



C.M.A.(MD).No.300 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).Nos.300 of 2020

and

C.M.P.(MD).Nos.3877 of 2020 & 8208 of 2023

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.5-233, II Gundar Diversion Street,
Narayanapuram, Kamuthi,
Ramanathapuram District.

... Appellant

Vs.

1.Kalaiselvi

2.Uma Mageswar

3.Rajasekar

4.Satheeshkumar

(4th respondent remained exparte before the lower Court)

5.Muniasamy

6.Thangammal

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment made in M.C.O.P.No. 184 of 2017, dated 10.09.2019, on the file of the Motor Accidents Claims Tribunal Cum Principal District Judge, Ramanathapuram.



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For Appellants : Mr.C.Jawahar Ravindran
For Respondents : Mr.R.J.Karthick for R1 to R3
: Mr.M.Mohamed Sherbudeen for R6
: R4-Exparte
: R5- No appearance

J U D G M E N T

(Judgment of the Court was made by **K.K.RAMAKRISHNAN.J.,**)

The 3rd Respondent/Insurance Company in M.C.O.P.No. 184 of 2017 on the file of the Motor Accident Claims Tribunal Cum Principal District Judge, Ramanathapuram, has filed this appeal challenging the award of Rs.45,19,063/- passed in favour of Respondent Nos. 1 to 3 as a compensation for death of 1st Respondent husband in the Motor accident happened on 24.05.2017 due to the rash and negligence driving of the appellant insured Tipper Lorry bearing registration No. TN-48-T-2244 by dashing the deceased two wheeler when he was on patrol duty as a Sub-Inspector of Police.

2.For sake of convenience and clarity of facts, parties shall be referred to as per their status/position in the M.C.O.P.No.184 of 2017 proceedings.

3. The 1st Respondent's husband was Selvaraj and he was working as a Sub-Inspector of Police. The 2nd and 3rd Respondent are children of the said



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Selvaraj. On 24.05.2017, when he was riding his two wheeler on patrol duty on the Thurathiyenthal to Therthangal road, near the Thurathiyenthal Bridge at about 10.15 PM the appellant insured Tipper Lorry bearing registration No.TN-48-T-2244 came in rash and negligent manner and dashed against the Motor Cycle and caused injuries to the deceased and due to the said accidental injuries, he died on the spot. The respondent Nos.1 to 3 are the claimants and have filed in M.C.O.P.No.184 of 2017 claiming compensation of Rs. 75,00,000/- with interest.

4.In the claim petition the driver of the vehicle was arrayed as 1st Respondent and he did not appear. The 2nd Respondent was owner of the vehicle and he insured the vehicle with 3rd Respondent company. Both 2nd and 3rd Respondent admitted the involvement of Tipper Lorry in the accident and disputed the negligence. They pleaded that only due to the negligence of the deceased, the accident happened and they specifically stated he came in a rash and negligent manner and dashed against the on coming insured lorry.

5. The claimants to prove the case examined PW.1 and PW.2 and marked Exhibits P1 to P17 and on the side of the Respondent RW.1 and RW.2 were examined and Ex.R1 was marked.



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6. The Learned Trial Judge after framing necessary issues has held that accident happened due to the rash and negligent driving of the appellant's Tipper Lorry and granted compensation of Rs.45,19,063/- to the Respondent Nos.1 to 3 and deceased mother Thangammal who has been arrayed as 4th Respondent in the M.C.O.P.No.184 of 2017, by passing the impugned award dated 10.09.2019. Challenging the same, the Insurance Company preferred this appeal on negligence as well as quantum.

7. The Learned Counsel appearing for the Appellant would submit that the Learned Tribunal Judge after holding that no eye-witness to the occurrence has been examined, erroneously fixed negligence on the basis of the documents namely FIR, Mahazar, Sketch prepared by the Investigating Agency in filing while final report without properly considering the evidence of R.W.2. Therefore, the finding of the Learned Tribunal on negligence is perverse and seeks to set-aside the same.

8.The Learned Counsel appearing for the appellant would submit that deceased was aged about 56 years and he was working as a Sub Inspector of Police and he had only 2 years to complete his service only and therefore the



Learned Trial Judge has committed error in applying the multiplier of 9 and hence he seeks to reduce the compensation.

9. The Learned Counsel for the Respondents/Claimants would submit that the Learned Trial Judge has considered the documentary evidence and held that the accident happened due to the rash and negligent driving of the appellant's Tipper Lorry and driver of the lorry was not examined to dispute the above documents.

