



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.3579 of 2019

- 1.Vijayalakshmi
- 2.K.Murugan
- 3.Swetha (minor)

Minor petitioner represented
by next friend 1st petitioner

... Appellants

Vs.

1. The Chairman,
Jeyam Engineering College,
Nallanur, Ponnarkaram Taluk
Dharmapuri District - 636 701

2. The Tata AIG General Insurance Company Ltd.,
Peninsula Business Park,
Tower A, 15th Floor,
Kanpatrayo Kadham Mark,
Mumbai - 400 013

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.12.2017, made in M.C.O.P. No.500 of 2015, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dharmapuri.

For Appellants : M/s.C.Swetha for
Mr.T.Balaji

For Respondents : Mr.K.Vinod for R2
R1-Notice Sent, Service Awaited



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C.M.A. No.3579 of 2018



JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree dated 22.12.2017, made in M.C.O.P. No.500 of 2015, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dharmapuri.

2. The appeal is filed by the claimants. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending bus bearing Regn. No.TN-48-Q-0333.

3. The case of the claimants is that the deceased Manoj Kumar @ Manoj Prabakar was studying in Jeyam Engineering College, Nallanur. On 06.03.2015, he was returning to his native in a two wheeler bearing Regn. No.TN-29-AQ-8007 slowly and carefully by observing the road traffic rules. At about 5.30 p.m., near Sompatty bus stop, he met with an accident with another two wheeler bearing Regn. No.TN-29-A-6510, as a result of which, Manoj Kumar fell down. At that time, a college bus belonging to the 1st respondent bearing Regn. No.TN-48-Q-0333, which was driven by its driver



in a rash and negligent manner, ran over the said Manoj Kumar, due to which, he died on the spot.

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4. The claimants who are the mother, father and minor sister of the deceased Manoj Kumar, filed the claim petition in M.C.O.P. No.500 of 2015, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dharmapuri, claiming compensation of Rs.30,00,000/- stating that at the time of accident, the deceased was aged about 23 years. He was a student of Jeyam Engineering College and had taken a major course of Electrical and Electronics Engineering. The deceased had potential and ability of earning more than Rs.25,000/- in future, had he not died. Due to the sudden death of the deceased, the life of the petitioners/claimants have doomed.

5. Before the Tribunal, the owner of the offending bus/1st respondent herein remained ex-parte.

6. The Tribunal, after hearing the arguments on either side, dismissed the claim petition by holding that the accident had occurred only due to the rash and negligent riding of the deceased Manoj Kumar and that



the owner of the another two wheeler which is involved in the accident viz.,
Regn. No.TN-29-A-6510, was not added as a party.

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7. Aggrieved by the said dismissal order, the claimants have filed the present appeal.

8. The learned counsel for the appellants/claimants submitted that the Tribunal went wrong in holding that the accident had not occurred due to the rash and negligent driving of the driver of the bus. Admittedly, the deceased met with an accident with another two wheeler and thereby, fell down from his two wheeler. However, if the driver of the bus was cautious, the deceased would not have died and he would have lived long. Though the charge sheet was filed against the deceased Manoj Kumar, the materials in the criminal case or the investigation, will not bind the Tribunal and there must be an independent evidence before the Tribunal and the Tribunal has to consider the materials available before it. The evidence of P.W.2 who is the eye-witness to the occurrence, clearly shows that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the 1st respondent and insured with the 2nd respondent/Insurance Company.



Though it was stated that the deceased, by showing hand gestures to the girls in the bus, tried to over take the bus and met with an accident, none of the students who travelled in the said bus were examined to prove the same. The report of the Motor Vehicle Inspector clearly shows the involvement of the bus. Therefore, the respondents who are the owner and insurer of the offending bus are liable to pay compensation to the claimants.

