



C.M.A.(MD)No.213 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 22.11.2022

Delivered On : 31.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.213 of 2018

Gurunathan

.. Appellant /3rd respondent

Vs.

1.Karuppaiah

2.Arumaikannu

.. Respondents 1&2 / Claimants

3.Chinnaiah

4.The Branch Manager,

New India Assurance Company Ltd.,

P.P.K.Complex, T.S.No.3548/2, 3549/1

2nd Floor, South Main Street,

Pudukottai.

.. Respondents 3&4 / Respondents 1&2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.47 of 2012, on the file of the Motor Accident Claims Tribunal – Principal District Court, Pudukottai, dated 20.01.2017.



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For Appellant

: Mr.T.Lenin Kumar

For Respondents

: Mr.K.Pandiarajan for R1 & R2

: Mr.M.S.Suresh Kumar for R4

: No appearance for R3

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.47 of 2012, on the file of the Motor Accident Claims Tribunal – Principal District Court, Pudukottai, dated 20.01.2017. The appellant herein is the third respondent, respondents 1 and 2 herein are the claimants and the respondents 3 and 4 herein are the respondents 1 and 2 in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.47 of 2012, is as follows:-

On 31.08.2011, when the deceased-Vellaichamy was riding a two wheeler bearing Registration No.TN-55-B-6017, along the Pudukkottai to Karambakudi main road, another two wheeler, bearing Registration No.TN-55-T-0939 was driven by its rider in a rash and negligent manner, without showing any signal suddenly applied the brake, thereby, the deceased vehicle, that was following the other vehicle, hit the other vehicle and the deceased was thrown out and he sustained injuries and he died



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on the spot. The claimants are his dependants, and they claimed a sum of Rs.

12,00,000/- as compensation.

3. A Brief substance of the counter filed by the first respondent, in M.C.O.P.No.47 of 2012, is as follows:

The first respondent already sold the vehicle to one Gurunathan, who is the third respondent herein, on 28.04.2011. The third respondent took possession of the vehicle. On the date of accident, the first respondent was not the owner of the vehicle and the first respondent is not liable to pay compensation.

4. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.47 of 2012, is as follows:

The respondent denied the manner of accident. The age and income of the deceased are to be proved. The vehicle bearing Registration No.TN-55-T-0939 was not insured with the respondent. There is no brevity of contract. The vehicle was previously insured with the respondent from 03.02.2009 till 02.02.2010 and the policy was not renewed. The respondent is not liable to pay compensation.

5. A Brief substance of the counter filed by the third respondent, in M.C.O.P.No.47 of 2012, is as follows:



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It is wrong to state that the accident has happened due to the negligence of the rider of the two wheeler bearing Registration No.TN-55-T-0939. The accident has happened only due to the negligence of the deceased. He was riding the two wheeler, without following the traffic rules and hit against another motorcycle from behind. The age and income of the deceased are denied. The insurance company of the deceased vehicle is a necessary party to the proceedings.

6. 2 witnesses were examined and 8 documents were marked, on the side of the claimants. 4 witnesses were examined and 6 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.8,45,000/- as compensation, to be paid by the respondents 1 and 3.

7. Against the award, the third respondent / appellant has filed this appeal, on the following grounds:-

The Tribunal failed to consider that the appellant was examined as R.W.3. He has specifically denied the execution of Ex.R4 – delivery note. The appellant is not the owner of the vehicle at the time of accident. The tribunal failed to consider Ex.R5, wherein, the appellant was acquitted of the charges in the criminal case. The Tribunal is wrong in giving more weightage to Ex.P1 - copy of the F.I.R and Ex.P2- copy of the final report. The Tribunal failed to consider that on behalf of the



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appellant, R.W.4, who is an independent witness was examined, who has deposed that it was the deceased, who invited the accident. The Tribunal ought to have disbelieved the evidence of P.W.2, who was the own brother of the deceased. The Tribunal is wrong in fixing the notional monthly income as Rs.5,000/-. The Tribunal is wrong in fixing the age of the deceased as 25 years, and the Tribunal is wrong in deducting $\frac{1}{3}^{\text{rd}}$ of the income instead of $\frac{1}{2}$ of the income, towards the own expenses of the deceased, who was a bachelor. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses, which are all excessive. The total award amount is excessive.

8. On the side of the appellant, it is stated that the appellant was not the owner of the vehicle and a person in whose name the R.C book stands is to be considered as the owner of the vehicle. A judgment of the Hon'ble Supreme Court reported in 2018-2-CTC-91 (Naveen Kumar V. Vijaya Kumar and others) is cited, wherein, it is stated as follows:-

“A person, whose name reflected in records of registering authority, is owner of the vehicle and liable to pay compensation”

9. On the side of the appellant, another judgment of the Hon'ble Supreme Court in Civil Appeal No.1427 of 2018 (Naveen Kumar V. Vijay Kumar and



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others) , dated 06.02.2018, is cited, wherein, it is stated as follows:-

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“But, for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate.”

10. On the side of the respondents 1 and 2-claimants, it is stated that the third respondent sold the vehicle to the appellant and that Ex.R4 was the delivery note and the R.C. was not transferred. The criminal case was registered only against the appellant and that the appellant has not denied the delivery of the vehicle and both the appellant and the third respondent herein are liable to pay compensation and that in the counter of the appellant before the Tribunal, the delivery note was not at all denied and that even after a lapse of 1 ½ years, the appellant failed to transfer the R.C in his name and he failed to take an insurance policy and that an acquittal in the criminal case is not relevant to decide the claim petition.

