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C.M.A.No.3127 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3127 of 2017

1.Ramasamy
2.Padmavathi

... Appellants

Vs.

1.James
2.R.Rajesh Kumar
3.S.Bhavana

4.Shriram General Insurance Company Ltd.,
E-8, EPIP, RIICO Industrial Area,
Sitapura, Jaipur, Rajasthan.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the order passed in M.C.O.P.No.947 of 2013 on the file of the Motor Accident Claims Tribunal/In the Court of II Additional District and Sessions Judge of Tirupur dated 17.04.2015 and award compensation as prayed by the appellants.

For Appellants : M/s.Ma.P.Thangavel

For Respondents : Not Ready in Notice [R1 & R2]
No appearance [R3]
Ms.V.Pushpa [R4]



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JUDGEMENT

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The claimants are before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruppur, in M.C.O.P.No.947 of 2013, dated 17.04.2015.

2. It is the case of the claimants that, on 16.07.2012 at about 10.00 p.m., when the son of the claimants was driving his two wheeler bearing Reg.No.TN 39 AJ 5184, following all the Motor Vehicles Rules, when the two wheeler proceeded Muthu Kumara Swamy temple, the lorry bearing Reg.No.KA 01 AA 2258, which was parked on the road without the tail light, thereby resulting in the vehicle driven by the claimant's son dashing against the said vehicle from behind and thereby, he sustained grievous injuries and died on the spot. Claiming that the negligence was totally on the lorry, which was insured with the second respondent, the claimants preferred the claim petition before the Tribunal.

3. Before the Tribunal, the claimants examined three witnesses viz., P.W.1 to P.W.3 and marked 14 documents viz., Ex.P.1 to Ex.P.14. On the



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side of the respondents, they have examined one witness viz., R.W.1 and marked 1 document viz., Ex.R.1. The Tribunal, on considering the oral and documentary evidence, held that the accident had happened due to the negligent driving by the deceased and therefore, rejected the claim made by the claimants. Aggrieved by the same, the present appeal has been filed.

4. The learned counsel appearing for the appellants/claimants submitted that the Tribunal has rejected the claim of the claimants merely on the basis of Ex.P.9, which is diametrically opposite to Ex.P.1. However, it is submitted that the Tribunal lost sight of the fact that equally the offending vehicle was also fault as it was standing in the road in a dark road without any tail light, which is evident from Ex.P.11/FIR, which has been lodged by P.W.2, who was working in the same office along with the deceased. The erroneous letter Ex.P.9 on the part of the claimants posterior in point of time cannot be the basis to completely reject the claim of the claimants when equally the lorry was also at fault, having been standing stationary without any tail light, so definitely contributory negligence, has to be fastened on the lorry as well, which aspect has been



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lost site of the Tribunal only on the basis of Ex.P.9 and therefore, the order passed by the Tribunal rejecting the compensation for the claimants requires to be interfered with.

5. Per contra, the learned counsel appearing on behalf of the fourth respondent/insurance company submitted that the claimants have been taking different stands at different point of time, and more especially, the letter Ex.P.9, which is diametrically opposite to the FIR/Ex.P.1, which was given by P.W.2. The Tribunal has properly considered all the materials and has come to the conclusion that the accident had happened only due to the rash and negligent driving by the deceased and only with a view to receive compensation from the fourth respondent/insurance company, the complaint Ex.P.9 had come into play at a later point of time, wherein it was claimed that the stationed vehicle was standing without tail light. Therefore, the order passed by the Tribunal does not require any interference.



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6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the fourth respondent and perused the materials available on record.

7. The facts leading to the death of the deceased which was on account of the deceased hitting the lorry from behind is not in dispute. The lorry was standing stationary is also not in dispute. The only ground of rejection is that Ex.P.9 had come later in point of time by pointing a finger on the lorry that it was standing without tail light, which is not evidenced in Ex.P.1/FIR, which was only for the purpose of claiming compensation from the fourth respondent/insurance company. It is to be pointed out that it has been the consistent view of the Courts that FIR is may not and need not contain all the necessary details at the earliest point of time. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the



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occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167)*). The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*.

