



C.M.A.No.804 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.07.2023

PRONOUNCED ON : 01.03.2024

CORAM:

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

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1. M.Malathi
2. M.Saravanan (Minor)
3. M.Nandhini (Minor)

(Minors 2 & 3 are represented by their mother and next friend the first petitioner herein)

4. Jothi Ammal

...Appellants

Vs.

S.Dan Deva Kumar (deceased)

1. The New India Assurance Co.Ltd.,
No.45, 2nd Line Beach Moore Street,
Chennai – 600 001.
Now at : Door No.232 NSC Bose Road,
Bombay Mutual Building, Chennai – 1.

2. Amaly Swanzy Marry

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 14.12.2017 in M.C.O.P.No.902 of 2011 by the learned Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.



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For Appellant : Mrs.Ramya Rao

For Respondents : Mrs.A.Salomi for R1

JUDGMENT

The claimants have filed the appeal against the dismissal of the claim petition filed by them before the Tribunal.

2 The appellants are claimants, who filed the claim petition claiming compensation of Rs.35,00,000/- for the death of one Amalraj @ Mahendran caused in the accident that occurred on 16.05.2010. According to the appellants/claimants on 16.05.2010, when the deceased was riding as pillion rider in the vehicle bearing Reg.No.TN 22 AD 0622 from south to east in GST Road, the rider of the vehicle suddenly turned right side without indication in a rash and negligent manner and endangering public safety and dashed against the Car bearing Reg.No.TN 07 L 3144. In the said accident, the deceased sustained fatal injuries and the said accident has occurred only due to rash and negligence of the rider of the two wheel in which the



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deceased travelled as a pillion rider. Hence the appellants filed claim petition.

3 The claim petition was contested by the second respondent/Insurance company and they filed detailed counter denying all the allegations apart from disputing the liability.

4 Before the claims Tribunal, On the side of the claimant P.Ws.1 and 2 were examined and Exs.P1 to P10 were marked. On the side of the respondents, no oral or documentary evidence was let in.

5 The Tribunal, on an assessment of the entire evidence on record, mad a finding that the claimants failed to prove the negligence on the part of the rider of the two wheeler in which the deceased was travelling as a pillion rider and there is no evidence on record to support the claim of the claimants and dismissed the claim petition. Aggrieved against the dismissal, the claimants are before this Court.



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6 Learned counsel appearing for the appellants/claimants would submit that the claimants are the legal heirs of the deceased. In this case eye witness to the accident was examined as P.W.2, who has clearly stated the manner in which the accident took place. Even though in the FIR it is stated that the due to rash and negligence of the driver of the Car the accident had occurred, the Tribunal has failed to consider the fact that the deceased was a pillion rider in the two wheeler and since there is involvement of two vehicles, the claimants can proceed either of the vehicle and further in this case due to involvement of two vehicles, theory of composite negligence would arise.

6.1 FIR is only a document which shows the factum of accident and the Tribunal relying on the only document i.e. FIR, dismissed the claim petition, without even looking into the other aspects, which is against the law. The Tribunal failed to note that this Court and the Hon'ble Supreme Court time and again held that FIR is not a gospel. The Tribunal ought to have atleast taken contributory negligence as there was involvement of two vehicles and the Tribunal also failed to observe the ratio laid down by the



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Hon'ble Supreme Court and dismissed the entire claim of the appellants on the ground that the claimants are not proved negligence on the part of the rider of the two wheeler.

6.2 Further the Tribunal erred in observing that the deceased himself was driving the vehicle, but, in the document i.e. FIR, which was relied on by the Tribunal, itself it is stated that the deceased was travelling as pillion rider. Therefore the finding of the Tribunal is not sustainable. Further P.W.2, who is the eye witness has clearly stated that the accident had occurred only due to the rash and negligence of the driver of the Car. To support his contentions, the learned counsel appearing for the appellants relied on the decisions of the Hon'ble Supreme Court reported in **2015 (1) TN MAC 801 (SC), 2021 (2) tn mac 449 (SC)**. Therefore the claimants, who are the dependents of the deceased are entitled for just and reasonable compensation and the first respondent is liable to pay the compensation.

7 Learned counsel appearing for the first respondent/Insurance Company would submit that the entire accident had occurred only due to the



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negligence of the driver of the Car bearing Reg.No.TN 07 L 3144, which dashed against the two wheeler and caused the fatal injuries both to the rider and the pillion rider of the vehicle. FIR was registered against the driver of the Car and charge sheet was also laid against him only. From the FIR it is clear that the rider of the two wheeler rode the vehicle slowly and carefully, crossed the GST Road at the place provided for it, proceeded three fourth of the road and when he had gone to eastern end of the road, the Airport prepaid Taxi came with reckless speed and dashed against the two wheeler, which caused the fatal injuries to both rider and pillion rider of the two wheeler.