9. The learned counsel for the 2nd respondent/Insurance Company submitted that the complainant who is the father of the deceased Manoj Kumar, has clearly stated in his evidence that the accident had occurred only due to the rash and negligent riding of the deceased Manoj Kumar. The accident occurred due to head-on-collision between the said 2 two wheelers, due to which, both the riders of the two wheelers fell down. At that time, the backside wheel of the bus, ran over the said Manoj Kumar and it is not due to the rash and negligent driving of the driver of 1st respondent's bus. The driver of the bus who was examined as R.W.2, has clearly stated that the deceased, by making hand gestures against the girls in his bus, tried to over take his bus. At that time, he dashed against a two wheeler, which was coming in the opposite direction and fell down and stuck on the wheel of the



bus. Even the charge sheet and the rough sketch would clearly show that the accident had occurred not due to the driver of the 1st respondent's bus. Therefore, the Tribunal rightly dismissed the claim petition. Further, the owner and insurer of the other two wheeler involved in the accident, were not added as parties. There is no merit in the appeal and the same is liable to be dismissed.

10. Heard the learned counsel for the appellants and the learned counsel for the 1st respondent and perused the materials available on record.

11. It is settled proposition of law that the FIR, investigation report and the materials in the criminal case, are not Encyclopaedia and the same would not bind the Tribunal. There must be an independent evidence before the Tribunal and the Tribunal has to consider the materials placed before it.

12. As an appellate Court and final Court of fact finding, this Court has to re-appreciate the entire materials and to give independent findings.



13. On a perusal of entire materials, this Court finds that only due to his rash and negligent riding, the deceased met with an accident with another two wheeler and fell down. Therefore, the deceased himself is a tort-feasor to the accident. However, had the driver of the bus been cautious, the death of the deceased could have been avoided. Therefore, this Court finds that the driver of the bus has also equally contributed his negligence. Therefore, non impleading of the owner and insurer of the other two wheeler involved in this case, is not fatal to the case of the claimants.

14. Therefore, this Court fixes 50-50 contributory negligence on both the deceased and the driver of bus. Since the driver of the bus had contributed 50% negligence to the accident, the respondents who are the owner and insurer of the said bus, are liable to pay compensation for 50% contributory negligence. Accordingly, this Court directs the 2nd respondent/Insurance Company to pay 50% of the compensation to be determined by this Court on behalf of the owner of the bus/1st respondent herein.

15. As far as the quantum of compensation is concerned, it is



seen that, at the time of accident, the deceased was a student and he was aged about 23 years. Therefore, this Court fixes the notional income of the deceased at Rs.5,000/- per month. As per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others Vs. Delhi Transport Corporation* reported in *2009 (2) TN MAC 1 (SC)*, the proper multiplier to be applied for the age group of persons between 21 to 25 years, is '18'. Since the deceased was a Bachelor, 50% has to be deducted from the arrived income towards personal expenses. Accordingly, a sum of Rs.5,40,000/- ($\text{Rs.5,000/-} \times (-) 50\% \times 12 \times 18$) is awarded towards loss of dependency. As regards the future prospects, since the deceased was unemployed, future prospects would not be applicable.

16. A sum of Rs.50,000/- each, is awarded to the claimants towards loss of love and affection and a sum of Rs.15,000/- is awarded towards funeral expenses. Further, a sum of Rs.10,000/- is awarded towards transportation charges.

17. Accordingly, this Court awards compensation as tabulated below;-



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S.No.	Description	Amount awarded by this Court (Rs)
1	Loss of dependency	Rs.5,40,000/-
2	Love and affection	Rs.1,50,000/-
3	Funeral Expenses	Rs.15,000/-
4	For Transportation	Rs.10,000/-
	Total	Rs.7,15,000/-
	Less Contributory Negligence of 50%	Rs.3,57,500/-
	Total Compensation	Rs.3,57,500/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs in the present appeal.

19. The 2nd respondent/Insurance Company is directed to deposit the award amount of Rs.3,57,500/- now determined by this Court, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.500 of 2015, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dharmapuri. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with proportionate interest.



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20. The claimants/appellants are equally entitled to the compensation amount. Since the 3rd appellant herein is a minor, her share shall be deposited in any one of the Nationalized Bank until she attains majority and till then, the mother of the deceased/1st appellant shall be permitted to withdraw the interest once in three months.

21. The Tribunal is directed to calculate the above said compensation, including the interest etc., and credit the actual amount without any formal application, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

22. The appellants/claimants are directed to pay necessary Court fee, if any, on the compensation amount awarded by this Court.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No



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To

1.The Motor Accident Claims Tribunal/Principal District Court
Dharmapuri

2.The Section Officer, VR Section, High Court, Madras.



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P.VELMURUGAN, J

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