



C.M.A.No.1648 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.09.2023

PRONOUNCED ON : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.1648 of 2018

1. Surulirajan
2. Selvi

...Appellants

Vs.

1. Manickam
2. The New Indian Assurance Co. Ltd.,
Rep. by its Manager,
Dharmapuri.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 09.04.2018 made in M.C.O.P.No.572 of 2014 by the learned Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

For Appellant : Mr.S. Sathiaselan

For Respondents : Mr.M.Krishnamoorthy for R2
Notice served No Appearance - R1



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JUDGMENT

This appeal is filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.No.572 of 2014 dated 09.04.2018 by the learned Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

2 According to the appellants/claimants, on 29.06.2014 when their son Gokul was travelling in a Hero Splendor Pro bearing Reg.No.TN 20 AQ 8039 as a pillion rider, driven by one Sakthi slowly and cautiously observing traffic rules, from Hogenakal towards Dharmapuri, in Pennagaram-Dharmapuri Road, and when the vehicle reached Paramveer Matriculation School, the vehicle bearing Reg.No.TN 29 AF 8974 coming from opposite direction in a rash and negligent manner dashed against the vehicle in which the deceased travelled, due to which both the deceased, who was travelling as pillion rider and the rider of the vehicle sustained grievous injuries and succumbed to the injuries. Therefore the claimants, who are parent of the deceased, have filed claim petition claiming



Rs.30,00,000/- as compensation for the death of their son.

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3 The claim petition was contested by the second respondent/Insurance Company and they filed detailed counter apart from disputing the manner of accident and liability. The first respondent, who is the owner of the offending vehicle did not appear before the Tribunal and he remained ex-parte.

4 To prove the claim, the appellants/claimants examined P.Ws.1 & 2 and marked Exs.P1 to 14. On the side of the second respondent/Insurance Company R.Ws.1 to 3 were examined and Exs.R1 to 7 were marked.

5 The Tribunal on an assessment of entire oral and documentary evidence, fixed contributory negligence on the part of the deceased and the rider of the offending vehicle and awarded a sum of Rs.10,17,800/- as compensation and directed the second respondent/Insurance Company to pay the 50% of the compensation and directed it to recover the same from



the first respondent/owner of the offending vehicle. Aggrieved over the compensation awarded by the Tribunal, the claimants are before this Court.

6 Learned counsel for the appellants/claimants would submit that even though P.W.2, who is the informant, based on whose information Ex.P1 FIR was registered, before the Police has stated that three persons were travelling in the vehicle, in which the deceased was a pillion rider, but, before the Tribunal has stated that Sakthi was riding the vehicle and the deceased was travelling as pillion rider and P.W.2 and the other one was travelling in the other vehicle. P.W.2 further deposed that while the Sakthi was riding the vehicle slowly, cautiously and observing the traffic rules, the offending vehicle coming from opposite direction in a rash and negligent manner dashed against the two wheeler, in which the deceased was travelling as pillion rider and due to which both rider of the vehicle and pillion rider the deceased sustained grievous injuries and succumbed to the injuries.

6.1 The Tribunal accepted the contents of Ex.P1 FIR, but, failed to

accept the evidence of P.W.2 and fixed contributory negligence both on the part of the deceased and the rider of the offending vehicle. There is no evidence to show that rider of the two wheeler in which the deceased travelled as pillion rider, rode the vehicle in a rash and negligent manner and caused the accident. P.W.2, who is the eye witness to the accident has clearly stated that the accident had occurred only due to rash and negligent driving of the rider of the offending vehicle and not the rider of the two wheeler.

6.2 The learned counsel further contended that the quantum of compensation awarded by the Tribunal does not reflect just compensation. Age of the deceased at the time of accident was only 17 years and was studying +2 at Sri Vijay Vidyalaya Matriculation Higher Secondary School, Dharmapuri and the claimants prepared the deceased to become a Doctor and if the accident had not happened, the deceased would have become a Doctor. The Tribunal without considering the evidence of P.W.1 and the documents produced by the appellants/claimants simply fixed the notional income of the deceased at Rs.6500/- p.m. and erroneously deducted ½ of the



amount towards personal expenses of the deceased.

