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C.M.A.No.822 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.822 of 2020

1.Thangamani
2.Periyasamy

... Appellants

Vs.

1.Anandakumar

2.The New India Assurance Co. Ltd.,
4/2-1, Rasipuram Main Road,
Vennandur,
Namakkal District – 637 505.
Divisional Office at No.29,
Paramathi Road,
Namakkal.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award amount in the judgment and decree dated 01.04.2019 made in M.A.C.T.O.P.No.242 of 2017 on the file of the Motor Accidents Claims Tribunal / Additional District Judge, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran
For Respondents : R1 – No Appearance
Mr.J.Chandran for R2



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J U D G M E N T

This appeal has been filed by the appellants/ claimants challenging the judgment and decree passed in M.C.O.P.No.242 of 2017 dated 01.04.2019 on the file of the Motor Accidents Claims Tribunal / Additional District Judge, Namakkal.

2.The brief facts of the case is that on 08.05.2016 at about 06.40 p.m., the deceased Sanjeev Kumar was travelling in a Hero Honda Splendor Plus bearing Registration No.TN-28 AX-0406 as a pillion rider in Tiruchengode to Salem Main Road, near Karumapuram Pirivu Road, Morepalayam. At that time the rider of the motorcycle, drove the vehicle in a rash and negligent manner and dashed against the unknown motorcycle going in front of the vehicle, due to which, the said Sanjeev Kumar sustained grievous injuries and was immediately taken to Surya Multi Speciality Hospital, Tiruchengode, where the deceased was given first aid and thereafter he was admitted in Vijaya Hospital, Erode, however, he died on 21.05.2016.

3.Thereafter, the parents of the deceased Sanjeev Kumar/ appellants/ claimants filed claim petition before the Motor Accidents



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Claims Tribunal, claiming a sum of Rs.25 Lakhs as compensation for the death of their son. After adjudication, the Tribunal rejected the claim petition. Aggrieved by the same, the appellants claimants have filed this appeal.

4.The learned counsel appearing for the appellants submitted that the deceased was 11 years at the time of death. The learned counsel further submitted that in the Hospital, the law enforcing agency obtained statement from P.W.1/ second appellant and registered F.I.R. and based on the F.I.R., the law enforcing agency inadvertently registered criminal case as against the un-known motorcycle. On the sole ground, the claim petition was rejected.

5.The learned counsel appearing for the appellants further submitted that in order to prove the negligence aspect, P.W.2 eye witness was examined and he clearly deposed that due to the sudden brake applied by the rider of the motorcycle in which the deceased travelled as a pillion rider, the accident happened and no contra evidence was let in either by the owner of the vehicle or by the Insurance Company, however, the Tribunal rejected the claim petition.



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6.The learned counsel appearing for the appellants further submitted that if the evidence recorded before the Tribunal is contrary to the contents of the F.I.R., the evidence recorded before the Tribunal has to be given weightage. In the present case, the evidence let in by P.W.2 was ignored by the Tribunal and the statement in the F.I.R. was taken into consideration, which is not sustainable one. The learned counsel further submitted that F.I.R. was registered by the law enforcing agency based on the information furnished by P.W.1, who is not an eye witness to the occurrence. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Apex Court reported in **CDJ 2021 SC 739 [National Insurance Company Ltd. Vs. Chamundeswari and Others]**.

7.Per contra, the learned counsel appearing for the second respondent Insurance Company submitted that as per the F.I.R., unknown vehicle was involved in the accident. Hence, without filing claim petition as against the owner of the un-known vehicle and its insurer and filing claim petition as against the owner of the motorcycle in which the deceased travelled as a pillion rider and its insurer is not sustainable.



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8.The learned counsel appearing for the second respondent Insurance Company further submitted that in the F.I.R., P.W.1 has clearly stated that the un-known vehicle took right side and turned left side, thereby, the rider of the motorcycle applied sudden brake and thereby the accident happened, however, P.W.2 has deposed that due to the sudden brake applied by the rider of the motorcycle in which the deceased travelled as a pillion rider, the accident happened and the same is contrary to F.I.R. and charge sheet filed by the law enforcing agency. Hence, the Tribunal rightly rejected the claim petition.

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

10.Admittedly, F.I.R. was registered based on the complaint given by P.W.1. It is equally un-disputed fact that P.W.1 is not an eye witness and the eye witness was examined as P.W.2. P.W.2 makes it clear that due to the sudden brake applied by the rider of the motorcycle in which the deceased travelled as a pillion rider, the accident happened.



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11.It is relevant to extract hereunder the relevant portion of the decision of the Hon'ble Apex Court reported in **CDJ 2021 SC 739 [National Insurance Company Ltd. Vs. Chamundeswari and Others]**:

"8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the judgment, relied on



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by the appellant's counsel in the case of [Oriental Insurance Company Limited v. Premlata Shukla and Others](#)¹, this Court has held that proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report. In the judgment in the case of [Nishan Singh and Others v. Oriental Insurance Company Limited](#)², this Court has held, on facts, that the car of the appellant therein, which crashed into truck which was proceeding in front of the same, was driven negligently by not maintaining sufficient distance as contemplated under Road Regulations, framed under [Motor Vehicles Act, 1988](#). Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the appellant, would not render any assistance in support of his case."



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12.Perusal of the decision cited supra makes it clear that if any evidence runs contrary to the contents of the F.I.R., then the evidence recorded before the Tribunal has to be given weightage. However, in the present case, contrary to the decision of the Hon'ble Apex Court, the Tribunal arrived at the conclusion based on the contents of the F.I.R. and charge sheet and rejected the claim petition, which is not sustainable one.

13.This Court fix 100% negligence on the part of the rider of the motorcycle owned by the first respondent and insured with the second respondent.

14.Perusal of records reveal that the policy is a package policy and hence the pillion rider is entitled to claim compensation. Hence, the appellants/ parents of the deceased pillion rider are entitled for compensation. Respondents 1 and 2 are jointly and severally liable to pay the compensation to the appellants claimants.

15.This Court thinks it fit that a sum of Rs.5 Lakhs would be a just and reasonable compensation for the death of the 11 year old



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deceased. Ex.P6 – medical bills reveal that the appellants have spent a sum of Rs.2,33,515.47. Hence, this Court awards a sum of Rs.2,33,516/- (Rs.2,33,515.47 rounded off to Rs.2,33,516/-) along with a sum of Rs.5 Lakhs as compensation to the appellants. The appellants are entitled to a sum of Rs.7,33,516/- as compensation along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

16.The second respondent Insurance Company is directed to deposit the compensation amount along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, before the Motor Accidents Claims Tribunal / Additional District Judge, Namakkal, 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 the entire award amount in equal share, on making proper and necessary application before the Tribunal.

17.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 compensation amount, if required. The Motor Accidents Claims



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Tribunal / Additional District Judge, Namakkal, shall disburse the compensation amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

18.The civil miscellaneous appeal is allowed. The judgment and decree passed in M.C.O.P.No.242 of 2017 dated 01.04.2019 by the Motor Accidents Claims Tribunal / Additional District Judge, Namakkal, is set aside. No costs.

30.11.2023

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

To

1.The Motor Accidents Claims Tribunal /
Additional District Judge, Namakkal.



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M.DHANDAPANI,J.
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