



C.M.A.No.1499 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1499 of 2018

and

C.M.P.No.12857 of 2018

M/s.Iffco Tokio General Insurance Company Limited,
Tulsi Chambers, 3rd Floor,
No.95, T.V.Samey Road,
R.S.Puram,
Coimbatore – 641 002.

... Appellant

Vs.

1. R.Anjali

2. M.A.Lathif

3. Rajaganapathi

4. M/s.United India Insurance Company Limited,
Oriental Complex,
No.77,A.A.Street,
Salem-1.

5. Rajathi

6. Marimuthu

... Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgment and decree made in M.C.O.P.No.1803 of 2008 dated 19.01.2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : M/s.C.Harini
for M/s.M.B.Gopalan Associates

For R1 and R4 : No appearance

For R2 and R3 : Notice dispensed with

For R5 and R6 : M/s.S.Ravichandran

J U D G E M E N T

The Insurance Company who is the second respondent in M.C.O.P.No.1803 of 2008 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem, has filed the present appeal. The first respondent herein is the wife of the deceased and she had filed the claim petition against the driver of the Auto and Insurance Company of Auto as well as the two wheeler. Mother and father of the deceased were shown as the fifth respondent and sixth respondent herein respectively.



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2. After enquiry, the Tribunal fixed the liability on the driver of the Auto, which was insured with the appellant/Insurance Company and directed the Insurance Company to pay the compensation. Challenging the said Award, the appellant/Insurance Company has filed the present appeal.

3. On 15.08.2007 at about 6.00 pm, while the deceased Rajkumar was riding his Motor Cycle bearing Registration No.TN-30 J-7391 from Ayyothiyapattinam to Belur, near Mootakadai, the driver of the L.M.V. Three wheeler bearing Registration No.TN.30-H-4840 came in opposite side in a rash and negligent manner and hit against the deceased Rajkumar. Hence the accident had occurred.

4. Learned counsel for the appellant/Insurance Company submitted that complaint had been given by the driver of the Auto and a case was registered against the deceased. The driver of the Auto was examined as R.W.1, who has categorically stated that the rider of the two-wheeler drove his vehicle in a rash and negligent manner and dashed



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on the left side of the Auto. The Police Officer was examined as R.W.2 and the Insurance Company official was examined as R.W.3 and the mother of the deceased was examined as R.W.5. Investigation report, charge sheet, rough sketch and observation mahazar clearly show that the accident had occurred only due to rash and negligent driving of the two wheeler by its rider and a case was also registered against him. Since the rider of the two wheeler died, the case was closed as “abated”. The Tribunal failed to consider that both the vehicles dashed against each other and hence, the Tribunal ought to have fixed the contributory negligence. The entire liability had been fixed against this appellant alone. The Tribunal erroneously held that the accident had occurred only due to rash and negligent driving of the driver of the Auto, which warrants interference.

5. Learned counsel for the respondents 5 and 6 submitted that due to accident, the rider of the two wheeler sustained injuries and he was brought to the hospital. The Auto driver has given a false complaint as against the rider of the two wheeler. After investigation, the case was



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closed. The investigating officer was not examined and only the fourth respondent/Insurance Company had summoned the documents, for which, R.W.2 brought the document and he was not the “authorised person” to tender any evidence. Further, he submitted that the Motor Vehicle Report of the Auto was not marked. The Tribunal has held that, since the Motor Vehicle report was not marked, it is difficult to ascertain as to whether the Auto was coming on the right/correct direction as stated by R.W.1 being the driver of the Auto or the rider of the two-wheeler ie., the deceased, was coming on the wrong direction. In the absence of Motor Vehicle report, evidence of R.W.1/driver of the Auto cannot be taken as it is. The Tribunal has held that evidence of P.W.2, who is one of the eye-witness had clearly stated that the accident had occurred only due to rash and negligent driving of the Auto driver, and not the rider of the two-wheeler. F.I.R was registered as against the deceased, who was the rider of the two wheeler. No contra evidence was produced against the evidence of P.W.2-eye witness and more particularly, non-production of M.V. Report is fatal to the case of the appellant/Insurance Company. Hence, the Tribunal rightly held that the