8. However, Ex.P.1 reveals that the deceased had hit the lorry which was stationary from behind and had sustained injuries and died. The issue that requires consideration right now by this Court is whether the stationary lorry which was insured with the fourth respondent/insurance company has also in some way contributed to the accident in addition to the contributory negligence that has to be fastened on the deceased.

9. A stationary lorry parked at night is supposed to exhibit a signal in the form of tail light flashing so as to enable the vehicles coming from behind to note that the said lorry is stationary. In the case on hand, the vehicle of the first respondent was parked in the road without exhibiting its tail light. P.W.2 is an eye-witness to the occurrence, who has spoken about the fact that the lorry belonging to the second respondent was



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stopped in the road without any parking light and without any signal. This clearly shows that there is negligence on the part of the lorry belonging to the second respondent. At the same time, it cannot be lost sight of that the vehicles coming from behind also have to be cautious while driving at night, so as to avoid unnecessary accidents. Had the motorcycle driven by the deceased not driven in a negligent manner, the accident could not have resulted in fatality. Therefore, equally the deceased had contributed to the accident as well. Appreciating the materials available on record, this Court fixes the negligence at 50% : 50% on the part of the deceased and the vehicle of the second respondent. Therefore, the finding of the Tribunal on negligence is set aside and instead, this Court holds that the vehicle of the second respondent is negligent to the extent of 50% while the deceased had contributed negligence to the extent of 50%. Therefore, to the extent of 50%, the fourth respondent/insurance company as insurer of the vehicle belonging to the second respondent is liable to pay the compensation to the claimants.

10. Since this Court had fixed 50% contributory negligence on the deceased and 50% negligence on the vehicle of the second respondent,



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this Court is inclined to award compensation to the claimants by adopting the multiplier method.

11. It is claimed by the claimants that at the time of death, the deceased was working as a accountant and earned a sum of Rs.20,000/- per month. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.15,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.21,000/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.10,500/- per month and the deceased being aged about 25 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported



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in (2009) 6 SCC 121, the loss of income to the family is arrived at
Rs.10,500/- * 12 * 18 = Rs.22,68,000/-, which is worked out as follows :-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	15,000
Add: Future Prospects (Rs.15,000 x 40%) (Per month)	6,000
	21,000
Less: Personal expenses (50%) (Rs.19,000/- x 50%) (Per month)	10,500
	10,500
Notional income (per annum) (Rs.10,500/- x 12)	1,26,000
Multiplier	18
Total	22,68,000

12. Further, this Court awards a sum of Rs.80,000/- towards loss of love and affection by awarding a sum of Rs.40,000/- to the appellants. A sum of Rs.15,000/- is awarded by this Court under the heads loss of estate and funeral expenses respectively.

13. In the above circumstances, this court is inclined to award compensation under the following heads :-



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<i>S. No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of Income	-	22,68,000/-
2	Loss of love and affection	-	80,000/-
3	Funeral Expenses	-	15,000/-
4	Loss of estate	-	15,000/-
	Total	-	23,78,000/-

14. Deducting the amount towards the contributory negligence at 50% on the part of the deceased, the compensation payable by the fourth respondent/insurance company is fixed at **Rs.11,89,000/-**.

15. Accordingly, the Civil Miscellaneous Appeal is allowed and a sum of **Rs.23,78,000/-** is awarded as compensation to the appellants/claimants. The fourth respondent/ insurance company is directed to deposit 50% of the above compensation amount to the credit of M.C.O.P.No.947 of 2013 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The above compensation



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amount shall be equally apportioned among the appellants. On such deposit being made by the fourth respondent/insurance company, the Tribunal is directed to transfer the amount as per the above apportionment made by this Court, directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the above compensation by the appellants/claimants. No costs.

22.11.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal/In the Court of II Additional District and Sessions Judge of Tirupur.

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



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M.DHANDAPANI, J.,

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