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C.M.A.No.1955 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1955 of 2020

1. R.Ponnusamy
2. P.Poongodi
3. P.Monika

... Appellants

Vs.

1. K.Rajendran
2. Ramu Virappan
3. M/s.The National Insurance Co.Ltd.,
Main Branch, Ramanathapuram, Coimbatore.
4. M/s.The Oriental Insurance Co.Ltd.
No.186-A1, Coimbatore Main Road,
Mettupalayam – 641 301.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2019 made in M.C.O.P.No.1122 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore and grant the compensation.

For Appellants : Mr.K.Vasanthanayagan

For Respondents : M/s.R.Sreevidhya for R4
Mr.V.S.Kesavan for R1
Mr.S.Arun Kumar for R3



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Not ready in Notice [R2]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore in M.C.O.P.No.1122 of 2015 dated 28.06.2019, the claimants has filed the above appeal before this Court seeking enhancement and the negligence fixed as against the deceased.

2. Mr.V.S.Kesavan, learned counsel accepts notice for the first respondent, Mr.S.Arun Kumar, learned counsel accepts notice for the third respondent and Mrs.R.Sreevidhya, learned counsel accepts notice for the fourth respondent. Considering the period of pendency of the above appeal, the same is taken up disposal based on the materials available on record.

3. Brief facts which are necessary for disposal of this appeal is as follows:-

(i) The claimants are parents and sister of the deceased. On 23.01.2015, at about 9.30 p.m., when the deceased namely P.Easwaramoorthy was riding a



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motor cycle bearing registration No.TN 66 B 7072, at that time a pedestrian, one Muthusamy without giving any signal had crossed the road, in order to avoid hitting him, the deceased had turned the vehicle towards west direction, due to which the car which came from south to north direction driven by the first respondent belonging to the second respondent dashed the motor cycle driven by the deceased, which resulted in the death of the deceased. Thereby, the claimants have filed a claim petition claiming compensation of Rs.27,30,000/-.

4. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked sixteen documents viz., Ex.P.1 to Ex.P.16. The third respondent / insurer of the car examined R.W.1 and examined Ex.R1 and R2, the fourth respondent / insurer of the motor cycle has examined R.W.2 and marked Ex.R3. After adjudication, the Tribunal dismissed the appeal on the ground that the respondents are exonerated from the claim. Aggrieved over the same, the claimants have filed the above appeal.



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5. The learned counsel appearing for the claimants submitted that admittedly the first respondent is the driver of the car belonging to the second respondent insured with the third respondent. When the deceased, was driving his motor cycle, suddenly one Muthusamy, crossed the road without giving any signal and in order to avoid hitting the said pedestrian, the deceased had turned his vehicle towards west, at that time the car belonging to the second respondent driven by the first respondent in a rash and negligent manner dashed the deceased and caused the accident, for which the deceased lost his life. Therefore, definitely the third respondent / insurer of the car has to indemnify the claimants for the loss suffered by them, due to the death of the deceased.

6. He further submits that though, the said accident was caused due to the driver of the car / first respondent herein, however, the law enforcing agency has registered a case against the deceased as if it is due to the negligent driving of the deceased, he lost his life by dashing the car driven by the first respondent. On the basis of the FIR registered by the law enforcing agency the



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Tribunal, erred in concluding that the respondents are exonerated from the appellants' claim. It is an established principle of law that FIR cannot be assumed as a substantive piece of evidence and can only be considered as an important piece of evidence. Moreso, the appellants have examined an independent eye witness, P.W.1. namely R.Ponnusamy, who categorically deposed before the Tribunal that the accident had occurred only due to the first respondent / driver of the car and without considering the same, the Tribunal had held that the first respondent cannot be said to be responsible for the accident and failed to fix negligence on the part of the first respondent, which is *per se* unsustainable. Accordingly, he prayed to fix contributory negligence on the part of the first respondent.

7. Per contra, the learned counsel appearing for the first respondent / driver of the car submits that admittedly the FIR has been registered as against the deceased and in order to avoid hitting a pedestrian, the deceased diverted the vehicle in a wrong direction and caused the accident by colluding with the car which came in the opposite direction. Hence, the deceased is solely



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responsible for the alleged accident. Upon considering the oral and documentary evidence, the Tribunal had rightly held that the respondents are not responsible for the said accident. Accordingly, he prayed for dismissal of the above appeal.

