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C.M.A. No. 1689 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1689 of 2021
and C.M.P. No. 8943 of 2021

New India Assurance Company Limited,
12, New Hospital Road,
Gobichettipalayam,
Tamil Nadu 638 402

... Appellant / 3rd Respondent
Vs.

1. Nagaraj ... 1st Respondent / 1st Respondent
2. Raghavendiran ... 2nd Respondent / 2nd Respondent
3. Kavitha
4. Minor Dushyanth
5. Minor shree Atchayaa ... 3 to 5 Respondents / Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 07.03.2020 passed in M.C.O.P. No.23 of 2018 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Hosur.

For Appellant	:	M/s. S.R. Sumathy
For R1	:	No Appearance
For RR 2 to 5	:	Mr. S. Velmurugan



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability fixed as per the award in M.C.O.P. No.23 of 2018, dated 07.03.2020 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Hosur.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 14.08.2017, the deceased Srinivasan was riding a two wheeler bearing Registration No.TN-70-B-1338 on the Hosur to Krishnagiri High way, while he reached the service road near Seethram medu Bus Stop, Hosur, a lorry bearing Registration No.TN-36-AZ-3648 driven by its driver in a rash and negligent manner and without any signal, suddenly moved the stationed lorry in the service road, hence, the deceased not be to ascertain the sudden moving of lorry hit on its backside and sustained grievous injuries and succumbed to the same in the hospital. A criminal case was registered in Cr.No.388/2017 U/s.279 and 304(A) of I.P.C on the file of Hudco Police Station. For the loss of deceased Srinivasan, the claimants



have filed claim petition seeking compensation for a sum of Rs.30,00,000/- under section 166 of the Motor Vehicles Act.

4. The third respondent - insurance company filed a counter and stated that the driver of the lorry has parked the lorry on Hosur to Krishnagiri road on extreme left side of the service road area, with signal lights and affixed reflection board on the back side of the lorry and the accident was happened only due to the negligence on the part of the deceased, who ridden the two wheeler in a rash and negligent manner, hit on the backside of the parked lorry. The criminal case was also registered only against the rider of the two wheeler. Both the deceased as well as the driver of the lorry has no valid driving licence, at the time of accident and disputed the age, occupation and income of the deceased, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.15 were marked. On the side of the respondents, R.W.1 was examined and Exs.R.1 to R.5 were marked.



6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the negligence on the part of the driver of the first respondent's lorry is responsible for the occurrence and fixed the liability on the part of the third respondent - insurance company to indemnify the first respondent and to pay the compensation to the claimants. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.16,27,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the award, the insurance company has filed this appeal challenging the liability fixed on them.

8. The learned counsel appearing for the insurance company submitted that in F.I.R, it is recorded that the deceased himself has negligently ridden the two wheeler and dashed against the lorry, which was moving in front of him. He has not even maintained a proper distance to avoid any contingency, which is necessary to avoid negligence. In this case, the deceased himself has caused the accident, hence the claimants are entitled for claiming compensation from the insurance company herein,



hence prays to set aside the award.

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9. Per contra, the learned counsel appearing for the claimant submits that there is ample evidence adduced by the eye witness that the lorry was running before the deceased and suddenly, stopped in the middle of the service road. Since, the lorry driver has negligently parked the lorry in the middle of the road, the accident has occurred and the Tribunal has rightly appreciated the evidences placed on record and awarded a just compensation, hence prays to confirm the award.

10. Heard the submissions made on both sides and perused the materials available on record. The major contention raised by the appellant - insurance company is the liability fixed on them, on the ground that the accident was taken place only due to the negligence on the part of the deceased herein.

11. The evidence of P.W.1, the wife of the deceased and the first claimant herein has stated that her husband was riding a two wheeler in the service road with due care and caution and it was raining at the time of



occurrence, which took place at 09:15 PM. P.W.2 - who is the eye witness to the occurrence, has stated that the lorry was running in front of the deceased and suddenly, stopped in the middle of the service road and the deceased has hit on the backside of the lorry and sustained grievous injuries. The combined reading of the evidences of P.W.1 and P.W.2 shows that, the claimants contend that the deceased was riding a two wheeler behind the lorry around 09:15PM on a rainy day and the lorry driver has stopped the lorry suddenly, without any signal on the middle of the service road, which invited the occurrence.

12. The Apex Court judgment in *Nishan Singh and Ors. Vs. Oriental Insurance Company Ltd. and Ors.,[2018 ACJ 1466]*, has held that it is mandatory on the part of the rider of the motorcycle to maintain a safe and proper distance between the on-going vehicles in order to meet any contingency or emergency stoppage of the on-going vehicle. On analysing the evidences of P.W.1 and P.W.2 and also the recitals in the Ex.P.1- FIR and all other connected records including the Ex.R4- Inquest report shows that the deceased has not properly maintained a safe distance between the lorry, which requires to avoid the accident.



13. The evidence also shows that the lorry was originally parked and while, it was moved, the driver of the lorry has stopped the lorry in the middle of the road. It is admitted case that the occurrence has taken place during night hours and it was raining at the time of occurrence, hence this Court is of the view that the lorry driver, has not driven the lorry with due care and caution and more particularly, he moved the parked lorry to the service road without seeing the on-coming vehicle and applied brake, which resulted in accident, hence both the deceased as well as the lorry driver are responsible for the accident.

14. Considering the fact that it was raining and the occurrence has taken place at the night time, the rider of the two wheeler could not have anticipated a sudden stoppage of the lorry, which resulted in accident, hence this Court is of the view that the finding of the Tribunal that only the lorry driver is responsible for the accident is not proper. Based on the above discussions, this Court is inclined to fix contributory negligence to the extent of 30% on the part of the deceased. Accordingly, this Court modifies the finding of the Tribunal that lorry driver is alone responsible for the accident.



15. With regard to quantum of compensation is concerned, the insurance company has not raised any grievances and this Court on perusal of the award shows that the Tribunal has awarded a just compensation, hence this Court is inclined to confirm the compensation awarded under various heads by the Tribunal. However, this Court fixed contributory negligence of 30% on the part of the deceased as stated above, the claimants are entitled to get only 70% of the total compensation, as awarded by the Tribunal (i.e., Rs.16,27,000/- X 70% = Rs.11,38,900). Whereas the other aspects in the award of the Tribunal is hereby confirmed.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,27,000/- is hereby reduced to **Rs.11,38,900/- [Rupees Eleven Lakh Thirty Eight Thousand and Nine Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization, excluding the default period, if any. The appellant - insurance company is directed to deposit the amount awarded by this Court along with interest and costs, 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



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of M.C.O.P. No.23 of 2018 on the file of the Additional District Judge,
Motor Accidents Claims Tribunal, Hosur. On such deposit, the claimants
herein are permitted to withdraw the award amount now determined by this
Court along with interest and costs, as per the apportionment fixed by the
Tribunal. Consequently, connected civil miscellaneous petition stands
closed. There shall be no order as to costs in the present appeal.

29.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Trial Judge,
Motor Accidents Claims Tribunal,
Additional Subordinate Court,
Virudhachalam.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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