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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Civil Miscellaneous Appeal No.1165 of 2014
& M.P.No.1 of 2014

The National Insurance Company, Ltd.,
No.165, Nethaji Road,
Manjakuppam, Cuddalore - 607 001. ... Appellant/2nd Respondent

..Vs..

1. N.Pazhaniyammal
2. N.Srimathi
3. N.Sridhar
4. N.Chinna Ponnu [died]
5. Nirmal Kumar Metha

... Respondents/Petitioners 1 to 4 & 1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicle Act against the judgement and Decree dated 24.09.2013 made in M.C.O.P.No.1474 of 2010 on the file of the Motor Accident Claims Tribunal, [Principal District Judge], Cuddalore.

For Appellant : Mr.S.Vadivel

For respondents: Ramya V Rao - R1 to R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the judgement and Decree dated 24.09.2013 made in M.C.O.P.No.1474 of 2010 on the file of the Motor Accident Claims Tribunal, [Principal District Judge], Cuddalore.

2. The case of the claimant before the Tribunal is that on 08.05.2010 at about 12.30 p.m., when the deceased Nagaraj was riding his bi-cyle from north to south direction at his extreme left at Majakuppam, the first respondent's two wheeler bearing registration No.PY -010 - U - 8896 came from the opposite direction in a rash and negligent manner and dashed against the deceased bicycle, due to which he sustained grievous injuries and multiple fractures all over his body. He was immediately

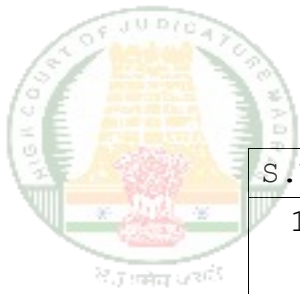


taken to the Government Hospital, Cuddalore and then he was transferred to Government Hospital, Pondicherry and on 20.05.2010 at about 8.15 a.m. he succumbed to his accidental injuries. His bi-cycle was completely damaged. At the time of the accident, the deceased was hale and healthy and he was aged about 44 years and working as a Milk Vendor and earning a sum of Rs.10,000/- per month. The deceased was the only bread winner of the family and due to the accident, the entire family lost their only bread winner and is suffering for their livelihood. He lost his valuables in the accident and more money was spent for his treatment. The claimants are the dependants and legal heirs of the deceased. During the pendency of the claim petition, the fourth claimant died on 21.09.2011 and there is no other legal heir for the fourth claimant except the other claimants. The accident had occurred due to rash and negligent act of the driver of the first respondent's vehicle. Since, the first respondent being the owner of the offending vehicle and the second respondent being the insurer of the said vehicle, both are jointly and severally liable to pay the compensation to the claimants. Hence, the claimants had claimed a compensation of Rs.25,00,000/- from the respondents with interest and costs.

3. The first respondent remained exparte before the Tribunal.

4. The second respondent filed a counter stating that the petition is not maintainable in law and on facts. Denying that the deceased met with the road accident on 08.05.2010 and died leaving behind the claimants as his legal heirs and his bi-cycle was completely damaged, it is stated that the final report filed before the Judicial Magistrate No.II, Cuddalore, indicate that the case has been closed as 'mistake of fact'. Since, there is no accident as stated in the claim petition, this respondent is not liable to pay any compensation to the claimants. The first respondent's vehicle was not involved in the alleged accident. There was one day delay in filing the complaint and it is only an after thought and subsequently a false complaint was made against the first respondent, in order to get unlawful gain, if possible. The age, avocation, income of the deceased are all denied. The first respondent's vehicle was not insured with this respondent and driver of the first respondent was not holding valid and effective driving license, F.C. and permit at the time of the accident. The driver of the first respondent is no way responsible for the accident. Further, the claim of compensation is highly excessive. Hence, the claim petition is liable to be dismissed with costs.

5. The Court below after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.6,90,000/- under the following heads :



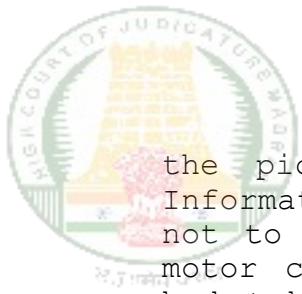
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S.No.	Particulars	Amount in Rs.
1.	Life Dependency of the claimants [Rs.45000/- x 14 = 6,30,000]	6,30,000/-
2.	Loss of consortium to the first petitioner	20,000/-
3.	Love and affection to 2 nd and 3 rd claimants each Rs.10,000/-	20,000/-
4.	Funeral expenses	10,000/-
5.	Transport Expenses	10,000/-
	Total	6,90,000/-

Aggrieved over the same, the appellant has filed this appeal before this Court.

