Inspector in the reports has ruled out the possibility of any mechanical defect in both the vehicles in



question. However, it was clearly mentioned that the front side portion of the vehicle driven by the husband of the claimant was damaged. If this is taken note of, this Court can visualise as to how the accident could have happened or in other words, the defense raised by the appellants is probable. It is clear that there was no damages caused to the rear side of the two-wheeler driven by the husband of the claimant. It was the version of the claimant in the claim petition that the appellant hit the two-wheeler driven by her husband at the rear side. If that be so, it is for the claimant to prove the manner in which the accident had taken place. Even though the judgment of the Criminal Court cannot be taken note of while considering a claim petition under Section 166 of the Motor Vehicle Act, clear evidence have been brought out as to how the accident had occurred. It was clearly suggested that the husband of the claimant had severed the vehicle driven by him to the right side of the road and the first appellant was caught unaware when the vehicle was negotiated by the husband of the claimant. Therefore, based on the Motor Vehicle Inspectors Report, it is evident that the accident did not take place in the manner as projected in the claim petition. In such view of the matter, this Court holds that the husband of the claimant has also contributed for the accident equally. While so, the Tribunal is not right in fastening the entire liability on the first appellant. Accordingly, the liability is fixed at 50% on the appellants and 50% on the owner of the two-wheeler/husband of the claimant.

15. As regards quantum, it is seen that the claimant was 55 years old at the time of accident. Even though it is stated that the claimant is earning a sum of Rs.7,000/- per month by engaging herself in cultivating land, milk vending and vegetable vending absolutely there was no scrap of evidence brought forth by the claimant. Therefore, the Tribunal fixed a sum of Rs.4,500/- per month of the claimant. For 50% disability assessed by the Doctor, the Tribunal awarded Rs.1,50,000/-. For loss of income during the period of treatment, the Tribunal awarded Rs.18,000/- for four months. That apart, a sum of Rs.15,000/- was awarded towards transportation and nutrition. Further, Rs.25,000/- was awarded towards pain and sufferings and another sum of Rs.25,000/- towards loss of future amenities. The Tribunal also awarded Rs.93,000/- towards medical expenses which are based on Exs.P9, P10, P13, P14, P15 and P20. On considering the above, this Court is of the view that the compensation awarded by the Tribunal is wholly justified and it does not call for any interference.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,26,000/- together with interest and costs is hereby confirmed. The appellants are directed to deposit 50% of the



award amount, (i.e., Rs.1,63,000/-) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, 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.85 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Perunthurai. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

The Sub-Judge,
The Motor Accidents Claims Tribunal,
Perunthurai.

+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.19234
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.20010
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.20013

C.M.A.NO.832 OF 2018

PM(CO)
PBS/26/04/2022