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accident had occurred only due to rash and negligent driving of the Auto driver. There is no merit in the case and this Appeal may be dismissed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The accident had occurred between the Auto and two-wheeler, both riding on opposite directions. The second respondent herein is the owner of the Auto. The driver of the second respondent drove the Auto bearing Registration No.TN-30-H-4840, being a LMV three wheeler. The deceased was riding the two wheeler bearing Registration No.T.N.30-J-7391. In the claim petition, the claimant has clearly stated that, on 15.08.2007 at about 6.00 pm, while the deceased Rajkumar was riding his motor cycle bearing Registration No.TN-30 J-7391 from Ayyoithiyapattinam to Belur, near Mootakadai, at that time, the driver of the L.M.V. Three wheeler bearing Registration No.TN.30-H4840, came on the opposite side in a rash and negligent manner and hit the deceased Rajkumar. But the Police has registered the case against the deceased. In



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order to substantiate her contentions, the claimant/wife was examined as P.W.1 and one of the eye witnesses was examined as P.W.2, who has categorically stated in his evidence about the manner of the accident and it had occurred due to rash and negligent driving of the driver of the Auto and not the rider of the two-wheeler. The presence of P.W.2 was not challenged and there is no reason to discard the evidence of P.W.2. Further it cannot be stated that P.W.2 is not the eye witness. The appellant/Insurance Company had taken the stand that the accident had occurred only due to rash and negligent riding of the rider of the motor cycle bearing Registration No.TN-30 J-7391 and it came from the opposite direction and hit the three-wheeler (Auto) which belonged to the second respondent herein. Further contention taken by the appellant/Insurance company is that the F.I.R was registered only as against the rider of the two-wheeler. The appellant/Insurance company had not examined any independent eye witness, even though the appellant/Insurance company mainly relied on the evidence of R.W.1, who is the driver of the three wheeler. Admittedly, R.W.1 has not produced M.V. Report of the three-wheeler. R.W.2 is the Sub Inspector



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of Police and he has stated that he prepared the rough sketch alone and the Inspector of Police only investigated the matter. The said Inspector of Police, who investigated the case, was not examined. Summons have also been issued only to produce the documents and not for tendering evidence. The Investigating Officer has also not been examined before the Tribunal to substantiate the materials produced by R.W.2, R.W.3 and R.W.4 who are not the eye witnesses. R.Ws.2 to 4 have given the evidence only based on the records. The F.I.R was registered against the deceased and since the deceased died, and taking advantage of the same, the Auto driver registered the case against the deceased. Since the case is registered only against the deceased, but the Police had conveniently closed the case as “abated”.

8. Taking into consideration the evidence of P.W.2, who is stated to be the eye witness and further the M.V report of the Auto has also not been produced before the Tribunal, the Tribunal has held that, in the absence of MV. Report, evidence of R.W.1 cannot be taken into account. There is no perversity in the points raised by the Tribunal



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regarding the negligence. Except the evidence of R.W.1, no other evidence has been adduced to show that the accident had occurred only due to rash and negligent driving of the rider of the two-wheeler, whereas, P.W.2 has clearly stated in his evidence that the accident had occurred only due to rash and negligent driving of the driver of the Auto/three wheeler. In order to substantiate the contention of R.W.1 who is the informant of the complaint and who is also the owner of the three wheeler/Auto cum driver, he has not produced M.V. Report. Hence the Tribunal has taken the adverse inference. In the absence of M.V report, it cannot be stated that the accident had occurred due to head-on-collision, or both have contributed their negligence for the accident.

9. Therefore, under the above facts and circumstances of the case, and also from the evidence of P.W.2 and R.W.1, who has not substantiated his contention by producing M.V. Report, this Court finds that the accident had occurred only due to rash and negligent driving of the driver of the Auto/three wheeler.



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10. As far as the liability is concerned, since the Auto was insured with the appellant, the appellant/Insurance Company is liable to pay the compensation. At the time of accident, the deceased was aged about 26 years. Though the claimant had not produced any proof for the income of the deceased, the Tribunal has rightly fixed the notional income and adopted “multiplier method”. The claimant has not filed any appeal for enhancement of compensation.

11. In view of the above facts and circumstances of the case, this Court finds that the impugned Award passed by the Tribunal is “just compensation” and there is no merit in this appeal, which is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. Motor Accidents Claims Tribunal,
Special District Court,
Salem.
2. The Section Officer,
VR Section,
High Court, Madras.



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P.VELMURUGAN, J.

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