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C.M.A.No.3115 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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1.Abinaya
2.Minor.Sriharasan
3.Minor.Vimalaharasan
4.Rajammal
5.Mariyammal
(Minor Appellants are rep. by next friend,
guardian mother Abinaya)

... Appellants

Vs.

1.G.Aishwarya
2.The Manager,
ICICI Lambard General Insurance Company Limited,
Represented by its Manager,
Office at Swarnambigai Plaza,
Near New Bus Stand, Omalur Main Road,
Salem-636009

... Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 04.01.2020 passed in M.C.O.P.No.945 of 2018 by the Special District Judge, MACT Tribunal, Salem.

For Appellant : Mr.V.Vijayakumar

For R2 : Mr.B.Siva Kollapan

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The above Civil Miscellaneous Appeal has been preferred by the claimants against the dismissal order dated 04.01.2020 made in M.C.O.P.No.945 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem dated 04.01.2020.

2.The claimants before the Tribunal claimed a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) for the death of one Sivamalai who died in the accident that occurred on 12.04.2018.



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3. It is the case of the claimants that on 12.04.2018 at about 8:30 A.M, the deceased Sivamalai was riding his Hero Honda Splendor Motorcycle bearing Registration No.TN 30 AP 1071 in Bangalore to Salem National Highways Road from the side of Omalur towards Salem. While he was carefully driving the motor cycle on the left side of the road after a short distance from the Karuppur Government Engineering College Main gate towards Salem, a Chevrolet Cruze Car bearing Reg.No.KA 41 MA 9927 driven by the first respondent came on the same direction of the motor cycle from behind at a very high speed in a rash and negligent manner without blowing horn and dashed against the said Hero Honda Splendor Motor Cycle bearing Reg.No.TN 30 AP 1071. In this accident the said Sivamalai fell down on the road and sustained serious injuries over head and in the vital parts of the body and died on the spot.

4.The first respondent herein remained ex-parte before the Tribunal.

5.The second respondent/Insurance Company filed a Counter statement denying the averments made in the claim petition. They stated that the



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Sooramangalam Police Station had originally registered FIR in Crime No. 391 of 2018 on 12.04.2018 against the driver of the first respondent as accused. But after due enquiry, the police filed a final report on 10.07.2018 before the Judicial Magistrate No.II, Salem and referring the case as Mistake of Fact. The appellants are well aware of the said facts. As such, it is crystal clear that first respondent's driver is not responsible for the said accident. Hence, the 2nd respondent is not liable to pay compensation to the appellants. As per the final report filed by the Sooramangalam Police, the deceased Sivamalai rode the two wheeler bearing Registration No.TN 30 AP 1071 in a rash and negligent manner and he came from Omalur to Salem National Highway on the right hand side of the road, without caring for the road traffic. When the deceased came near Government Engineering College, he had hit behind the left side of the first respondent's car and due to the same the deceased fallen in the road. The accident had occurred only due to the careless and negligent act of the deceased. Hence, the driver of the first respondent is not responsible for the alleged accident.



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6.Before the Tribunal, the appellants examined two witnesses as PW1 and PW2 and marked five documents as Ex.P1 to Ex.P5. The 2nd respondent examined two witnesses as RW1 and RW2 and marked one Document a Ex.R.1. Court documents were marked as Ex.C.1 to Ex.C.5.

7.The Tribunal considering the pleadings oral and documentary evidence held that the appellants failed to establish that the deceased died due to the rash and negligent driving by the driver of the first respondent. The Tribunal found that the Sooramangalam Police who investigated the FIR in Crime No.391 of 2018, after thorough investigation found that the deceased was a tort feisor and had filed a negative final report before Judicial Magistrate-II, Salem referring the case as mistake of fact. The Tribunal also relied upon the report of the Police to conclude that the deceased was at fault and he had no valid license. The Tribunal disbelieved the evidence of P.W.2, the brother of the deceased who was examined as an eyewitness to prove the claim of the claimants. The Tribunal therefore, dismissed the claim petition.



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8. Against the said order of dismissal dated 04.01.2020 made in M.C.O.P.No.945 of 2018 the appellants have filed the present appeal.

9. The learned counsel for the appellants submitted that the final report of the Police is not a conclusive proof for fixing negligence on the deceased. The Tribunal ought to have considered the evidence placed before it as regards negligence. The learned counsel further submitted that P.W.2 who is an eye witness to the accident had cogently stated that the driver of the first respondent was driving the vehicle in a rash and negligent manner and caused the accident and hence prayed for allowing the appeal and awarding compensation.

10. The learned counsel for the respondent/insurance company submitted that the final report filed by the police has been made after thorough investigation by taking into account, the oral and documentary evidence collected by the police. The police relied upon the reports of the Motor Vehicles Inspector which would suggest that the accident could not



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have taken place in the manner alleged by the appellants. Further, the report of Motor Vehicles Inspector would show that the car was damaged near the left rear wheel and the bike was damaged on the front side. Therefore, the car could not have dashed the Motor cycle from behind. The Tribunal had correctly appreciated the evidence on record and found that the negligence has not been established by the appellants.

11.We have perused the materials on record and considered the submissions made by the learned counsels on either side.