10. RW.2 the owner of the vehicle was not an eye-witness to the occurrence and his evidence was not corroborated by any other evidence and therefore the Learned Tribunal Judge correctly fixed the negligence on the appellant's Insurance company Tipper Lorry. Therefore, the said finding of the Learned Trial Judge need not be interfered. The Learned Tribunal Judge following the ratio principle laid down the Hon'ble Constitution Bench judgement of Supreme Court in "**Pranay Sethi**" case reported in **2017 (6) CTC 493** applied the multifiler method even though deceased had 2 years service only. Therefore, there was no error in the said aspect also. Hence, he seeks to dismissed this appeal.



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11. This Court considered the rival submission made on either side and perused the records and impugned judgment and the precedents relied upon by both sides.

12. Now the points for determination arising in this appeal are as follows:

12.1. Whether the Learned Tribunal Judge correctly fixed the negligence upon the driver of the appellant's Tipper Lorry?

12.2. Whether the Learned Tribunal Judge was correct in adopting multiplier of 9 to arrive at the loss of income of the deceased?

13. Discussion on negligence:-

Owner of the Tipper Lorry was examined as RW. and he has not disputed the involvement of vehicle. Therefore, it is clear that the appellant insured vehicle is involved in the accident. Now the remaining question is whether accident happened due to the rash and negligent driving of the driver of the appellant insured vehicle. The Investigating Agency registered the case and conducted the investigation and filed the final report against the driver of the appellant's insured vehicle. The Investigating Agency prepared observation Mahazar and Sketch and same were marked as Ex.P3 and Ex.P4 without any objection. From the above documents and the evidence of RW.2 it is clear that



deceased rode his two wheeler on the Thurathiyenthal to Therthangal road on the left hand side and the driver of the Tipper Lorry drove his vehicle from the opposite direction and dashed the two wheeler at Thurathiyenthal bridge bend by transgressing into the left side of the road without driving on the right side. It is well settled principle that the M.C.O.P proceedings is summary proceedings and there is no necessity to prove the accident beyond reasonable doubt as required in the criminal proceedings. Accident can be proved either through the documentary evidence or oral evidence. It is not expected to prove the accident due to the rash and negligence of the offending vehicle by examining the eye-witness. When the evidence of the driver is against the documentary evidence, the evidence of the driver must be corroborated by other evidence. Driver was added as party to the proceedings and he did not file counter denying the manner of the accident and he did not make pleading disputing the negligence. Therefore, his evidence without pleadings is not acceptable. More particularly, he admitted the filing of final report against him and he has not initiated any proceedings to quash the final report filed against him in C.C.No.14 of 2018. Even in his chief examination, he stated that when he was driving his vehicle in the bend, the deceased came in an opposite side and accidentally lost his balance and hit the lorry. The said evidence is contrary to Ex.P3 and Ex.P4. As observed above, he went on the left side of the road without keeping the right side in his



lane and R.W.2 failed to drive his vehicle in careful manner more particularly, in the bend and hit the on coming deceased two wheeler. Therefore, the Learned Tribunal Judge correctly disbelieved the evidence of the RW.2 and fixed negligence upon him on the basis of the undisputed documents Ex.P3 and Ex.P4. That apart, R.W.2 ran away from the place of the occurrence after the accident and the same is a material circumstance to disbelieve his evidence. This Court finds no palpable error or perversity in the said finding of fixing negligence on the driver of the appellant insured tipper lorry and concurs with the finding of the learned Tribunal Judge that due to the rash and negligent driving of R.W.2, the accident happened.

14. Discussion on Quantum

There was no dispute about the fact that the deceased was working as Sub-Inspector of Police, and aged about 56 at the time of accident. P.W.2 also examined to prove his salary and date of joining the department. The only contention raised by the appellant insurance company is that the learned Tribunal Judge has failed to take the split up multiplier method considering his remaining period of service of two years. The said submission is against the law laid down by the Hon'ble Constitution Bench of Supreme Court in the case of "Pranay Sethi" case reported in 2017 (6) CTC 493 and the same was discussed by the learned Tribunal Judge and correctly adopted the multiplier of 9 and



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correctly arrived the Future Loss of Income as Rs.43,29,063/-. The learned counsel for the appellant did not dispute the remaining compensation awarded under other heads. This Court perused the remaining award under various heads and also finds no infirmity. Therefore, this Court finds no grounds to interfere with the impugned award passed by the learned Tribunal Judge in awarding the compensation of Rs.45,19,000/-.

15. Accordingly, the appeal filed by the appellant insurance company is dismissed and the award passed by the Motor Accidents Claims Tribunal cum Principal District Judge, Ramanathapuram, in M.C.O.P.No.184 of 2017, dated 10.09.2019, is hereby confirmed. The Insurnace Company is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the deposited amount as per the ratio fixed by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

[P.V.J.] [K.K.R.K.,J.]
01.10.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
sbm



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To

1. The Motor Accident Claims Tribunal cum Principal District Court,
Ramanathapuram
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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