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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.2510 & 2511 of 2023

- 1.Kuppusamy
- 2.Kumarasamy
- 3.Baby

..Appellants
in both CMAs

.VS.

- 1.Keerthanon
- 2.Royal Sundaram Alliance Insurance Company Ltd.,
302, Muthu Plaza, 1st Floor
Avinashi Road, Tiruppur.

..Respondents
in both CMAs

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 07.08.2023 made in M.C.O.P.No.1714 of 2018 and M.C.O.P.No.1713 of 2018, on the file of the Exclusive Motor Accident Claims Tribunal,Tiruppur.

For Appellants : Mr.M.Lokesh
(Both CMAs)

For Respondents : Mr.G.Vasudevan
(Both CMAs) for R2

for R1 – set ex-parte



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COMMON JUDGMENT

The claimants who are the brothers and sister of the deceased Arusamy and Loganathan, aggrieved by the rejection of their claim petitions, have filed these appeals against the award passed by the Exclusive Motor Accident Claims Tribunal, Tiruppur in M.C.O.P.No.1714 of 2018 and M.C.O.P.No.1713 of 2018, dated 07.08.2023.

2.The case of the claimants is that the deceased Arusamy and Loganathan were travelling in a two wheeler on 26.5.2018 which was ridden by Loganathan and Arusamy was the pillion rider. They were travelling at Palladam-Tarapuram Road and at about 09.30 p.m., the offending vehicle which was a Car and which was coming in the opposite direction was driven in a rash and negligent manner and it hit the two wheeler as a result of which both the rider and the pillion rider sustained grievous injuries and unfortunately both of them succumbed to the injuries. It is under these circumstances, the claimants who are the brothers and sister of the deceased filed two independent claim petitions in M.C.O.P.Nos.1713 and 1714 of 2018, seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had not taken place due to the rash and negligent driving on the part of the 1st respondent and the accident had taken place only due to the rash and negligent driving on the part of the deceased Loganathan. Accordingly, both the



claim petitions were dismissed. Aggrieved by the same, the present appeals have been filed before this Court.

4. Heard Mr.M.Lokesh learned counsel for the appellants and Mr.G.Vasudevan, learned counsel for R2.

5. This Court has carefully considered the submissions made on either side and the materials available on record. This Court also carefully gone through the award passed by the Tribunal.

6. The entire case hinges upon the evidence of PW.2, RW.1 and RW.2. PW.1 was not an eye witness in this case and she was the one who is said to have informed the police based on which an FIR came to be registered in Crime No.286 of 2018. Before going into the evidence of PW.2, RW.1 and RW.2, there is one fact which requires mention pertaining to the evidence of PW.1.

7. The Tribunal has disbelieved the evidence of PW.1 mainly on the ground that PW.1 was not an eye witness in this case and that PW.1 while giving the complainant has attributed the entire negligence regarding the accident on the deceased Loganathan. That apart, PW.1 has also mentioned the name of one Gopu as if, he informed to PW.1 about the accident and this Gopu was not even the relative of PW.1 and PW.1 has not explained as to how he came to know



Gopu. PW.1 also speaks about one Loganathan as an eye witness but he was not examined as an eye witness and whereas one Senthil Kumar alone has been examined as an eye witness. That apart, the Tribunal also rejected the explanation given by PW.1 as to the circumstances under which the FIR was registered and also Ex.P.3 which was a complaint addressed subsequently to the Superintendent of Police.

8.It must be borne in mind that PW.1 was not an eye witness in this case and he was the brother of the deceased. He belongs to a rustic village and therefore, the standard of appreciating the evidence of a rustic villager must be adopted by the Court. PW.1 has clearly stated that he is an illiterate and he did not even know the contents of the FIR and he was merely asked to subscribe his thump impression. This was done by PW.1 since the police were insisting for the complaint in order to release the dead bodies of the brothers of PW.1. On coming to know about contents of FIR, a complaint was also given to the Superintendent of Police through Ex.P.3. A counsel helped to prepare this letter. Such help was resorted to since PW.1 is an illiterate and therefore, there is nothing unnatural to approach an advocate to prepare a complaint. The fact that PW.1 mentioned two other names as the informant and the eye witness of the accident, by itself cannot result in completely discarding the evidence of PW.1. Therefore, the evidence of PW.1 has some significance in this case, to understand the situation that was prevailing immediately after the accident took place where PW.1 had lost



both his brothers.