12.We find that the Tribunal has relied upon the negative final report in which the police concluded that the driver of the car was not guilty of either rash or negligent driving. We are of the view that the final report of the police cannot be the sole basis for concluding that the driver of the first respondent was not liable for rash and negligent driving. Firstly, the finding in the final report is not binding on the Tribunal and the Tribunal has to independently assess the evidence on record to find out if the appellants have proved



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negligence on the part of the driver of the offending vehicle. Secondly, the negligence in a crime and negligence in a tort have to be appreciated differently. Under Section 304 (A) of IPC gross negligence or gross rashness has to be established. Whereas a tort negligence need not be gross. Therefore, the finding of the Police in the Final Report cannot be the sole basis for rejecting the claim petition. The 2nd respondent - Insurance Company has relied upon Ex.C.5 copy of the report of the Motor Vehicles Inspector to show that there was a damage in the left rear wheel of the car and on the front side of the two Wheeler to show that the accident could not have taken place in the manner alleged by the appellants. However, we find that the Motor Vehicle Inspector has not been examined by the 2nd respondent- Insurance Company. Therefore, we cannot rely upon the report of the Motor Vehicles Inspector to infer that the deceased was the tortfeasor. Further, we find that P.W.2 who is an eyewitness, as per the appellants has stated in his evidence that it was the driver of the first respondent who drove the offending car in a rash and negligent manner. We find that the evidence of P.W.2 is acceptable and nothing has been elicited in the cross examination to



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disbelieve his evidence. We also find that the, driver of the first respondent offending vehicle has not been examined by the respondents to counter the evidence of P.W.2. Therefore, we are of the view that the evidence of P.W.2 can be accepted to hold that the accident took place due to the negligence of the driver of the first respondent. The 2nd respondent has not denied that the car belonging to the 1st respondent was insured with them and policy was in force at the time of accident. Hence, the 2nd respondent, being the insurer of the car is liable to pay the compensation to the appellants.

13.In view of the above finding, we will have to determine the compensation payable to the appellants. The deceased was aged 35 years at the time of the accident as per Ex.P2 post mortem certificate. According to the appellants at the time of accident, the deceased was working as salesman and was earning a sum of Rs. 15,000/- per month. But they have not filed any documents to prove the same. The accident took place in the year 2018. In the absence of any evidence to show the income of the deceased, considering the age, year of the accident and the nature of work done by the deceased, we



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deem it appropriate to fix Rs.15,000/- (Rupees Fifteen Thousand only) as monthly income of the deceased at the time of the accident as the deceased was working as a salesman in a shop. Taking into consideration the age of the deceased, 40% enhancement is granted towards future prospects and multiplier 16 is applied. Since the dependants are five in numbers, 1/4th of his income has to be deducted towards his personal expenses. Hence, the compensation under the loss of dependency comes to be Rs.30,24,000/- [Rs.15,000+ 6000 [15000 X 40%] X 12 X 16 X 3/4].

14.The 1st appellant/wife of the deceased is entitled to Rs.40,000/- (Rupees Forty Thousand only) towards for loss of consortium. The minor appellants 2 and 3 who are the son of the deceased are entitled to Rs.40,000/- (Rupees Forty Thousand only) each towards the loss of parental consortium and the appellants 4 and 5 who are parents of the deceased are entitled to loss of filial consortium of Rs.40,000/- each. The appellants are entitled to Rs.15,000/-(Rupees Fifteen Thousand only) towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.15,000/- for the transport charges to



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the Hospital. Thus, the compensation payable to the appellants is awarded in the following manner:

Sl. No.	Description	Amount awarded by this Court (Rs.)
1	Loss of dependency	30,24,000/-
2	Loss of consortium to the 1 st appellant	40,000/-
3	Loss of parental consortium to the 2 nd and 3 rd appellants	80,000/- (40,000 X 2)
4	Loss of filial consortium to the 4 th and 5 th appellants	80,000 (40,000 X 2)
5	Funeral Expenses	15,000/-
6	Loss of estate	15,000/-
7	Transport Charges	15,000/-
Total		32,69,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.32,69,000/- (Rupees Thirty Two Lakhs Sixty Nine Thousand only) is awarded as compensation to the appellants along with interest 7.5% from the date of petition till the date of deposit. Out of the award amount of Rs.32,69,000/-, the 1st appellant is entitled to Rs.8,69,000/- the minor appellants 2 and 3 are each entitled to a sum of Rs.8,50,000/- and the appellants 4 and 5 are each entitled to a sum of Rs.3,50,000/-. The 2nd respondent/Insurance Company is directed to deposit the entire amount awarded by this court along with interest and costs within a period of six



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weeks from the date of receipt of copy of this judgement. On such deposit, the Appellants 1,4 and 5 are permitted to withdraw their respective shares on the award amount as apportioned above, along with proportionate interest and costs. The share of minor appellants 2 and 3 is directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant/mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in 3 months for the welfare of the minors. No costs.

[V.M.V.,J]

[S.M.,J]

19.10.2022

To

- 1..The Special District Judge, MACT Tribunal, Salem
- 2.The Section Officer
VR Section
High Court
Madras.



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**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

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