7.1 The learned counsel would further submit that the evidence of alleged eye witness P.W.2 could not be acceptable, since he neither lodged the complaint nor taken the deceased to the hospital. Therefore the Tribunal rightly held that since the the accident had occurred due to the rash and negligent driving of the Taxi, which was not validly insured, the claimants had filed the claim petition against the owner and insurer of the two wheeler, which was insured with the first respondent. The Tribunal has rightly



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appreciated all the material evidence and dismissed the claim petition.

Therefore there is no merit in the appeal and the same is liable to be dismissed.

8 Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the first respondent/Insurance Company and perused the materials available on record.

9 According to the appellants/claimants the accident had occurred due to rash and negligent driving of the driver of the two wheeler, in which the husband of the first appellant was riding as pillion rider, in which he sustained grievous injuries and succumbed to the injuries. The deceased at the time of accident, was 38 years and was working as Load Man and he also possessed valid Driving License and was earning Rs.8000/- p.m.

10 The first appellant is wife, 2nd and 3rd appellants are minor



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children and 4th appellant is mother of the deceased. The accident and the fact that the appellants are the legal heirs of the deceased are not in dispute.

Even though in the FIR it is stated that the accident had occurred only due to the negligence of the Driver of the Car and the Tribunal also based on the same made a finding that there is no negligence on the part of the rider of the two wheeler, but it is settled proposition of law that FIR is not an encyclopedia. The Tribunal ought to have assessed the entire materials independently with the available records and the Tribunal cannot decide the matter solely based on the materials collected in the criminal case during investigation.

11 Admittedly two vehicles were involved in the accident. P.W.1 during the cross examination has stated that her husband was driving the two wheeler, but, in the FIR no where it is stated that the deceased was riding the vehicle. Even though it is contended by the learned counsel for the first respondent/Insurance Company that P.W.2 neither had given the complaint nor taken the deceased to the Hospital, but, however, the evidence of P.W.2 shows that he was working and residing in that area and the



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deceased and he are known to each other. At the time of accident, he was in the Tea shop and saw the accident and he further stated that the deceased was traveling as pillion rider and the accident had occurred only due to the rash and negligence of the rider of the two wheeler.

12 Even otherwise, there is no concrete proof to show that at the time of accident, the deceased was only riding the vehicle, except the one word mentioned by P.W.1 during the cross examination that her husband was driving the vehicle, but she is not an eye witness. The first respondent/Insurance Company did not examine any witness or the Driver of the Car to prove the contents of the FIR.

13 Therefore it is clear that the deceased at the time of accident was traveling in the two wheeler as pillion rider. In the instant case, two vehicles were involved in the accident and as contended by the learned counsel for the appellant that both the rider of the two wheeler and the Driver of the Car contributed their negligence. Even though the Taxi was not insured with any Insurance Company, however, the two wheeler was insured



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with the first respondent/Insurance Company.

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14 This Court as an appellate Court, while re-appreciating the evidence on record comes to the conclusion that the claimants are entitled to the compensation and the second respondent/Insurance Company is liable to pay the 50% of the amount.

15 Even though the claimants have stated that the deceased at the time of accident was earning Rs.8,000/- p.m., as Loadman, but, there is no valid proof for the same and hence this Court fix notional income at Rs.5000/-. It is claimed that the deceased at the time of accident was aged about 38 years. Since there is no contra evidence to disprove the same, the age of the deceased is 38 years and the multiplier is 15. Thus Loss of dependency is calculated as follows:

Notional income	=	Rs.5,000/-
30% addition towards future prospects	=	(+)Rs.1,500/-
	=	Rs.6,500/-

After deduction of 1/3 towards personal



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expenses = (-) Rs.4,333/-

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<i>Sl. No.</i>	<i>Name of the Head</i>	<i>Award Amount Rs.</i>
1	Loss of dependency	779940.00
2	Love and Affection for appellants 2 to 4 (each Rs.50,000/-)	150000.00
3	Loss of consortium to first appellant	40000.00
4	Funeral expenses	15000.00
	Total	984940.00

16 The first respondent/Insurance Company is directed to deposit the 50% award amount i.e. Rs.4,92,470/- along with interest @ 7.5% p.a from the date of claim petition till the date of realisation, within a period of three months from the date of receipt of a copy of this order before the Tribunal. The first appellant/wife is entitled to Rs.1,92,470/- and the appellants 2 to 4 are entitled to Rs.1.00 Lakh each, if the fourth appellant is not alive, her share shall be paid to the first appellant/wife. On such deposit being made the Tribunal is directed to pay the same directly to the account of the first and fourth appellants/claimants as per the decision of the Division Bench of this Court reported in 2016 (2) LW 561 (*The Divisional*



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Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh

and Others). The shares of the Minor claimants shall be deposited in any one of the Nationalised Bank till they attain majority. The claimants are hereby directed to pay the requisite court fee, if any, for the award granted by this Court.

17 In the result, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs in this appeal.

01.03.2023

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court, Chennai.
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

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