8. The learned counsel appearing for the third respondent / insurer of the car submits that admittedly the FIR and charge sheet has been registered as against the deceased. The deceased, being a tort-feaser is solely responsible for the said accident and hence, the claimants are not entitled to claim compensation before the Tribunal. Upon appreciating the said facts, the Tribunal has rightly, rejected the claim of the appellants and exonerated the respondents from their claims.

9. The learned counsel appearing for the fourth respondent / insurer of the motor cycle submits that the aforesaid two wheeler driven by the deceased has been registered in the name of the second appellant / mother of the deceased and hence, he steps into the shoes of the owner of the vehicle. When



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that be so, the deceased who being the son of the second appellant is not a third party as per the policy of the insurance. However, the fourth respondent is not liable to indemnify the claimants. Accordingly, he prayed for passing appropriate orders.

10. Heard the learned counsel for the appellants and the respondents 1, 3 and 4 and perused the materials available on record.

11. Admittedly, the accident happened on 23.01.2015. It is the contention of the appellants that the deceased was riding the two wheeler belonging to the second appellant in the north to south direction on the Sakthy Main road, at that time a pedestrian crossed the road without giving any indication and in order to avoid hitting him, the deceased diverted the vehicle driven by him towards the west, thereby a car which came from south to north direction driven by the first respondent dashed the two wheeler driven by the deceased. In order to prove the said incident, the appellants have examined an independent eye witness as P.W.1. However, no independent eye witness has



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been examined on behalf of the respondents. As both the vehicles are involved in the said accident, it cannot be said that the deceased alone is wholly held responsible for the cause. Though the FIR has been registered as against the deceased, it has been the consistent view of Courts that FIR is not an Encyclopedia and need not contain all the details and it is only the final report after investigation of the witnesses which would have a bearing on the issue. Without considering the said aspect, the Tribunal has fixed entire negligence as against the deceased, which is wholly unsustainable. Hence, this Court thinks it appropriate to fix 75% negligence as against the deceased and 25% negligence on the part of the driver of the car.

12. The another issue is with respect to quantum of compensation awarded by the Tribunal. Admittedly, the accident had happened during the year 2015. It is the claim of the appellants that the deceased was earning a sum of Rs.8,400/- per month. Considering the fact that the deceased had lost his life, this Court is inclined to fix a sum of Rs.8,400/- per month. Accordingly, the monthly income of the deceased is fixed as Rs.8,400/- and after adding



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40% towards future prospects, the same would arrive at Rs.11,760/- (Rs.8,400 + Rs.3,360). Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased would be at Rs.5,880/- (Rs.11,760 – 50% of Rs.11,760) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '18' and hence, the loss of income would be at Rs.12,70,080/- (Rs.5,880 x 12 x 18).

13. A sum of Rs.80,000/- each has been awarded under the head of "loss of love and affection" for the appellants 1 and 2. A sum of Rs.15,000/- has been awarded under the head "loss of estate". A sum of Rs.15,000/- has been awarded under the head "funeral expenses".

14. In the above circumstances, the award passed by the Tribunal is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of income	-	12,70,080/- (awarded)
Funeral expenses	-	15,000/- (awarded)
Loss of love and affection	-	80,000/- (awarded)
Loss of estate	-	15,000/- (awarded)
Total	-	13,80,080/-
Less 75% contributory negligence on the part of the rider of the motorcycle / deceased	-	3,45,020/-
Rounded off	-	3,46,000/-

15. Accordingly, this appeal is partly allowed by awarding a sum of **Rs.3,46,000/-** as compensation to the claimants in which the appellants 1 and 2 are entitled to a sum of Rs.1,48,000/- each and the third appellant is entitled for a sum of Rs.50,000/- as compensation. The third respondent / insurer of the car is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.1122 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, within a period of six weeks (6) from the



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date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS as per the aforesaid apportionment ordered by this Court within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. There shall be no order as to costs in the present appeal.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
rap

To

1. The Motor Accident Claims Tribunal, Special Subordinate Judge,
Coimbatore

2. The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI,J.,

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