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C.M.A.(MD)No.418 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.418 of 2021

and

C.M.P(MD)No.3729 of 2021

Banumathy

... Appellant/Respondent

Vs.

1.Jeyabalan

2.Anto Arul Thiagarajan

3.Antoahalya Binu

... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order in M.C.O.P.No.100 of 2018, dated 23.12.2020 on the file of the MACT/1st Additional District Court, Tirunelveli by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.H.Velavadhas

For Respondents : Mr.P.Samvel Gunasingh



JUDGMENT

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This Civil Miscellaneous Appeal is preferred against the Award dated 23.12.2020 passed in M.C.O.P.No.100 of 2018 by the Motor Accident Claims Tribunal/1st Additional .District Court, Tirunelveli.

2. The respondent in M.C.O.P.No.100 of 2018 is the appellant herein.

3. The petitioners/claimants are respondents herein, who filed the claim petition in M.C.O.P.No.100 of 2018.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 100 of 2018 are adopted hereunder.

5. The brief facts of the case:

On 10.11.2017 at about 11.30 a.m. the 1st petitioner was riding his Kinetic motor cycle bearing registration number TN 74 K 7078 along with his wife Bridgit as pillion rider in Kottar to Beach Road junction. At that time, the respondent's mini bus bearing registration No.TN 49 1872 was driven by its driver from opposite direction in a rash and



negligent manner and hit against the two wheeler. Due to impact the first petitioner's wife sustained fatal injuries on several parts of body and died on the way to hospital. The deceased was aged 59 years and was earning Rs.25,000/- p.m. as LIC agent. Hence, the petitioners, who are dependants of the deceased Bridgit, filed the claim petition seeking compensation of Rs.25,00,000/-.

6. The respondent objected the claim petition by contending that the driver of the mini bus was driving the bus by observing all traffic rules in a slow speed, as the alleged accident place is a congested one. The first petitioner has ridden his two wheeler in a rash and negligent manner and invited the accident. Therefore, the petitioners are not entitled any claim from the respondent.

7. Before the Tribunal, petitioners examined two witnesses as P.W.1 and P.W.2 and marked 10 documents as Ex.P.1 to Ex.P.10. On respondents side no witness was examined and no document was marked. Witness side exhibits Ex.X.1 to Ex.X.3 were marked. After hearing both and after considering the evidences, the Tribunal has held that the accident had occurred due to the rash and negligent act of the driver of the respondent bus and awarded a total compensation of Rs.8,52,800/- to



the petitioners with interest and cost. Aggrieved by the said award, the respondent has preferred this Civil Miscellaneous Appeal.

8. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

9. The learned counsel appearing for the appellant/respondent has argued that the 1st respondent/1st petitioner has not possessed valid driving license and his driving license was expired and not renewed. P.W.1 admitted these facts. Further, the 1st respondent/1st petitioner's vehicle TN 74 K 7078 is not fit for riding and this was not considered by the Tribunal. Therefore, the Tribunal has to hold contributory negligence at 10% towards the 1st respondent/1st petitioner. The deceased age was 60 years 6 months and 26 days as her date of birth is 14.04.1957, but the Tribunal taken multiplier '9' instead of '6'. In support of his contention, the learned counsel for appellant/respondent relied on citation reported in **2023(1) TN MAC 427 (DB)** of this Court, wherein it is held in paragraph No.12(b) as follows:

“12.(b) As regards the contributory negligence fixed by the Tribunal, we find that the deceased had not contributed to the accident in any manner, except for the fact that he did not possess a valid driving



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licence. The Hon'ble Apex Court had held that the accident has to be independently accessed to fix negligence. However, considering the fact that the deceased did not have a valid license, we are of the view that the contributory negligence fixed by the Tribunal at 10% for the said reason is in accordance with law."

