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C.M.A.No.3536 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3536 of 2019

Rani

... Appellant

Vs.

1.K.Sundara Mahalingam

2.The Manager,
Shri Ram General Insurance Company Ltd.,
No.66, Thirumalai Pillai Street,
T.Nagar,
Chennai – 600 017.

3.K.Rajendran

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Accident Act, 1988, to set aside the judgment and decree passed by the learned Motor Accident Claims Tribunal, Vellore dated 08.08.2016 in M.C.O.P.No.2 of 2013.

For Appellant : Mr.D.Ramesh Kumar
For Respondents : Mr.R.Amardeep for R1
M/s.Poomalai for R2
R3 – No Appearance



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The petitioner before the Motor Accident Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 08.08.2016 passed by the Motor Accident Claims Tribunal, Vellore, in M.C.O.P.No.2 of 2013.

2.The learned counsel appearing for the appellant submitted that the appellant is the Mother of the deceased Sathiyakumar. On 03.08.2012 at about 5 p.m., the deceased Sathiyakumar was riding his two wheeler bearing Registration No.TN-25-R-9279 from Cheyyar direction towards Arcot direction near Mulluvadi Village Koot Road. At that time, a TATA Sumo vehicle bearing Registration No.TN-43-Z-1335 owned by the first respondent and insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against the motorcycle, due to which, the deceased was thrown away. At that time, the Tractor and Tractor bearing Registration Nos.TN-25-B-0349 and TN-23-AU-6738 respectively, hit the deceased and the deceased died on the spot.

3.The learned counsel appearing for the appellant further submitted that the appellant filed claim petition before the Tribunal



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claiming Rs.7 Lakhs as compensation for the death of her son, however, the Tribunal rejected the claim petition on the ground that as per Ex.P1 FIR, the third respondent is the driver of the tractor and trailer at the time of the accident and one Purushothama Naidu was the owner of the vehicle. Therefore it is very clear that the petitioner/ appellant herein not impleaded the owner of the tractor and trailer in the case. Without impleading the owner of the tractor and trailer as a party to the proceedings, the claimant is not entitled for compensation.

4.The learned counsel appearing for the appellant further submitted that the Tribunal ought to have fixed the negligence inbetween the driver of the TATA Sumo and the driver of the Tractor and Trailor and without doing so, the Tribunal simply rejected the claim petition, which is not sustainable one.

5.The learned counsel appearing for the second respondent Insurance Company submitted that inorder to prove the negligence of the Tractor, R.W.1 – driver of the TATA Sumo was examined and he in his evidence, clearly deposed that he drove the vehicle very cautiously and when he stopped the vehicle for drinking water, the



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two wheeler came in the opposite direction and dashed against the vehicle and the motorcyclist fell down and at that time, the Tractor ran over the deceased, in which, no negligence can be fixed as against the driver of the vehicle owned by the first respondent.

6.Heard the learned counsel appearing for the appellant claimant as well as the learned counsel appearing for the respondent 1 and 2 and perused the materials available on record. There is no representation for the third respondent.

7.Admittedly, two vehicles were involved in the accident. It is equally un-disputed fact that F.I.R. was registered as against the Tractor as well as TATA Sumo. Merely because R.W.1 was examined on the side of the respondents 1 and 2 does not mean that the Tribunal has arrived at a right conclusion. The Tribunal has failed to fix the percentage of negligence as against the driver of the vehicle owned by the first respondent and the driver of the Tractor and Tractor.

8.Admittedly, the driver of the vehicle owned by the first respondent dashed against the motorcycle and the deceased/



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motorcyclist fell down. Thereafter, the Tractor hit the deceased. Hence, this Court fix 70% of the negligence on the part of the driver of the vehicle owned by the first respondent and insured with the second respondent and 30% negligence as against the driver of the Tractor and Tractor.

9.The accident took place during the year 2012. The Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as salary to the vegetable vendor. Applying the yardstick fixed by Hon'ble Apex Court, this Court fix a sum of Rs.7,000/- as the notional income of the deceased per month. The deceased is a bachelor and hence $\frac{1}{2}$ of the amount has to be deducted for his personal expenses. Hence, if $\frac{1}{2}$ of the amount is deducted from Rs.7,000/-, the loss of income per month would be Rs.3,500/-. The deceased was aged 23 years at the time of death and the correct multiplier to be adopted is 18. Adopting multiplier 18, the actual loss of income to the claimant comes to Rs.3,500/- X 12 X 18 = Rs.7,56,000/-. Further, this Court awards 40% of the loss of income towards future prospects i.e., Rs.3,02,400/- [40% of Rs.7,56,000/-], a sum of Rs.40,000/- towards loss of love and affection, a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate.



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10.The appellant/ claimant is entitled to a sum of Rs.11,28,400/- as compensation along with interest at the rate of 7.5% interest from the date of claim petition till the date of deposit.

11.The respondents 1 and 2 as the owner of the TATA Sumo and insurer of the vehicle are jointly and severally liable to pay 70% of the compensation amount awarded by this Court, i.e., Rs.7,89,880/- [70% of Rs.11,28,400/-]. For the balance 30% of the compensation amount awarded by this Court, liberty is granted to the appellant/ claimant to file appropriate petition as against the owner of the Tractor and Trailor in the manner known to law.

12.The second respondent Insurance Company is directed to deposit 70% of the compensation amount awarded by this Court, i.e., Rs.7,89,880/- [70% of Rs.11,28,400/-], along with interest at the rate of 7.5% interest from the date of claim petition till the date of deposit, before the Motor Accident Claims Tribunal, Vellore, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant is permitted to withdraw the entire amount, on making proper and



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necessary application before the Tribunal.

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13.The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the compensation amount, if required. The Motor Accidents Claims Tribunal, Vellore, shall disburse the compensation amount upon production of certified copy showing proof of payment of Court fee by the appellant/ claimant.

14.The civil miscellaneous appeal is allowed on the above terms. The judgment and decree dated 08.08.2016 made in M.C.O.P.No.2 of 2013 on the file of the Motor Accident Claims Tribunal, Vellore, is set aside. No costs.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accident Claims Tribunal,

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M.DHANDAPANI,J.
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