



C.M.A.(MD)No.630 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.02.2024

Pronounced on : 26.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.630 of 2019

1. Veerammal

2. Mahalakshmi

...Appellants

Vs.

1. N.Subramanian

*(1st respondent remained exparte before
the lower court)*

2. M/s.National Insurance Company Limited,
represented by its Divisional Manager,
Divisional Office,
Door No.3, North Veli Veethi,
Madurai – 625001.

...Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award passed in MCOP.No.492 of 2013 dated 08.04.2019 on the file of the Motor Accident Claims Tribunal cum Special District Judge/MACT, (Incharge), Madurai, in so far as it related to the contributory negligence 50% fixed against the deceased as awarded is concerned, by allowing the Civil Miscellaneous Appeal.



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For Appellants : M/s.L.Juliet Caroline

For R2 : Mr.D.Sivaraman

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.492 of 2013 dated 08.04.2019 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP cases, Madurai.

2. The appellants/claimants, who were awarded with compensation of Rs.7,35,900/- (Rupees Seven Lakhs Thirty Five Thousand and Nine Hundred only) being the 50% of the compensation awarded for the death of Arunkumar, consequent to an accident occurred on 17.05.2010, challenged the decision of the Tribunal fixing contributory negligence at 50% on the deceased Arunkumar.

3. The case of the appellants/claimants is that on 17.05.2010 at about 21.30 hours, when the deceased was riding his two wheeler bearing Registration No.TN-65-D-9609 with one Karthick as pillion rider from east to west in the left side of Madurai to TPK main road near Thevar



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bridge, Madurai, a car bearing Registration No.PY-01-AS-3111, which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler and as a result of which, the two wheeler rider Arunkumar fell down on the road and sustained serious head injuries and died on the spot and that the accident was occurred only due to the rash and negligent driving of the car driver and on that basis, FIR came to be registered in Crime No.83 of 2010 on the file of Traffic Investigation Wing-III, Madurai for the offences under Sections 279, 337 and 304(A) IPC.

4. It is the further case of the appellants/claimants that the deceased was very hale and healthy and he was aged about 23 years at the time of accident and that he was working as Tiles Contractor and was earning Rs.15,000/- per month.

5. The defence of the second respondent/insurer is that the first respondent's car driver was not possessing valid driving license at the time of accident and thereby the first respondent had violated the terms and conditions of the policy and hence, the second respondent has no legal



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obligation to indemnify the first respondent, that the driver of the first respondent's vehicle had driven the vehicle in a moderate speed in the extreme left side of the road by observing all the traffic rules and regulations carefully and at the time of accident, the deceased had driven his two wheeler bearing Registration No. TN-65-D-9609 from the opposite direction with influence of alcohol and came to the wrong side of the road in a rash and negligent manner and dashed against the first respondent's car and thereby invited the accident, that though FIR was registered against the first respondent's car driver, after completing the investigation the jurisdictional police has filed a final report as 'action dropped' by holding that the deceased alone under the influence of alcohol had driven the vehicle in a rash and negligent manner and caused the accident, that the first respondent's car driver was no way responsible for the accident and that therefore the claim petition itself is liable to be dismissed.

6. During trial, the appellants/claimants have examined the first appellant/first claimant as P.W.1 and two other witnesses as P.W.2 and P.W.3 respectively and exhibited 5 documents as Ex.P.1 to Ex.P.5. The first respondent-owner of the vehicle had remained *ex parte*. The second



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respondent/insurer has examined the staff attached to the Regional Transport Office, Madurai North as R.W.1 and their official as R.W.2 and exhibited 5 documents as Ex.R.1 to Ex.R.5 and a witness document as Ex.X.1.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 08.04.2019 by holding that the accident was occurred due to the rash and negligent driving of both the two wheeler rider and the car driver and fixed the contributory negligence at 50% each and directed the second respondent/insurer to pay the remaining 50% of the award amount. Aggrieved by the impugned order, the claimants have preferred the present appeal.

8. It is pertinent to note that the accident and the involvement of the two wheeler bearing Registration No.TN-65-D-9609 and the car bearing Registration No.PY-01-AS-3111 are not in dispute, but the only dispute is as to who was responsible for the accident or whether both of them are equally responsible for the accident.



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9. The appellants/claimants, in order to prove the mode of accident, have examined P.W.2 and P.W.3. Admittedly, on the basis of the complaint lodged by P.W.3-Karthick, FIR came to be registered in Crime No.83 of 2010 for the offences under Sections 279, 337 and 304(A) IPC on the file of Traffic Investigation Wing-III against the car driver. But at the same time, the jurisdictional police, after conducting investigation, has filed the final report as 'action dropped' by holding that the deceased alone after consuming alcohol had driven the two wheeler in a rash and negligent manner and caused the accident. The second respondent/insurer has produced the copies of the final report under Ex.R.3 and the documents filed along with final report (Ex.R.1-Observation Mahazar and Ex.R.2-rough sketch).