10. The learned counsel for the respondents/petitioners herein, has contended that the mini bus involved in the accident and F.I.R was also registered against the driver of the mini bus. Further, the claim petition was filed claiming compensation for the deceased, who was riding as pillion rider, so if the 1st respondent/1st petitioner did not possess driving license it is not fatal to the present claim petition filed for pillion rider. The appellant/respondent has not examined any witness or marked any document to prove her case. So, the citation reported in **2023 TNMAC 427 (DB)** will not be applicable to this case. The deceased was 59 years and even it is taken as 60, as per **Sarla Varma** case if age 61 completed, fixed multiplier '7' has to be taken, but in this case the deceased completed 60 but less than 61 years and so the multiplier '9' taken by the Tribunal is correct. In support of his argument, the learned counsel for the respondents relied on the following citations:



1. Judgment dated 23.07.2019 in C.M.A.No.2415 of 2019 of this

Court, wherein it is held in paragraph No.10 as follows:

“10.Claimant, though possessed no driving licence, but was not driving rashly and negligently, he cannot be held to be guilty of contributory negligence.”

2. Judgment dated 08.12.2020 in C.M.A.Nos.2222, 2244 and

2226 of 2019 of this Court, wherein it is held in paragraph No.15 as follows:

“15. It is settled law that a person, driving a vehicle without the licence may be the offence under the Motor Vehicles Act. But, it does not leads to conclusion that he has driven the two wheeler in a rash and negligent manner; which resulted in the accident, unless the evidence available on records shows that the accident has taken place due to the negligent driving of the rider of that vehicle.”

3. (2020) 3 Supreme Court Cases 57, wherein it is held in

paragraph No.13 as follows:

“13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the



reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

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Therefore, the compensation awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.

11. On hearing both and on perusal of records, it is clear that in the accident a mini bus and a two wheeler were involved. It is general settled principle that when two vehicles involved in accident, the biggest and larger vehicle is to be held responsible than the smaller one. As per evidence adduced before the Tribunal it is clear that F.I.R was registered against the driver of the mini bus, belonged to the respondent. No contra material placed by the appellant/respondent. The Tribunal has properly appreciated the evidence of P.W.1 and other exhibits and correctly concluded that the accident happened due to the negligence on the part of the driver of the mini bus.

12. As far as contributory negligence is concerned, the appellant/respondent contended that the rider of the two wheeler/1st petitioner has not possessed valid driving license and the two wheeler is not fit for riding. On perusal of records the respondent has not examined any witness and has not placed any document to substantiate her



contention. As per citations relied on both as above, it is clear that even if a rider involved in the accident had not possessed any valid driving licence contributory negligence would not be fixed until it is proved that the accident was taken place due to rash and negligent on the part of the rider. In this case admittedly, no evidence was adduced by the respondent that due to 1st respondent/1st petitioner's negligent riding the accident was taken place and hence, this contention is untenable.

13. The next point argued by the appellant/respondent is that the age of the deceased. The claimants stated that the deceased was aged 59 years at the time of accident. The appellant/respondent states that the deceased completed 60 years 6 months as her date of birth is 14.04.1957. As per **Sarla Varma Case** multiplier '9' is taken for age group 56 - 60 and '7' for age group 61 to 65. Therefore, the deceased not completed 61 years only taken to be completed 60 years. Therefore, the multiplier taken by the Tribunal is found correct. On perusal of award, the Tribunal held that as the deceased had no standard income, has taken notional income as Rs.9,000/- and arrived at loss of income and awarded other incidental benefits on the basis of settled **Sarla Varma** case reported in **2009 (2) TNMAC 1** and **Pranay Sethi** case reported in **2017 (2) TNMAC 609 (SC)**. There is no serious dispute raised by the



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appellant/respondent against these aspect. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 23.12.2020 passed by Motor Accident Claims Tribunal/ I Additional District Court, Tirunelveli in M.C.O.P.No.100 of 2018 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Motor Accident Claims Tribunal /
I Additional District Court,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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