



C.M.A.No.2734 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.03.2023

Delivered on: 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.2734 of 2019

United India Insurance Company Ltd
Dr.Shankaran road
Namakkal

... Appellant

Vs.

1.Selvam

2.Chitra

3.Karthick

4.Thirumalvalavan

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 23.11.2018, made in M.C.O.P. No.1527 of 2015 on the file of the Motor Accidents Claims Tribunal,(Additional District Judge), Namakkal.



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For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Ma.P.Thangavel for R1 to 3

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award dated 23.11.2018 in M.C.O.P.No.1527 of 2015 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Namakkal), awarding a sum of Rs.11,59,200/- together with interest at the rate of 7.5% per annum, at the instance of the 2nd respondent before the Tribunal viz., the insurance company.

2. Brief facts necessary for adjudicating the grounds raised before this Court are as follows:

The claimants viz., the respondents 1 to 3 herein sought for a compensation of Rs.40,00,000/- for the death of Mr.Mohankumar, S/o Mr.Selvam in a road accident on 04.09.2015. It is the case of the claimants that the deceased was travelling in his two wheeler on Salem-Namakkal National Highway and at about 08.30 a.m, a lorry bearing registration No.

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TN-28-AE-1576, proceeding in the same direction and before the two wheeler driven by the deceased, without any signal applied sudden brake as a result of which the deceased suffered head injuries and that he was subsequently admitted to hospital and treated. However, the said Mohankumar succumbed to the injuries suffered in the accident and died on 26.09.2015. The claimants are the father, mother and sister of the deceased. It is further stated that deceased Mohankumar was aged only 19 years and he was pursuing his second year B.E course. Compensation was claimed under various heads totalling in all Rs.40,00,000/-.

3. The appellant herein as the 2nd respondent filed a counter denying that the driver of the lorry was at fault. The counter also put forth an interesting contention that the FIR was lodged by the friend of the deceased himself, who infact was a pillion rider along with the deceased and that he having suffered injuries, has filed an independent claim petition in M.C.O.P.No.283 of 2016. It is further contended in the counter that in the said FIR it has been mentioned that the deceased tried to ride the bike in



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between the lorry and another private college bus and therefore, the deceased contributed to the accident by his rash and negligent driving. It is also stated that even though the rules permit only one pillion rider, the deceased was driving the bike with two pillion riders, both of whom have filed independent claim petitions alleging that the deceased Mohankumar alone was at fault. In short, the appellant contended that they are not liable to compensate the fanciful claims made by the respondents 1 to 3 herein.

4. Before the Tribunal, the father of the deceased the 1st respondent herein was examined as P.W.1 and an eye witness, Mr.Manivannan was examined as P.W.2. Exs.P.1 to 17 were marked on the side of the respondents. On the side of the appellant one Mr.Palanichmay, Deputy Manager of the insurance company was examined as R.W.1 and Exs.R.1 and R.2 were marked on the side of the appellant.

5. The Tribunal after considering the oral and documentary evidence available on record and with regard to the rival submissions made by the



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counsel on either side, held that the insurance company had not proved, by examining any eye witness, with regard to the fastening of entire liability on the deceased. However, the Tribunal taking note of the evidence held that the deceased contributed to the accident and fixed 50% towards contributory negligence. With regard to the compensation to be awarded to the respondents herein, the Tribunal fixed the notional income of the deceased at Rs.8,400/- per month and applied a multiplier of 18 and awarded a sum of Rs.18,14,100/- towards loss of income. The Tribunal awarded Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.4,69,000/- towards medical bills/expenses and Rs.5,000/- towards transportation expenses, totalling in all Rs.23,18,400/- and after factoring contributory negligence of 50%, the award was finally restricted to Rs.11,59,200/-.

6. This Court has heard Mr.D.Bhaskaran, learned counsel for the appellant and Mr.Ma.P.Thangavel, learned counsel for the respondents 1 to 3.



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7. The learned counsel for the appellant made emphasis on a few key points which according to him would warrant setting aside the entire award passed by the Tribunal, excepting for may be, no fault liability, which alone could be awarded to the respondents. The submission of the learned counsel for the appellant in this regard is primarily placing reliance on the FIR. According to the learned counsel for the appellant, firstly the FIR was lodged by none else than the friend of the deceased who was travelling in the very same two wheeler at the time when the accident occurred and that the said Jeevanandham, one of the two pillion riders should have been examined by the respondents and his non examination was fatal to the claims made by the respondents.

8. Secondly, the learned counsel for the appellant also submitted that even from the contents of the FIR, it is very clear that the accident occurred only because of the rash and negligent driving of the deceased Mohankumar and therefore, when he was at fault, there is no question of directing the insurance company to pay any compensation to the respondents, his



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dependants.
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9. Learned counsel for the appellant in support of his contentions relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.10145 of 2016 in *Nishan Singh and Ors Vs. Oriental Insurance Company Ltd and Ors*, the Hon'ble Supreme Court, in a similar factual matrix where a truck driver allegedly applied sudden brake, which resulted in the Maruti car coming behind it colliding and causing the accident, held that the Maruti car had not maintained safe distance from the truck and was being driven in a rash and negligent manner and that the accident occurred only because of the same. However, in the said case before the Hon'ble Supreme Court evidence was available in the form of site plan paper showing the breadth of the road, factum of the Maruti car being driven at a distance of about 10 to 15 feet behind the truck when the breadth of the road was only 14 feet to enable finding and holding that it was a clear case of the truck not being driven rashly or negligently and that the entire fault was on the part of the driver of the Maruti car. The facts of the said case are distinguishable on facts of the



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case on hand. In this case, the evidence of the eye witness, P.W.2 clearly supports the case of the claimants. Moreover, as the Tribunal has also rightly found the Investigating officer was not examined and the final report was marked only through the appellant's Deputy Manager and the report also did not contain any enclosures or annexures to support the findings of the final report.