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9.The most important witness in this case is PW.2, who was examined on the side of the claimants as an eye witness. PW.2 clearly explains about the accident in his chief examination. During the cross examination, PW.2 was able to explain about the accident even better than what he explained in the chief examination. He even goes to the extent of saying as to what happened immediately after the accident where the offending vehicle lost control and fell into a ditch and an ambulance also came to the scene of occurrence and the injured persons were taken in that ambulance. These injured persons are none other rather than RW.1 and RW.2. On a careful reading of the evidence of PW.2, it is seen that his evidence has not been discredited. Just because PW.2 happens to live 25 kilo metres away from the scene of occurrence, that by itself is not a ground to doubt his presence at the spot at 09.30 p.m., on the fateful day. The Court must keep in mind the fact that the yardstick to be followed while appreciating the evidence in motor accident cases is only preponderance of probabilities. PW.2 has explained as to how he was present in the scene of occurrence and unless and otherwise his evidence is totally unbelievable, it cannot be discarded.

10.Insofar RW.1 is concerned, it has to be approached with a pinch of salt.



RW.1 is none other than the driver of the offending vehicle and he was the 1st respondent before the Tribunal. He did not contest the case in spite of being served with summons and he was set ex-parte. Having remained absent before the Court, he makes his appearance as a witness called on the side of the insurance company and has deposed as RW.1. This fact by itself creates doubt on the evidence of RW.1. If RW.1 had contested the case on merits, the genuineness of the stand taken by RW.1 could have been appreciated. However, RW.1 was attempting to have a back door entry in this case as a witness and he was trying to achieve indirectly what he did not achieve directly by contesting the case.

11. Insofar as RW.2 is concerned, he has merely reiterated the evidence of RW.1. Curiously both RW.1 and RW.2 have stated that they sustained injuries during the accident and both of them went to the police station and informed the police and the police insisted that they should go and take treatment at Palladam Government Hospital and thereafter, they took treatment. If this version given by RW.1 and RW.2 is to be believed, the easiest thing would be to mark the accident register since both of them claimed that they underwent treatment in the Government Hospital immediately after the accident. This is more so since PW.2 in his evidence says that they were taken to the hospital in a 108 ambulance.



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12.The rough sketch in this was marked during the cross investigation. PW.2 specifically states that the scene of occurrence in the rough sketch has not been properly noted. That apart, the rough sketch is prepared only in the course of investigation conducted by the police and the investigation officer was not before the Court to talk about this rough sketch. Therefore, rough sketch by itself cannot be taken to be the gospel truth. The Tribunal seems to have been completely swayed by this rough sketch.

13.On an over all appreciation of the evidence available on record, this Court holds that the evidence of PW.2 has not been discredited and the version given by the eye witness about the accident carries a lot of weight. Hence, the finding of the Tribunal to the effect that the rash and negligent driving on the part of the 1st respondent has not been proved, deserves to be set aside. The Tribunal has given a finding that the accident had taken place only due to the rash and negligent driving on the part of the deceased Loganathan. This is based on the so called complaint that was taken from PW.1. The brothers of PW.1 have died in this case and it is very unnatural that PW.1 will go to the police station and blame his own brother for the accident. From the standpoint of view of a prudent man, the entire FIR sounds from unnatural in this case and the explanation given by PW.1 regarding the circumstances under which such complaint was taken, appears believable. Therefore, the finding of the Tribunal that the accident had taken place only due to the rash and negligent driving on the part of the deceased



Loganathan also deserves to be set aside.

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14.The Tribunal has not gone into the issue of fixing the compensation in this case since the claim petition was dismissed on the ground that there was no negligence on the part of the 1st respondent. The said finding has now been interfered by this Court. Hence, both the matters have to be remanded back to the file of the Tribunal to go into the question of compensation and to fix the compensation in both the claim petitions.

15.In the light of the above discussion, the award passed by the Tribunal in M.C.O.P.No.1714 of 2018 and M.C.O.P.No.1713 of 2018, on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur, dated 07.08.2023, is hereby set aside. The matter is remanded back to the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur, with a direction to the Tribunal to deal with the quantum of compensation to be paid in these claim petitions. The issue regarding the negligence has become final in these appeals and the Tribunal need not go into that issue after remand. The adjudication regarding the compensation payable in these claim petitions shall be decided after affording sufficient opportunity to both sides and it shall be completed within a period of three months from the date of receipt of copy of this judgment.



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16. In the result, both the Civil Miscellaneous Appeals are allowed in the above terms. No costs.

27.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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To

1. Royal Sundaram Alliance Insurance Company Ltd.,
302, Muthu Plaza, 1st Floor
Avinashi Road, Tiruppur.
2. Exclusive Motor Accident Claims Tribunal
Tiruppur.



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N. ANAND VENKATESH., J

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