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CMA NO.4115 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 15 / 03 / 2024

JUDGMENT DELIVERED ON: 08 / 04 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.4115 OF 2019
AND CMP NO.23222 OF 2019**

The Divisional Manager
United India Insurance Company Ltd.,
No.2, Church Street,
Karaikal.

... Appellant /
2nd Respondent

Vs.

1.Jaquiline Mary
2.Josephine Sagayamary

... Respondents /
Petitioners

3.A.V.Murugan

... Respondent /
1st Respondent

4.ICICI Lombard General Insurance
Company Ltd.,
Zenith House, Keshavrao Khade Marg,
Mahalaxmi, Mumbai.

... Respondent
3rd Respondent



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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated June 15th, 2017 made in M.A.C.T.O.P.No.842 of 2013 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) Puducherry.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.B.Janakiram
1 and 2

For Respondent 3 : Not ready in notice

For Respondent 4 : Mr.K.Poomalai

J U D G M E N T

R.SAKTHIVEL, J.

Assailing the award dated 15th June 2017 passed by the Motor Accident Claims Tribunal (II Additional District Judge) Puducherry in M.A.C.T.O.P.No.842 of 2013, the appellant / second respondent has preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, henceforth, the parties will be referred to as per their array in the original petition *i.e.*, 'appellant herein' will be referred to as 'second respondent', the 'first and second respondents herein' will be referred to as 'petitioners', 'third respondent herein' will be referred to as 'first respondent', and 'fourth respondent herein' will be referred to as 'third respondent'.



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Petitioners' case

3. According to the petitioners, on November 11th, 2010 at 19.30 hours, the deceased John Sagayaraj was proceeding from Kalpakkam to Pondicherry along the East Coast Road in his Honda Unicorn Bike bearing Registration No.TN-45-AQ-5139 insured with the third respondent. While nearing Perunthuravu, his bike collided with the stationed Taurus Lorry bearing Registration No.TN-51-C-2124 belonging to the first respondent and insured with the second respondent. The said lorry had no fluorescent strips or parking indications. Adding to that, the Lorry was parked on the left side shoulder of the road (bike lane) covering considerable area of the causeway. That too, in a place where there was no street lights on a rainy day without any other indications of a stationed lorry. Consequently, the deceased sustained injuries in his head and upper body including his chest and abdomen and passed away on the spot. The deceased was working as an Electrical Engineer in TRAC FUJICO at Kalpakkam Atomic Power Plant and was earning Rs.12,000/- per month at the time of accident. Further, he had an opportunity to get promotion and earn more in future. The first petitioner is the mother and the second petitioner is the sister of the deceased. Being dependents, they are



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suffering a lot due to the sudden demise of the deceased. The father of the deceased predeceased him. The accident had happened only due to the negligence of first respondent's driver. The deceased's vehicle is insured with the third respondent. Therefore, the first respondent being the owner of the Lorry, third respondent being the insurer of the deceased's vehicle and second respondent being the insurer of Lorry are jointly and severally liable to pay compensation of Rs.20,40,000/- (Rupees Twenty Lakhs Forty Thousand Only) to the petitioners.

4.The first respondent remained exparte before the Motor Accidents Claims Tribunal.

Second respondent's case

5.The second respondent filed counter affidavit denying the manner of accident and the involvement of the first respondent's vehicle in the accident. Further contended that, onus is on the petitioners to prove that the accident had occurred only due to the rash and negligence of the driver of the first respondent by parking without any indication and that the injuries sustained by the deceased were only as a result of the accident.



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The charge sheet had been laid against the deceased and the same has been closed as abated due to the death of the deceased. On investigation by the police, it was reported that the said lorry was parked with florescent strips and proper indication. The petitioners have stated the contrary in the petition with an ulterior motive to falsely attribute negligence to the driver of the first respondent. If the petitioners are eligible for any compensation, that could be levelled only against the first respondent and the claim against this respondent has to be dismissed. The second respondent denied the dependency of the petitioners on the deceased. Further contended that the petitioners have to prove the age, occupation and income of the deceased. Further that the petitioners' claim and the rate of interest claimed are excessive. Accordingly, the second respondent prayed to dismiss the petition with costs.

Third respondent's case

6.The third respondent filed counter affidavit stating that the petition filed by the petitioners is not maintainable against the third respondent. The deceased John Sagayaraj is the insured and the petitioners are the legal heirs of the deceased and the insured are not a third parties.



