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C.M.A.No.3585 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3585 of 2019

1.Rajeswari

2.Karthikeyan

... Appellants

Vs.

1.Ganesan

2.The Branch Manager,
ICICI Lombard Insurance Company Ltd.,
Villupuram.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award passed in the judgment and decree made in M.C.O.P.No.138 of 2016 dated 27.09.2018 on the file of the Special District Court, Villupuram to deal with MCOP Cases to a sum of Rs.12,00,000/- from that of the award amount of Rs.5,98,200/- with other consequential benefits arising thereto.

For Appellants : M/s.N.R.Jasmine Padma
For Respondents : R1 – No Appearance
M/s.Poomalai for R2



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This appeal has been filed against the judgment and decree dated 27.09.2018 passed by the Special District Court, Villupuram, in M.C.O.P.No.138 of 2016.

2.The brief facts of the case is that on 13.06.2011 at about 04.30 hours, the deceased Manikandan s/o.Selvam was travelling as a pillion rider in the motorcycle bearing Registration No.TN-33-L-4696 driven by Manikandan s/o.Ilavarasan in Chidambaram – Virudhachalam Main Road from East to West near Manakkadu Village. At that time, the Indica Car bearing Registration No.TN-31-PY-0298 owned by the first respondent came from the opposite direction in a rash and negligent manner and hit against the motorcycle, due to which, both the rider as well as the pillion rider of the motorcycle lost their lives.

3.Thereafter, the dependants of the deceased Manikandan s/o.Selvam/ appellants filed claim petition before the Tribunal, in M.C.O.P.No.138 of 2016, claiming compensation of Rs.12 Lakhs. After adjudication, the Tribunal awarded a sum of Rs.11,96,400/- as compensation and directed the second respondent to pay 50% of the



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compensation, i.e., Rs.5,98,200/- with interest at the rate of 7.5%

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from the date of petition till the date of deposit and costs. Aggrieved by the same, the appellants claimants have filed this appeal.

4.The learned counsel appearing for the appellants submitted that the appellant has filed this appeal questioning the 50% liability fixed on the deceased pillion rider. The learned counsel further submitted that the dependents of the deceased Manikandan s/o.Ilavarasan/ rider of the motorcycle filed M.C.O.P.No.17 of 2012 on the file of the Subordinate Court, Chidambaram and the Subordinate Court, Chidambaram fastened the entire liability on the respondents/ owner of the car and insurer of the car, however, in the present case, the Tribunal has fastened 50% liability on the pillion rider, which is not sustainable one.

5.The learned counsel appearing for the appellants further submitted that Ex.P1 – F.I.R., was registered as against the driver of the vehicle owned by the first respondent, however, the Police Officials made statement before the Tribunal that four persons



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travelled in the two wheeler and hence 50% liability was fastened on the pillion rider, however, the travelling of four persons was not established before the Tribunal and no eye witness was examined on the side of the Insurance Company or the owner of the vehicle. Hence, this Court may set aside the 50% negligence fixed on the part of the pillion rider and direct the second respondent to pay the entire compensation in favour of the appellants.

6.The learned counsel appearing for the appellants further submitted that the Police Official was examined as C.W.1 and he deposed that four persons travelled in the motorcycle, however, court witness was not eye witness and further submitted that R.W.2 examined on the side of the respondents was also official witness and not eye witness. In the absence of any eye witness fastening 50% liability on the deceased/ pillion rider is impermissible one.

7.The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.



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8.Heard the learned counsel appearing for the appellants claimants and the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

9.Admittedly, on 13.06.2011 at about 04.30 hours, the deceased Manikandan s/o.Selvam was travelling as a pillion rider in the motorcycle driven by Manikandan s/o.Ilavarasan in Chidambaram – Virudhachalam Main Road from East to West near Manakkadu Village. At that time, the Indica Car owned by the first respondent came from the opposite direction in a rash and negligent manner and hit against the motorcycle, due to which, both the rider as well as the pillion rider of the motorcycle lost their lives.

10.Perusal of records disclose that Ex.P1 – F.I.R., was registered as against the driver of the vehicle owned by the first respondent, however, C.W.1 - Police Official deposed before the Tribunal that four persons travelled in the two wheeler, however, court witness was not eye witness and R.W.2 examined on the side of the respondents was also official witness and not eye witness. In the



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absence of any eye witness fastening 50% liability on the deceased/pillion rider is impermissible one.

11.Hence, fixing 50% negligence on the part of the deceased pillion rider is not sustainable one. Hence, this Court set aside the impugned judgment in respect of the negligence aspect and fix the 100% negligence on the part of the driver of the vehicle insured with the second respondent.

12.Coming to the question of quantum of compensation, the amount awarded by the tribunal, in the opinion of this Court, is just and reasonable and the same warrants no interference.

13.The civil miscellaneous appeal is allowed on the above terms. The judgment and decree passed in M.C.O.P.No.138 of 2016 dated 27.09.2018 by the Special District Court, Villupuram, is modified only in respect of the negligence aspect. Liberty is granted to the second respondent Insurance Company to work out the remedy as against the Insurance Company / insurer of the motorcycle bearing Registration No.TN-33-L-4696, in the manner known to law.



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14.The second respondent Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. 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 appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Special District Court, Villupuram, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

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

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

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To

1.The Special District Court,
Villupuram.

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M.DHANDAPANI,J.
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