10. P.W.2 and P.W.3, in their chief examination, would reiterate the version of the appellants/claimants raised in the main claim petition. But in the cross-examination, P.W.2 would admit that the first appellant/first claimant is his maternal aunt and only on her request, he has come to depose. P.W.2 would say that he has lodged a complaint in the police station on the next day, that the police have written the same and he has



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subscribed his signature, that he was not aware of the contents of Ex.P.1-complaint and that the police has not examined him subsequently and he was not at all examined before the criminal Court. He would further say that he was not aware as to the steps taken on the basis of his complaint. P.W.2 would further say that the accident road is a east-west road, that the occurrence place was shown to be situated near medical shop in the rough sketch prepared by the police and that the deceased was proceeding from Periyar towards Thirupparankundram at the time of accident. P.W.3, in his cross-examination, would say that he had acquaintance with the deceased Arunkumar for more than seven years as both of them were residing in the same street, that there was a space of 5 to 6 feet on the left of the said road and the accident could have averted if the vehicle was towards that space, that the police has shown occurrence place on the west of the occurrence road, but he would add that the plan was not correct and that he would deny the suggestion that himself and the deceased were responsible for the accident.

11. As rightly contended by the learned counsel appearing for the second respondent, in the rough plan-Ex.R.2 prepared by the police during



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investigation, it has been shown that the accident was occurred on the northern part of the east-west main road. Even according to the appellants/claimants, the deceased was travelling from east to west and whereas, the car was coming from west to east. But it is pertinent to note that the second respondent/insurer has not chosen to examine the car driver and they have not offered any reason or explanation for non-examining him.

12. As already pointed out, though FIR was registered against the car driver, the jurisdictional police, after investigation, has filed the final report only against the deceased. But as rightly contended by the learned counsel appearing for the second respondent, the appellants/claimants have not challenged the closure of the FIR as 'action dropped' by holding that the deceased alone was responsible for the accident. No doubt, as rightly contended by the learned counsel appearing for the appellants, any view or opinion of the investigating officer stated in the final report or the finding of the criminal Court are not binding on the Tribunal and the Tribunal is duty bound to consider the evidence available before it and to decide who was responsible for the accident independently.



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13. Though the second respondent/insurer has also taken a stand that the deceased had driven the two wheeler in a drunken way and the same was evident from Ex.P.2-postmortem certificate, wherein, the Doctor, who conducted the postmortem on the body of the deceased, has observed that small intestine contains 20 ml of brown colour fluid with smell of alcohol, as rightly contended by the learned counsel appearing for the appellants, except the above observation, there is no other material or evidence to hold that the deceased had driven the vehicle in a drunken manner. But at the same time, considering the evidence of the alleged occurrence witnesses P.W.2 and P.W.3 and the contents of Ex.R.1-observation mahazar and Ex.R.2-rough sketch and also the final report filed by the police, there is ample evidence to show that the deceased alone was responsible for the accident, but the Tribunal, taking note of the fact that the car driver could have averted the accident, has also held that he is also equally responsible for the accident. Admittedly, neither the first respondent nor the second respondent/insurer has filed any appeal challenging the finding of the Tribunal mulcting contributory negligence on the car driver. Considering the above, the finding of the Tribunal fixing



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contributory negligence at 50% each on the deceased and the car driver cannot be found fault with.

14. As already pointed out, the second respondent/insurer has also taken a stand that the car driver was not possessing valid driving license at the time of accident and in order to prove the same, the second respondent/insurer has summoned and examined the staff attached to the Regional Transport Office, Madurai North as R.W.1 and he would say that the car driver Samikalai was given license to drive Light Motor Vehicles (LMV) on 21.12.2000 and badge was given on 23.03.2001 and the same was valid till 21.06.2009 and that he was not possessing driving license on the date of accident i.e., on 17.05.2010. As already pointed out, the first respondent had remind *ex parte*. The Tribunal, taking note of the fact that the driver of the first respondent's vehicle was not possessing valid driving license at the time of accident, has invoked doctrine of pay and recovery and thereby directed the second respondent/insurer to pay the compensation amount and to recover the same from the first respondent.

15. Now turning to the quantum of compensation, the appellants/claimants have not challenged the quantum of compensation awarded at,



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by the Tribunal. The Tribunal, taking note of the fact that the deceased was working as tiles contractor, has fixed the monthly income at Rs.9,000/- and after adding 40% of the income towards future prospects, has fixed the monthly income at Rs.12,600/-. Since the deceased was a bachelor, the Tribunal has rightly deducted 50% of the amount towards personal and living expenses of the deceased and after deduction, has fixed the monthly income at Rs.6,300/-. The Tribunal, by applying the dictum laid down by the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in *AIR 2009 SC 3104*, has rightly applied multiplier 18 and arrived at Rs.13,60,800/- towards loss of dependency. The Tribunal has also granted Rs.80,000/- for loss of love and affection probably for the loss of consortium. The appellants/claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Considering the above, the compensation awarded by the Tribunal at Rs.14,71,800/- cannot be found fault with. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

16. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.



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17. In the result, the Civil Miscellaneous Appeal is dismissed. The second respondent is directed to deposit the 50% of the compensation amount as awarded by the Tribunal with interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.492 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP Cases, Madurai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the award amount as per the apportionment fixed by the Tribunal with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs.

26.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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- To
1. The Motor Accident Claims Tribunal/
Special District Court for MCOP Cases,
Madurai.
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Judgment made in
C.M.A.(MD)No.630 of 2019**

Dated : 26.04.2024