11. On the side of the respondents 1 & 2-claimants, it is stated that considering the number of dependants of the deceased, 1/3rd of the income has to be deducted for the personal expenses of the deceased. A judgment of the Hon'ble Supreme Court in Civil Appeal No.3483 of 2008 (Smt.Sarla Verma and others V. Delhi Transport Corporation and another) , dated 15.04.2009, is cited.



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12. On the side of the fourth respondent, it is stated that there is no policy for the vehicle, at the time of accident and the owner of the vehicle has to pay compensation. No liability was fixed against the fourth respondent by the Tribunal. There was policy from 03.02.2009 till 02.02.2010, the accident has happened on 31.08.2011, on the date of accident, there was no policy and the earlier policy was not renewed.

13. P.W.2 was examined as an eye witness. Copy of the F.I.R was marked as Ex.P1, copy of the charge sheet was marked as Ex.P2. Rough sketch was marked as Ex.P3. Inquest report was marked as Ex.P5. M.V.I report was marked as Ex.R3. Copy of the judgment in the criminal case on the file of the Judicial Magistrate, Alangudi, in C.C.No. 12 of 2013 was marked as Ex.R5. On the basis of the evidence of P.W.2 and on the basis of the above said documents, the Tribunal has fixed the negligence on the appellant.

14. On the side of the appellant, it is stated that the Tribunal failed to consider the evidence of R.W.2, who was an eye witness and that the Tribunal gave weightage to the evidence of P.W.2, who was the brother-in-law of the deceased. It is further stated that the appellant was acquitted of all the charges in the criminal court. Both the P.W.2 and R.W.2 were examined as eye witnesses and the criminal



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court records were also marked. The Tribunal need not depend on the criminal court records. The appellant has not denied the fact that he was riding the vehicle at the time of accident. F.I.R was the first intimation given to the police, regarding the occurrence. The appellant failed to lodge a complaint. In the above circumstances, it is decided that the accident has happened due to the rash and negligent driving of the appellant.

15. On the side of the appellant, it is stated that the appellant was not the owner of the vehicle at the time of accident and it was the third respondent, who was the owner as per the registration certificate of the vehicle. On the side of the third respondent, it is stated that the third respondent sold the vehicle on 28.04.2011 and that the possession of the vehicle was handed over to the appellant. Delivery note was marked as Ex.R4. In the appeal, the appellant denied the genuinity of the delivery note. A perusal of the counter filed by the appellant before the Tribunal reveals that the appellant has not denied the ownership of the vehicle in the counter filed before the Tribunal. The appellant cannot argue a new point in the appeal, without a pleadings.

16. On the side of the appellant, it was admitted that the appellant was the rider of the vehicle at the time of accident, how he got the possession of the vehicle

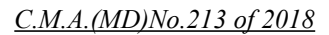


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was not stated anywhere, in the counter or in the appeal, hence, it is decided that the appellant was the owner of the vehicle, at the time of accident. The appellant was the owner of the vehicle, at the time of accident. The appellant failed to renew the insurance policy. The appellant was the rider of the vehicle, at the time of accident. The appellant failed to deny the ownership in the counter filed by him before the Tribunal. Since the appellant was the rider of the offending vehicle, it is decided that the appellant herein is liable to pay compensation. 75% of the liability is fixed on the appellant. As the registered owner, the third respondent is liable to pay 25% of the compensation.

17. On the side of the appellant, it is stated that the monthly income of the deceased was wrongly fixed by the Tribunal. The Tribunal fixed the salary as Rs.5,000/- per month. The accident has taken place in the year 2011, considering the date of accident, it is decided that the salary fixed by the Tribunal is reasonable.

18. On the side of the appellant, it is stated that the Tribunal failed to deduct 50% of the income towards the personal expenses of the deceased and that the Tribunal is wrong in deducting only 1/3rd of the income.



20. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses, which are excessive. As per the dictum of the Hon'ble Supreme Court in Pranay Sethi's Case, the claimants are entitled to Rs.70,000/- towards conventional charges.

Loss of income	:	Rs.7,56,000/-
Conventional charges	:	Rs. 70,000/-
		
Total compensation	:	Rs.8,26,000/-
		



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WEB COPY 22. In total, the claimants are entitled to Rs.8,26,000/- as compensation.

75 % (**ie.Rs.6,19,500/-**) of the compensation amount to be paid by the appellant with proportionate interest and costs and 25% (**ie.Rs.2,06,500/-**) of the compensation amount to be paid by the third respondent herein with proportionate interest and costs.

23. This Appeal is partly allowed. No costs. The compensation is reduced from Rs.8,45,000/- to **Rs.8,26,000/-**.

(i) The appellant is directed to deposit the 75% of compensation amount with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order and the third respondent herein is directed to deposit the 25% of the compensation amount with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The first claimant, who is the father of the deceased, is entitled to Rs. 3,26,000/- with proportionate interest and the second claimant, who is the mother of the deceased, is entitled to Rs. 5,00,000/- with proportionate interest and costs.



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(iii) On such deposit being made, the claimants are permitted to withdraw their share award amount with accrued interest and costs as apportioned by this Court, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

31.01.2023

Index : Yes/No

Internet : Yes/No

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Pudukottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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