10. Per contra, the counsel for the respondents/claimants sought to meet the arguments of the counsel for the appellant, contending that both the pillion riders, including the one who lodged the FIR had themselves preferred independent claims for the injuries suffered by them in the accident and naturally they would have to make allegations against the deceased who was riding the two wheeler to enable them to claim compensation. Therefore, the learned counsel for the respondents also submitted that FIR is not sacrosanct and it cannot form the only basis for rejecting a claim for compensation, that too in a case of fatal accident.



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11. Per contra, the counsel for the respondents 1 and 3 relied upon the judgment of the Hon'ble Supreme Court in ***Dinesh Kumar, J @ Dinesh, J vs. National Insurance Co. Ltd*** reported in ***2018 (1) TNMAC 34 (SC)*** and a recent judgment of the Hon'ble Supreme Court in ***K.Anusha and Others vs. Regional Manager, Shriram General Insurance Co. Ltd***, reported in ***2021 SCC Online SC 3339***. In Dinesh Kumar's case, the Hon'ble Supreme Court set aside the plea of contributory negligence and held that non production of driving license would be of no relevance. In K.Anusha's case, the Hon'ble Supreme Court in a similar set of facts, where a car travelling from behind dashed against a lorry which had stopped suddenly without any signal or indicator, the Hon'ble Supreme Court quoting the decision of the High Court of Australia in ***Astley Vs. Austrust Ltd.***, with approval, held that:

“ *when one party places another in a situation of danger, which compels the other party to act quickly to extricate himself, then it would not amount to contributory negligence*”.



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12. Placing reliance on the evidence available on record before the Hon'ble Supreme Court, the finding of contributory negligence was set aside. However, in the instant case, the Tribunal has rightly discussed all probabilities and arrived at the finding with regard to contributory negligence attributable to the deceased Mohankumar.

13. This Court is conscious of the fact the legislation itself is a benevolent one, brought about for justly and fairly compensating victims/legal representatives of the deceased in the case of motor accidents. It is settled law that the FIR is certainly a material piece of evidence to prove the factum of the accident. However, it cannot be stretched to an extent to say that the contents of the FIR are to be taken as final and consequently the fate of the accident victim would depend on the contents of an FIR. Admittedly, the deceased cannot be expected to give evidence and controvert the information recorded in the FIR. Infact, this Court finds that before the Tribunal, the insurance company marked Ex.R2- final report to establish the defence that the entire fault was that of the deceased. The Tribunal, noticing



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the specific parts that have been damaged in the vehicles, gave a categorical finding that both the lorry driver as well as the deceased Mohankumar were negligent. Infact, the Tribunal has relied upon the evidence of the eye witness, P.W.2 with regard to the lorry applying sudden break which resulted in the deceased colliding with the lorry from behind. The statement made in the FIR that the deceased was trying to ride between the lorry and private college bus was also rejected since the final report Ex.R2 did not contain any annexures and the Investigating officer was also not examined before the Tribunal. In any event, the statement made by the pillion rider and recorded in the FIR only shows that the deceased intended to ride between the loory and the bus, but does not conclusively show that he did so.

14. It is also relevant to note that it was not as if the deceased died on the spot. He was very much alive from the date of accident i.e from 04.09.2015 till 26.09.2015 when he succumbed to the injuries suffered. Surprisingly, there is no statement that has been obtained from the victim and there is also no medico legal case registered. The best person who could have



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spoken about the manner of the accident was the deceased Mohankumar himself. The final report is surprisingly silent about his statement being obtained or procured, especially, when he was very much available to give a statement. This Court, therefore finds that there is no infirmity or error committed by the Tribunal in fixing 50% liability each on the deceased as well as the appellant/insurance company, towards contributory negligence.

15. Coming to the aspect of awarding just and fair compensation to the respondents 1 to 3 herein, the counsel for the appellant vehemently contended that the Tribunal erred in fixing the salary at Rs.9,000/- as monthly notional income and deducting only 1/3rd towards personal living expenses and ought to have deducted 1/2 since the deceased was unmarried. Admittedly, the claimants are the parents and sister of the deceased and following the ratio laid down by the Hon'ble Supreme Court in *Pranay Sethi's* case in (2019) 16 SCC 680, this Court feels that no interference is warranted with regard to the finding of the Tribunal deducting 1/3rd towards personal and living expenses.



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16. Learned counsel for the appellant finally contended that in event of this Court not accepting the argument of the deceased being the tort-feaser and the insurer would be liable to compensate the claimants, the monthly income fixed by the Tribunal at Rs.9,000/- was excessive and ought to be scaled down.

17. Learned counsel for the respondents relied on the judgment of the Division Bench of this Court in *Maanvizhi and Ors Vs. Suresh Babu* in C.M.A.No.1639 of 2021 dated 17.03.2022, where the Division Bench of this Court fixed an income of Rs.20,000/- for a B.E graduate following the ratio laid down in *Managing Director, TNSTC Ltd Vs. Neela, in 2019 (2) TNMAC 153(DB)* where Rs.20,000/- was fixed as notional income for a final year Mechanical Engineering student. Applying the ratio laid down by the two Division Benches of this Court, no interference is warranted in the Tribunal fixing only Rs.9,000/- as notional income of the deceased who was pursuing his second year B.E. Course.



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18. In fine, this Court find that the award passed by the Tribunal does not warrant any interference and accordingly the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

09.03.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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To

1. The Additional District Judge
Motor Accidents Claims Tribunal
Namakkal

2.The Section Officer
V.R.Section
High Court, Madras



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P.B.BALAJI, J.,
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Pre-delivery judgment in
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