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CMA.No.2033 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2033 of 2024

1. Kannemma

2. Mani

... Appellants

vs.

1. Subedar Ramkishor

2. The Manager,

Universal Sampo General Insurance Company Limited,

Motor Thirty Party Claims,

No.102, New No.44, Old No.39, Halls Road,

Egmore, Chennai - 600 008.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 08.06.2023 in M.C.O.P. 26 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court No.1, Thiruvallur.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Ms.R.Sreevidhya



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J U D G M E N T

The appellants are the claimants in M.C.O.P. 26 of 2021 on the file of the Motor Accident Claims Tribunal, Thiruvallur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.80,00,000/- for the death of their son Parthasarathi in a road accident that occurred on 18.09.2020.

2. The brief case of the appellants / claimants is as follows :

On 18.09.2020, Parthasarathi (since deceased) was riding a motorcycle bearing Registration Number AP-03-BD-3506 on Puttur – Chennai Main Road and at about 11.10 a.m., a speeding lorry bearing Registration Number NL-01-1651 belonging to the first respondent came in the opposite direction and hit the two wheeler driven by Parthasarathi (deceased) resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number NL-01-1651 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Universal Sampo General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay



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compensation to them.

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4. In the Tribunal the owner of the lorry remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 08.06.2023, fastened negligence on the part of the driver of the lorry bearing Registration Number NL-01-1651 and the deceased in the ratio 50:50 and directed the respondents 1 and 2 to pay compensation of 14,83,000/- (50% of the total compensation of Rs.29,66,000/-) to the appellants (claimants), jointly and severally, together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation.

6. Aggrieved over the contributory negligence fastened on the part of the deceased by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



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7. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel appearing for the second respondent.

8. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants contended that the Tribunal merely based on the Google Map had come to the conclusion that the deceased also contributed to the accident to the extent of 50% and therefore, the same has to be set aside.

9. Per contra Ms.R.Sreevidhya, learned counsel appearing for the second respondent contended that the Motor Vehicle Inspector's Report (Ex.P3) and the FIR (Ex.P1) show that the deceased also contributed to the accident.

10. A perusal of the records shows that the Tribunal had taken pain to search the Google Map to find out the accident spot and observed thus :

".....

On verification of the Google Maps by searching M.Agaram Village, Nindra Village and Pichattur Village it could be seen that



the road from M.Agaram Village joins the Puttur - Chennai Road and Nindra Village lies in between the same and Pichattur Village is situated on the other side of the Puttur - Chennai Road after the cross road junction towards Chennai. As such deceased who was proceeding from M.Agaram Village to Pichattur Village must have to cross the Puttur - Chennai Road and proceeds towards Chennai direction."

However, in the FIR (Ex.P1) and in the charge sheet (Ex.P6) it is clearly mentioned that the driver of the lorry was responsible for the accident. Ramesh (P.W.2) is the eyewitness to the occurrence. He had deposed that the driver of the lorry was rash and negligent in driving his vehicle. In the circumstances, the Tribunal, merely based on the Google Map, had come to a conclusion that the deceased also contributed to the accident to the extent of 50%. Such an observation made by the Tribunal cannot be sustained and therefore, the same is set aside.

11. As far as quantum of compensation is concerned, there is no dispute and the Tribunal has also awarded just compensation. Therefore,



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the award passed by the Tribunal is upheld.

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12. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. The Award amount passed by the Tribunal is upheld.
- iii. The orders passed by Tribunal fixing contributory negligence on the part of the deceased is set aside.
- iv. The first respondent and the second respondent, the Universal Sampo General Insurance Company Limited are directed to deposit the compensation amount i.e., Rs.29,66,000/- (less the amount already deposited) jointly and severally, together with interest at the rate of 7.5% per annum 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 / uploading of this order to the credit of M.C.O.P. 26 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court No.1, Thiruvallur.
- v. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by



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the Tribunal shall be kept intact.

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vi. The appellants / claimants are not entitled to claim interest for the period of delay of 197 days in filing this appeal.

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Index : Yes/No
Speaking/Non-speaking order
mtl

To

1.The Motor Accidents Claims Tribunal,

7/9



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Special District Court No.1, Thiruvallur.

2. The Manager,
Universal Sampo General Insurance Company Limited,
Motor Thirty Party Claims,
No.102, New No.44, Old No.39, Halls Road,
Egmore, Chennai - 600 008.

3. The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.
mtl



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