The contract of insurance is one of indemnity and the liability of the third respondent is only vicarious in nature and not strict. As per the terms and conditions of the insurance policy taken by the deceased for his two wheeler, the personal accident cover to owner and driver is Rs.1,00,000/- only; and the legal heirs of the deceased / insured should have filed a claim petition and received the said amount of Rs.1,00,000/-. If no compensation is given by the third respondent, then the option open to the petitioners is to approach the consumer forum and not the Tribunal under the Motor Vehicles Act. Further, as the legal heirs, the petitioners have not intimated the third respondent about the accident. The alleged accident did not take place involving the two-wheeler bearing Registration No.TN-45-AQ-5139 belonging to the deceased. The accident had only happened either due to the rashness and negligence of the driver of the lorry or the own negligence of the deceased, who probably was over-speeding and collided into the Lorry. The deceased rode the motor cycle without driving licence. There is wilful breach of policy conditions. The petitioners have to prove that the deceased died due to the injuries sustained in the accident. Further, the third respondent denied the dependency of the petitioners on the deceased. Further contended that, the petitioners have to prove the age, occupation and income of the deceased. Further, the



petitioners' claim and the rate of interest claimed are excessive.

Accordingly, the third respondent prayed to dismiss the petition with costs.

7.On the side of the petitioners, P.W.1 and P.W.2 were examined and Ex-P.1 to Ex-P.17 were marked. On the side of the second respondent, one Mr.Parthiban, Senior Assistant was examined as R.W.1 and Ex-R.1 was marked. On the side of the third respondent, one Prabhu, Legal Officer of third respondent was examined as R.W.2. Permission was granted to the second respondent to raise all the defence on behalf of the first respondent under Section 170 of Motor Vehicles Act, 1988.

8.The Motor Accident Claims Tribunal, relying on the evidence of P.W.2 and considering that no one was examined on the respondents' side to prove that the lorry had fluorescent strips and/or indications, concluded that the accident happened due to the rash and negligent parking by the first respondent's driver. Accordingly it passed an Award in favour of the petitioners and against the second respondent as hereunder:



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“In the result, the petition is partly allowed with costs. A sum of Rs.20,19,000/- (Rupees Twenty Lakhs and Nineteen Thousand Only) is awarded as compensation to the petitioners, which shall be paid to them by the 2nd respondent with interest at 7.5% per annum from the date of petition, i.e., from 22.10.2013 till payment. Out of the total compensation, the 1st petitioner is entitled to Rs.15,19,000/- and the 2nd petitioner is entitled to Rs.5,00,000/- and the award amount of the petitioners shall be deposited in a nationalized Bank namely State Bank of India, Main Branch, Puducherry separately for a period of three years. The petitioners are directed to withdraw the interest of their respective compensation amount once in three months. The cost shall be paid by way of separate cheque issued in the name of 1st petitioner by the 2nd respondent. The fixed deposit of the petitioners shall not be withdrawn without the permission of this tribunal and the fixed deposit receipts shall remain with this Tribunal for safe custody. The balance of court fee if any, has to be paid by the petitioners within one month from this day. Petition is dismissed against R3.”

9. Feeling aggrieved with the Award, the second respondent has preferred this Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988.

10. The first respondent / owner of the lorry was set *exparte* before the Tribunal. His liability being covered by his lorry's insurer /



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second respondent, there arise no need to issue notice to him. Hence, no notice was issued to him in this appeal.

Arguments

11.This Court has heard Mr.D.Bhaskaran, learned counsel for the appellant, Mr.B.Janakiram, learned counsel for the first and second respondents, and Mr.K.Poomalai, learned counsel for the fourth respondent.

12.The learned counsel for the appellant / second respondent has submitted that the deceased riding his bike in a rash and negligent manner, collided with the back of a stationed Taurus Lorry bearing Registration No.TN-51-C-2124. The Police filed charge sheet against the deceased John Sagayaraj marked as Ex-R.1; perusal of the same shows that the Lorry had proper fluorescent strips and indicators, and was parked on the side of the road as its tyre got punctured. Further, the evidence of the alleged ocular witness viz., P.W.2 is not clear and trustworthy. Notably, P.W.2 in his cross examination by third respondent, has deposed that the Taurus Lorry was stationed on the mud surface on the left side of the road.



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Hence, the appellant has proved that the deceased by driving his motorcycle rashly and negligently, caused the accident. The Tribunal, without considering the final report filed by the Investigating Officer and the evidence of P.W.2, has fixed the liability on the driver of the Taurus Lorry bearing Registration No.TN-51-C-2124. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.

13.Per contra, learned counsel for the 1st and 2nd respondents / petitioners has submitted that P.W.2 in his chief examination has clearly deposed that the third respondent's Taurus Lorry driver stationed the Lorry without any indication. P.W.2 in his chief and cross examination by second respondent, has clearly deposed that the lorry was stationed in a manner covering the roadway. Hence, the accident occurred only due to the negligent act of the driver of the Lorry. The Tribunal after appreciating the evidence, passed the award. There is no reason to interfere with the award. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

Discussion and Decision

14.This Court has considered the submissions made on either side and perused the materials available on record.