6. The main contention of the appellant is that the Motor Accident Claims Tribunal ought not to have relied on the evidence of P.W.2 and held that the motor cycle bearing registration No.TN-01-U-8896 was not involved in the accident. On the other hand the Motor Accident Claims Tribunal ought to have believed the evidence of R.W.1 and accepted the report filed by him along with enclosures. The reason given for rejecting the evidence of R.W.1 is not sustainable. The Motor Accident Claims Tribunal having believed the evidence of P.W.2 taken a different stand to disbelieve the evidence of R.W.1. When both the above witnesses are independent witnesses, the Tribunal had taken a discriminative view in favour of the claimants in order to award compensation. The Tribunal failed to see that the final report was filed by the police after thorough investigation and after analyzing the evidence of persons concerning the accident. In the said circumstances, the Tribunal ought not to have stated that the Tribunal is not bound by the final report filed by the police.

7. It is the further contention of the appellant is that the Tribunal failed to consider that another motor cycle bearing Registration No.TN-05-D-8787 was involved in the accident and the owner and the insurer were not impleaded in the claim petition even after filing the counter. Hence, the claim petition ought to have dismissed on the ground of non-joinder of necessary parties. Further, the Tribunal failed to see that if at all P.W.2 witnessed the accident, he would have accompanied the injured to the hospital or ought have given a police complaint and hence, the Tribunal ought to have rejected the evidence of P.W.2. The Tribunal also failed to see that the motor cycle belonging to the first respondent was brought into



the picture after taking one day time to lodge the First Information Report. When such is the case, the Tribunal ought not to have expected the appellant to examine the rider of the motor cycle belong to the first respondent. But the Tribunal had taken an adverse inference against the appellant for non-examination of the rider of the motor cycle belonging to the first respondent. Further the Tribunal had not at all discussed the evidence and contents of Exhibits R1 to R5 and the same would go to show that the Tribunal had taken a biased view in favour of the claimants. The appellant is questioning the award of the Tribunal on liability and the appellant had already obtained permission under section 170 of the Motor Vehicles Act and paid the amount as required under the statute. Hence, prayed to set aside the award of the Tribunal.

8. The learned counsel for the second respondent would submit that the tribunal, after considering both the oral and documentary evidence of both sides, has awarded just compensation and hence, the well considered award of the Court below needs no interference.

9. The main contention of the learned counsel for the appellant is that as the First Information Report registered with regard to the accident has been closed as 'mistake of fact', the Tribunal ought not have awarded any compensation to the claimants. It is the further contention of the appellant that the vehicle of the first respondent was not involved in the accident and owner and driver of the vehicle which made the accident have not been impleaded in this matter. A perusal of the records would reveal that the Tribunal after analysing the evidence of P.W.1, who is an independent witnesses to the accident, has come to the conclusion that the accident occurred due rash and negligent driving of the first respondent's vehicle. The Tribunal further held that merely because P.W.2 has not given the complaint and not accompanied the injured to the hospital, the same is not sufficient to disprove the version of P.W.2. Since P.W.2 is not a close relative of the deceased, there is no necessity for P.W.2 to give the complaint about the accident and to accompany the injured person to the hospital. Finally, the Tribunal has held that if really the first respondent's vehicle's driver is not involved in the accident, he would have taken steps to quash the First Information Report and the Final Report and rejected the contentions of the second respondent.

10. It is to be noted that even if the investigation officer has referred the case, it is not sufficient to accept the contention of the second respondent. Further the second respondent has not adduced any rebuttal evidence to establish that the first respondent's vehicle driver is not involved in



the accident and he has not examined the first respondent to prove his contentions. Therefore, non joinder of necessary parties is not applicable to the facts of the present case. The Tribunal after analysing the entire materials available on record has awarded just and reasonable compensation. Therefore, this Court is of the opinion that there is no valid ground to interfere with the award passed by the Tribunal. Hence, there is no merits in this appeal and the same is liable to be dismissed.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12. The appellant is directed to deposit the entire amount awarded by the Tribunal, if not already deposited, together with interest at 7.5% per annum from the date of the Claim Petition till the date of deposit, less the amount, if any, already deposited to the credit of M.C.O.P.No.1474 of 2010 on the file of the Motor Accident Claims Tribunal, [Principal District Judge], Cuddalore, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the respondents through RTGS, within a period of two weeks.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

vrc

To

The Motor Accident Claims Tribunal,
[Principal District Judge], Cuddalore.

Copy To

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

+1cc to Mr.S.Vadivel, Advocate SR.No.11828
+2ccs to Mr.Ramya V Rao, Advocate SR.No.11928

Civil Miscellaneous Appeal No.1165 of 2014

PA (CO)
GMY (08/06/2022)