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Civil Miscellaneous Appeal No.2485 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.2485 of 2021

V.Shanthamani

... Appellant

Vs.

1.T.Vaithiyalingam

2.M/s.United India Insurance Company Limited,
TP Hub Office,
Divisional Office-1, 1st Floor,
Ranga Complex, Door No.104-A,
Peramanur Main Road,
Salem-636 007.

3.V.Venkateswaran

4.T.Chinnapaiyan @ Dhanapalan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2020 made in M.C.O.P.No.1735 of 2015 on the file of Motor Accident Claims Tribunal, I Additional District Court, Salem.

For Appellant : Mr.P.Jagadeesan

For Respondents : Ms.I.Malar for R2



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Mr.S.P.Yuvaraj for R4

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 22.01.2020 passed by the Motor Accident Claim Tribunal, I Additional District Court, Salem, in M.C.O.P.No.1735 of 2015.

2. The appellant is the daughter of the deceased, Sivanesam and the first respondent is the husband of the appellant and the third respondent is the son of the deceased.

3. The facts of the case are that on 26.03.2014, the third respondent Venkateswaran was driving a Suzuki Motorcycle bearing Reg.No.TN 52 Y 9473 belonging to the first respondent along with the deceased and the appellant's daughter from Mettur to Tharamangalam. When he was nearing Chinnankurai Thengaikottai at Periyasoragai, a TVS 50 moped bearing Reg.No.TN 27 W 1186 belonging to the fourth respondent which was going in front of the motorcycle turned right side and the third respondent has driven the motorcycle in a rash and negligent manner and did not slow down the motorcycle and hit on the backside of the moped



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and caused accident, due to which, Poojashri sustained grievous head injuries and Sivanesam died on the way to hospital. Thereby, the appellant, who is the daughter of the deceased, filed claim petition before the Tribunal and the Tribunal has awarded a compensation of Rs.9,26,200/- and fixed 50% liability against the second respondent and 50% liability against the fourth respondent. Challenging the same, this Civil Miscellaneous Appeal has been filed.

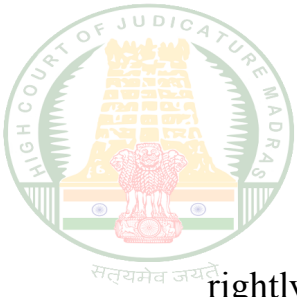
4. The learned counsel appearing for the appellant submits that the Tribunal erred in apportioning the compensation by directing 50% of compensation payable by the second respondent on behalf of the first respondent and the balance 50% shall be payable by the fourth respondent. In the case of composite negligence, apportionment of compensation between the two tort feasons is not permissible and the Tribunal ought to have directed all the respondents to pay the entire compensation jointly and severally. Further, the fourth respondent remained ex-parte before the Tribunal and therefore, it is not possible to recover the compensation from him. He would further submit that in order to prove the negligence against the third respondent, P.W.2/eye



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witness was examined and he deposed before the Tribunal that the entire negligence was against the third respondent, who is the son of the deceased. The policy is a package policy in which the pillion rider is also entitled to claim compensation irrespective of the relationship and the relationship is not a bar for filing the claim petition against the owner of the vehicle and other persons. The criminal case registered against the fourth respondent ended in acquittal and the evidence of P.W.2 and R.W.2 was against the third respondent. In such circumstances, the Tribunal ought to have fixed the liability against the second and the third respondents.

5. The learned counsel appearing for the second respondent submits that the first respondent is the owner of Suzuki Motorcycle and the husband of the appellant, and the third respondent has driven the motorcycle in a cautious manner and the fourth respondent has dashed against the motorcycle driven by the third respondent and thereby, the accident has happened, for which, FIR was registered against the fourth respondent and though the fourth respondent was acquitted from the criminal case, it would not be a conclusive proof to hold that the third respondent was responsible for the accident and the said issue was



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rightly considered by the Tribunal and the Tribunal has rightly fastened 50% of liability against the fourth respondent which need not be interfered with by this Court.

6. The learned counsel appearing for the fourth respondent submits that initially FIR was registered against the fourth respondent and he was acquitted from the criminal case. The evidence of P.W.2 and R.W.2 are against the third respondent and therefore, the fourth respondent is not liable to pay the compensation, however, the Tribunal fastened 50% of liability against the fourth respondent. Accordingly, he prays for allowing the appeal in favour of the appellant herein.

7. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the second respondent and the learned counsel appearing for the fourth respondent.

8. P.W.2/eye witness has deposed before the Tribunal that the third respondent who is the son of the deceased has driven the vehicle Suzuki Motorcycle bearing Reg.No.TN 52 Y 9473 belonging to the first respondent and insured with the second respondent/Insurance Company



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along with the deceased and the appellant's daughter in a rash and negligent manner, due to which, the accident had happened.

9. Though the second respondent claims that the accident has happened due to rash and negligent driving of the fourth respondent, who was coming from opposite direction in TVS 50 moped bearing Reg.No.TN 27 W 1186 and FIR was registered against him, the criminal case registered against the fourth respondent ended in acquittal. Further, no independent eye witness was examined by the second respondent to prove that it was the 4th respondent, who had driven the vehicle in a rash and negligent manner and in the absence of any material to prove the said fact, the fixation of 50% liability on the 4th respondent is wholly erroneous and, therefore, the same requires to be set aside. This Court fixes the entire liability against the second and the third respondents.

10. No grievance has been expressed about the compensation that has been awarded and, therefore, this Court is not venturing into the same.



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11. In the aforesaid circumstances, this appeal is allowed and the second respondent/Insurance Company is directed to deposit the entire compensation fixed by the Tribunal along with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the compensation amount directly to the bank account of the appellant through RTGS within a period of two weeks thereafter. No costs.

12.12.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

ssb

To

The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.



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M.DHANDAPANI, J

ssb

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