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6.3 Further even though the deceased was only pillion rider, who is a third party, the Tribunal failed to direct the second respondent/Insurance Company to pay the entire compensation and erroneously fixed the contributory negligence on the part of the rider of the two wheeler. The Tribunal itself found that the rider of the offending vehicle did not possess valid driving license at the time of accident and the person who did not have valid driving license to ride the two wheeler should have caused the accident and even assuming that three persons were traveling in the vehicle at the time of accident including the deceased, that may not be sole ground to arrive at the conclusion that the rider of the two wheeler also contributed to the accident. Hence appreciation of evidence by the Tribunal is perverse. In support of his claim, the learned counsel placed reliance on the decisions reported in *(2014)11 SCC 178, (2020) 3 SCC 57 and 2018 SCC OnLine Mad 6818:2019 ACJ 2340.*

7 Learned counsel appearing for the second respondent/Insurance



Company would submit that in Ex.P1 FIR itself it is stated that three persons were travelling in the two wheeler at the time of accident, in which the deceased was travelling as a pillion rider and one of the persons, who was traveling in the vehicle only gave complaint against the rider of offending vehicle, who was examined as R.W.1. R.W.1 has clearly stated that on the date of occurrence, on seeing the two wheeler, in which three persons were traveling coming from opposite direction in a zig zag manner, he stopped the vehicle and even then the said two wheeler dashed against his vehicle and caused the accident and he is not responsible for the accident.

7.1 P.W.2, who is the informant, before the police has clearly stated that on the date of occurrence, three persons were traveling in the vehicle, whereas, before the Tribunal, he has stated that he and other person travelled in other vehicle following the two wheeler, in which the deceased travelled as pillion rider. But, P.W.2 has not clearly stated in which vehicle he was travelling at the time of accident. Further owner and insurer of the two wheeler has not been impleaded in the claim petition. Even though case



was registered against the rider of the offending vehicle, both the vehicles had involved in the accident. The Tribunal rightly fixed contributory negligence, but, without considering the evidence of R.W.1, directed the insurance company to pay the 50% of the compensation, which is erroneous.

7.2 The Tribunal fixed notional income of the deceased at Rs.6,500/- p.m., but the deceased was only 17 years old at the time of accident and hence the Tribunal ought to have granted lump sum and further the Tribunal erroneously granted future prospects at 40%, which would only applicable for the employees. Therefore the Award of the Tribunal is liable to be set aside.

8 Heard the learned counsel appearing on either side and perused the materials available on record.

9 Exs.R6 and R7 are the motor vehicle inspection reports of both the vehicles and a careful perusal of the same would go to show that both the vehicles got similar damages in the front side of the vehicles and hence



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it is clear that it is head on collusion. Therefore riders of both the vehicles contributed to the accident and hence the Tribunal rightly fixed contributory negligence on the part of riders of both the vehicles involved in the accident.

10 The contention of the appellants/claimants is that P.W.2, who is an eye witness to the accident has clearly deposed that due to rash and negligent driving of the offending vehicle only the accident had occurred. But a perusal of the FIR shows that P.W.2, who is the informant, before the Police has stated that he along with the deceased were traveling in the two wheeler, but before the Tribunal he stated that he along with one another travelled in the other vehicle, but to prove the same he has not given the details of the vehicle in which he was traveling at the time of accident and hence his evidence is not trust worthy and it is unsafe to rely on his evidence.

11 Even though, the driver of the offending vehicle, who was examined as R.W.1 has stated that on seeing the vehicle coming from



opposite direction in a rash and negligent manner, he stopped his vehicle, but still that vehicle came and dashed against his vehicle, there is no proof to show that R.W.1 also sustained injuries. From Ex.R6 and Ex.R7 it is clear that both the vehicles got damaged in the front portion due to head on collusion. The appellants/claimants failed to implead the owner and insurer of the vehicle in which the deceased travelled at the time of accident. The Tribunal rightly fixed contributory negligence and owners and insurers of both the vehicles are liable to pay and since there is violation of policy condition and the deceased was only a pillion rider, The Tribunal directed the second respondent insurance company of the offending vehicle to pay 50% compensation and they can recover the same from the owner of the offending vehicle and this Court does not find any reason to interfere with the same.

12 As far as quantum of compensation is concerned admittedly the deceased was only 17 years minor at the time of accident and was studying +2 as per Ex.P9 bonafide certificate issued by the School. Even though the deceased was not employed and the Tribunal fixed notional income of the



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deceased at Rs.6500/-, considering the facts and circumstances of the case and nature of the claim, this Court does not find any reason to interfere with the Award, which reflects just compensation. There is no quarrel with the legal propositions laid down in the decisions relied on by the learned counsel for the appellants/claimants, but however, the facts and circumstances of those cases are not applicable to the present case on hand and every case has got its own merits, facts and circumstances.

13 In the result, this Civil Miscellaneous Appeal shall stand dismissed as devoid of merit and substance. No costs.

22.03.2024

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Court, Dharmapuri.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN. J.,

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Pre-Delivery Judgment in
C.M.A.No.1648 of 2018

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