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C.M.A.No.1568 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1568 of 2018

1.S.Murali

2.D.Sivasankari

... Appellants

Vs.

1.S.Ramesh

2.United India Insurance Co. Ltd.,
No.35-J, M.B.T. Road,
Gandhi Chowk,
Ranipet – 632 401.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 11.04.2018 in M.C.O.P.No.2498 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2, Motor Accidents Claims Petition) Small Causes Court, Chennai.

For Appellants : Ms.R.Renuka Devi

For Respondents : R1 – NRN

Mr.D.Bhaskaran for R2

J U D G M E N T

This appeal has been filed by the appellants/ claimants



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challenging the judgment and decree passed in M.C.O.P.No.2498 of 2013 dated 11.04.2018 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2, Motor Accidents Claims Petition) Small Causes Court, Chennai.

2.The brief facts of the case is that on 20.05.2010 at about 4.45p.m., the deceased Sudeep Nandan was travelling as a pillion rider along with his father/ first appellant in a two wheeler bearing Registration No.TN 25 X 2355 from Tambaram GST Road at "O" point. At that time a lorry bearing Registration No.TES 5505 came in a rash and negligent manner in front of the two wheeler and suddenly took reverse and hit the two wheeler, due to which, the deceased lost his life.

3.Thereafter, the parents of the deceased Sudeep Nandan/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.7 Lakhs as compensation for the death of their son. After adjudication, the Tribunal awarded a sum of Rs.5,00,000/- as compensation and fixed 50% negligence on the part of the first appellant and directed that the appellants are entitled to a sum of Rs.2,50,000/- as compensation along with interest at the rate



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of 7.5% per annum from the date of numbering of the petition (i.e., 26.04.2013) till the date of realization with costs. Aggrieved by the same, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants submitted that the deceased was 3-1/2 years old child and he travelled along with his father as a pillion rider, however, all of a sudden, the offending vehicle applied sudden brake without any indication and thereby the accident happened. The learned counsel further submitted that F.I.R. was registered as against the driver of the vehicle owned by the first respondent and further submitted that R.W.1 in his evidence deposed that the driver of the vehicle owned by the first respondent applied sudden brake without any indication and thereby the accident happened, however, the Tribunal fastened 50% contributory negligence on the part of the first appellant, which is not sustainable one.

5.Per contra, the learned counsel appearing for the second respondent Insurance Company submitted that F.I.R. reveals that the first appellant drove the motorcycle keeping the 3 years old child as a pillion rider without any care and dashed against the rear side of the



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vehicle owned by the first respondent. The said fact was properly considered by the Tribunal and the Tribunal rightly fixed 50% contributory negligence on the part of the first appellant, which warrants no interference.

6.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

7.Admittedly, on 20.05.2010 at about 4.45p.m., the deceased minor Sudeep Nandan was travelling as a pillion rider along with his father/ first appellant in a two wheeler from Tambaram GST Road at "O" point. At that time the lorry owned by the first respondent and insured with the second respondent came in a rash and negligent manner in front of the two wheeler and applied sudden brake without any signal. The guilt was admitted by the driver of the lorry owned by the first respondent and R.W.1 deposed about the same before the Tribunal. Even then, the Tribunal fastening 50% contributory negligence on the part of the first appellant is not sustainable one. Hence, this Court fix the entire negligence on the part of the driver of the vehicle owned by the first respondent.



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8.Insofar as the quantum of compensation is concerned, the tribunal after considering all the factual aspects, awarded the compensation which, in the opinion of this Court, is just and reasonable and warrants no interference.

9.The civil miscellaneous appeal is allowed on the above terms. The judgment and decree passed in M.C.O.P.No.2498 of 2013 dated 11.04.2018 by the Motor Accidents Claims Tribunal (Special Sub Court No.2, Motor Accidents Claims Petition) Small Causes Court, Chennai, is modified only in respect of the negligence aspect.

10.The second respondent Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the



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appeal. The appellants/ claimants are directed to pay the requisite Court fee for the compensation amount, if required.

11.The civil miscellaneous appeal is allowed. No costs.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal
(Special Sub Court No.2, Motor Accidents Claims Petition)
Small Causes Court, Chennai.

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