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15.The First Information Report (Ex-P.1) has been lodged based on the complaint given by one Juen Gerald Raj who is the nephew of the deceased. It has been stated that the accident occurred at 19.30 hours on November 11th, 2010. Admittedly, the complainant did not witness the occurrence. The Police, after investigation, filed a charge sheet marked as Ex-R.1. According to the said charge sheet, the Investigating Officer has found the deceased responsible as he drove his bike in a rash and negligent manner and collided into the back of a stationed Taurus Lorry.

16.On the side of the petitioners (claimants), P.W.2 was examined as an ocular witness. P.W.2 in his chief and cross examination by second respondent, has clearly deposed that the lorry was stationed in a manner covering the causeway. P.W.2 in his cross examination, by third respondent, has deposed in an unclear manner. The relevant extract is hereunder.

R3 தரப்பு குறுக்கு விசாரணை :

“லாரி ஓட்டியவரின் அஜாக்கிரதை தான் விபத்திற்கு காரணம். அந்த டாரஸ்வண்டி ரோட்டின் இடதுபக்கம், மண்பகுதி, ரோட்டிற்கும் நடுவே நிற்குகொண்டிருந்தது.”



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16.1.P.W.2's first statement in his cross examination by third respondent (*supra*), is contrary to the interpretation of the second respondent. Hence, this court rejects the contention of the second respondent that P.W.2 in his cross examination by third respondent, has deposed that the Taurus Lorry was stationed on the mud surface.

16.2.No doubt that Kalpakkam to Pondicherry ECR Road is a busy road. The accident had occurred at 19.30 hours. No doubt that the deceased passed away due to the injuries sustained in the accident caused by the collision between his bike and the first respondent's lorry. The police have lodged a final report against the deceased stating that the accident happened due to the negligence of the deceased and that the lorry had fluorescent strips and indicators. The said facts have not been effectively controverted by the petitioners. At the same time, the second respondent has not examined the driver of the first respondent's vehicle to dispel the ambiguity regarding the presence of fluorescent strips and indicators.

16.3.Considering all these factors, this Court is of the view that, if the deceased had rode his bike with due care and caution, the



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accident could have been averted. At the same time, there is no conclusive evidence to show that the Taurus Lorry was stationed on the left side of the road with proper sign board or indication. Parking a Lorry in a busy road in night hours itself amounts to negligence. Hence, this Court is of the considered opinion that there exist 85% negligence on the part of the driver of the Taurus Lorry and 15% negligence on the part of the deceased. Accordingly, this Court fixes 85% negligence on the part of the driver of the Taurus Lorry and 15% negligence on the deceased.

Quantum

17. At the time of accident, the deceased was a 23 years old bachelor, working as an Electrical Engineer and earning Rs.12,000/- per month. Considering these facts, the Tribunal, by applying the multiplier of 18, adding future prospects of Rs.6,000/- and deducting 50% thereof as his personal expenses arrived at a sum of Rs.19,44,000/- as loss of dependency and further awarded Rs.50,000/- towards loss of love and affection and Rs.25,000/- as funeral expenses. Thus, totally awarded Rs.20,19,000/-. The calculation of the tribunal for arriving at the award amount is in tune with the guidelines laid down by the Hon'ble Supreme



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Court in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.***

reported in ***(2009) 6 SCC 121***. In view of the apportionment of negligence stated *supra*, the second respondent is liable to pay 85% of the award amount viz., Rs.17,16,150/- to the petitioners.

18. Accordingly, after deducting 15% on the amount awarded by the Tribunal, the respondents 1 and 2 / petitioners are entitled to get a sum of Rs.17,16,150/- (Rupees Seventeen Lakhs Sixteen Thousand One Hundred and Fifty only) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The share percentage of the petitioners as apportioned by the Tribunal is unaltered.

19. The appellant is directed to deposit the modified award amount *i.e.*, Rs.17,16,150/- (Rupees Seventeen Lakhs Sixteen Thousand One Hundred and Fifty only) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.A.C.T.O.P.No.842 of 2013 on the file of Motor Accident Claims Tribunal (II Additional District Judge) Puducherry, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the



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respondents 1 and 2 / petitioners are permitted to withdraw their respective shares along with proportionate accrued interest and cost.

20. With these modifications, **the Civil Miscellaneous Appeal is partly allowed** to the extent indicated above. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]

08 / 04 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Motor Accidents Claims Tribunal
(II Additional District Judge)
Puducherry.



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.4115 OF 2019

08 / 04 / 2024