

Perumal and ors. Vs. E.indukumar and ors.

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Court : Chennai

Decided On : Jun-11-2012

Judge : P.Devadass, J.

Acts : Indian Penal Code(IPC) - Sections 279, 304-A

Appeal No. : CIVIL MISCELLANEOUS APPEAL No.2810 of 2007

Appellant : Perumal and ors.

Respondent : E.indukumar and ors.

Advocate for Def. : Mr.K.Padmanabhan, Adv.

Advocate for Pet/Ap. : Mr.N.Manokaran, Adv.

Judgement :

This Civil Miscellaneous Appeal filed against the Judgment and Decree dated 26.4.2007 passed in MCOP.No.349 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Bhavani.

JUDGEMENT

1. This appeal has been preferred by the dependants of deceased Jeyavelu, who lost his life in a road accident as against the Tribunal reducing their compensation amount.

2. The Tribunal holding that Jeyavelu was guilty of contributory negligence, apportioned negligence in the ratio of 50 : 50 as between the deceased and the driver of the second respondent and deducted 50% of that amount from the total compensation of Rs.6,44,000/- and awarded them only Rs.3,22,000/-.

3. The learned counsel for the appellants would contend that there was no evidence that the deceased was guilty of contributory negligence. In its judgment, the Tribunal recorded the finding that the accident was only due to the rash and negligent driving of the first respondent, however, subsequently, it had given a contrary finding that the deceased was also guilty of negligence. Further, it had made such a finding without any evidence. The learned counsel for the appellants cited UNITED INDIA INSURANCE CO. LTD. VS. VASANTHA AND OTHERS (2010 (2) TN MAC 278 (DB) and NATIONAL INSURANCE CO. LT. VS. ARJUNAMMAL AND OTHERS (2010 (1) TN MAC 506).

4. On the other hand, the learned counsel for the Insurance Company would submit that the Tribunal has gone deep into the evidence, it had referred to Ex.P.2 Rough sketch and Ex.P.3 Observation Magazor and also noted that the accident was at the centre of the road and thus, has fixed 50% negligence on the deceased. Further, it is a case of collision of two vehicles and it is a case of composite negligence. In the circumstances, the Tribunal has rightly apportioned the negligence equally between the driver of the Ambassador Car, namely, the deceased and the driver of the Mahindra Van/first respondent.

5. On 23.9.2005, at about 3.30 p.m, Jeyavelu was driving the Ambassador Car TN 33 F 4504 on the Bhavani - Mettur Main Road at Sekkanur Pallikadaipudhur, near Rathinasamy Thottam from South to North direction, at that time, a Mahendra Van TN 38 AC 0154, came driven by the first respondent from North to South. An accident took place. In this accident, car driver died on the spot.

6. The third respondent/Insurance Company in its counter pleaded that at the time of the accident, the deceased came driven the Ambassador car in a rash and negligent manner without minding road rules and regulations caused accident and if the deceased was cautious enough in driving the Ambassador car, the accident would not have occurred. Thus, it pleads contributory negligence on the part of the

car driver. It is its plea. A plea is not equivalent to proof. It must be proved by acceptable evidence. Otherwise it will remain only a plea.

7. In VASANTHA(supra) and ARJUNAMMAL (supra), it was held that if contributory negligence is pleaded, there must be evidence from the side of the person who pleads, to the effect that the other party is also responsible for the accident.

8. As regards the question of negligence is concerned under point No.1, in paragraph No.7 in its judgment, the Tribunal after analysing the evidence on record held that and thus deducted 50% of the total compensation amount of Rs.6,44,000/- awarded only Rs.3,22,000/- to the appellants.

9. In this case, at the time of accident, the deceased Jeyavelu was driving the Ambassador Car. Then P.W.2 Devi travelled in the car. She lodged the complaint. Based on that, the F.I.R has been registered for offences under Sections 279, 304-A IPC. In the complaint, she had stated that the accident was due to the rash and negligent driving of the driver of the Mahindra Van/first respondent. The police after investigation filed Final Report Ex.P.5. that the Van driver was responsible for the accident. P.W.2 deposed before the Tribunal. She had stated that the Van driver came driven the Van in a rash and negligent manner and dashed against the Ambassador Car.

10. Ex.P.2 is the rough sketch. It is the topography of scene of accident. It will not tell about the manner of accident. Ex.P.3 is the Observation Mahazar. It will furnish information as to the physical features of the scene place in as is where condition. It will not tell the manner of accident. Based on Exs. P.2 and P.3, the manner of the accident cannot be decided. It can be decided based on the evidence adduced before the Tribunal.

11. Now, in this case, the contesting insurance Company had not examined any witness to speak about their version of manner of the accident. It has not examined the Van driver or anyone who had witnessed the accident. There is no evidence that deceased Jeyavelu had driven the Ambassador car in a rash and negligent manner and contributed to the accident. There is no contra evidence.

12. The positive evidence on record shows that the Van driver/first respondent came driven the Van in a rash and negligent manner and caused the accident. Thus, it is not possible to hold that the car driver also contributed to the accident. Thus, we hold that the Tribunal is not right in holding that the deceased also contributed to the road accident. The Tribunal ought not to have deducted 50% of the award amount from the total award amount.

13. In the result, the appeal is allowed. The award amount is modified. The appellants are entitled to the total compensation of Rs.6,44,000/- from the date of Original Petition till deposit. The appellants shall share the amount equally. The third respondent shall deposit the entire amount within four weeks from the date of receipt of the copy of this judgment. On such deposit, the appellants 1 to 3 shall be permitted to withdraw their respective share amount with corresponding interest by filing proper petition before the Tribunal. Appellants 4 and 5 shall be entitled to withdraw their amount on filing proof of their attaining majority. The quarterly accrued interest in their deposits shall be paid to their mother/third appellant.

14. The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

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