

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2075 OF 2015

M/s.Reliance General Insurance Company Limited,
I Floor, Bharathi Street,
Omalur Main Road, Swarnapuri,
Salem-636 004.

... Appellant/2nd Respondent

-vs-

1.S.Ushakumari
2.S.Sharanya
3.S.Bavani Ammal
4.G.Periyasamy

... Respondents 1 to 3/
Petitioners, 4th Respondent/
1st Respondent

Appeal against the award, dated 20.08.2013, made in MCOP No.105 of 2012, on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, Namakkal.

For appellant : K.Moorthy

JUDGMENT

(Judgment of the Court was delivered by S.Manikumar,J.)

Challenge in this appeal, filed by M/s.Reliance General Insurance Company Limited is, to the finding, fixing negligence on the part of the driver of the lorry, bearing Registration No.TN 28 M5657, insured with the appellant company, and the consequential compensation of Rs.20,00,000/-, with interest at the rate of 7.5% per annum, from the date of claim till deposit, awarded to the legal representatives of the deceased.

2. Case of the respondents/claimants is, that on 15.10.2011, about 12.30 p.m., when the deceased Sasidharan Pillai, a Painting Contractor, aged about 48 years, was driving a Maruthi Swift Car, bearing Registration No.KA 05 MH6102, on the left side of the road from Karur to Bangalore, near Karuppanar Kovil, on the west of Kongu Matriculation School, at Keerampur on Namakkal to Karur Main Road, a lorry, bearing Registration No.TN 28 M5657, driven in a rash and negligent manner, suddenly turned to the right side, without any signal, and dashed against the car. In this regard, a case in Crime No.479 of 2011 for the offences under Sections 279,337,338 and 304 (A) of IPC, has been registered on the file of Paramathi Police Station. Due to the said

accident, the car driver was thrown out, sustained multiple injuries and, despite treatment in C.M.Hospital, Namakkal, and, thereafter, in Vinayaga Mission Hospital, Salem; and Meiya Hospital, Bangalore, succumbed to injuries on 17.10.2011.

3. Before the Claims Tribunal, respondents/claimants, wife, daughter and mother of the deceased, have contended, that as a Painting Contractor, the deceased earned Rs.30,000/- per month. They claimed compensation of Rs.20,00,000/-. The appellant insurance company denied the manner of accident. According to them, it was the driver of Maruthi Swift Car, who came in the opposite direction, driven in a rash and negligent manner, and caused the accident. They also contended, that at the time of accident, the deceased did not possess a valid and effective driving licence. Without prejudice to the above, they also disputed the age, avocation and income of the deceased, and the quantum of compensation, claimed under various heads, and further submitted that at the time of accident, the driver of the lorry bearing Registration No.TN 28 M5657, insured with them, also did not possess a valid and effective driving licence. Accordingly, they prayed for dismissal of the claim petition.

4. Before the Tribunal, wife, daughter and mother, who had also travelled in Maruti Swift Car along with the deceased, examined themselves as P.Ws.1 to 3, and adduced evidence, that it is because of the lorry, which suddenly turned towards right at the signal, the car dashed against the said vehicle. Ex.P-1-FIR; Ex.P-2-Wound Certificate; Ex.P-3-MVI Report; Ex.P-4-Chargesheet; Ex.P-5 (Series)-Medical Bills, pertaining to Sivaprasad; Ex.P-6-Wound Certificate pertaining to P.W.2; Ex.P-7-Medical Bills, pertaining to P.W.2; Ex.P-8-X-ray, pertaining to P.W.2; Ex.P-9-Wound Certificate, pertaining to P.W.2; Ex.P-9-Wound Certificate, pertaining to P.W.3; Ex.P-10-Medical Bills, pertaining to P.W.3; Ex.P-11-X-ray, pertaining to P.W.3; Ex.P-12-Post-mortem Report of the deceased Sasidharan Pillai; Ex.P-13-Death Certificate; Ex.P-14-Legal Heir Certificate; Ex.P-15-Medical Bills; Ex.P-16-Documents to prove payment of Income Tax; and Ex.P-17-X-ray, have been marked, on the side of respondents/claimants. No oral or documentary evidence has been adduced on behalf of appellant/insurance company.

5. On evaluation of the oral and documentary evidence, in particular, Ex.P-4-Chargesheet filed against the driver of the lorry bearing Registration No.TN 28 M5657, insured with the appellant insurance company, the Claims Tribunal held him negligent, in causing the accident. Based on Ex.P-16-document to prove payment of income tax of Rs.5,450/- for the assessment year 2009-2010, wherein, the annual income of the deceased was shown as Rs.2,12,943/-, the Tribunal fixed the monthly income of the deceased as Rs.18,000/-. Having regard to the age of the deceased, 48 years, and by deducting $1/3^{\text{rd}}$ towards his personal and living expenses, and applying multiplier 13, arrived at the loss of dependency at Rs.18,72,000/-. In addition to the above, the Claims Tribunal has awarded a sum of Rs.10,000/- for funeral expenses; Rs.45,000/- under the head 'loss of love and affection'; Rs.50,000/- towards loss of consortium and Rs.23,015/- for medical expenses, incurred by the respondents/claimants, for the treatment of the deceased in the abovesaid hospitals, duly supported by Ex.P-15-Medical Bills. The claim was Rs.20,00,000/-. The Tribunal awarded compensation Rs.20,00,000/- with interest at the rate of 7.5% per annum under the abovesaid heads, as prayed for.

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6. Challenge in this appeal is only to the finding, fixing negligence on the driver of the lorry, bearing Registration No.TN 28 M5657, insured with the appellant company, on the grounds that as there was no eye-witness to establish and fix negligence entirely on the part of the driver of the lorry and having regard to the manner in which the accident is stated to have occurred, and as spoken to by the eye-witnesses, that due to the sudden turning of the lorry towards the right side, the car hit the vehicle, by applying the principle of contributory negligence, the Claims Tribunal ought to have held that the deceased was also negligent, in causing the accident. The said contention, though, at first blush, may appear to be reasonable, but on the facts and circumstances of the case, as all the three witnesses were passengers in the Maruti Swift Car sustained injuries and filed separate claim petitions, tagged along with M.C.O.P.No.105 of 2012, and when the abovesaid persons themselves have witnessed the accident, no other independent witness is required to speak about the accident.

7. Material on record discloses that the appellant insurance company has not taken any steps to examine the driver of the lorry, bearing Registration No.TN 28 M5657, and no document has been filed in support of their contention. No contra evidence has been adduced. Police, on investigation, has filed Ex.P-4-Chargesheet, against the driver of the said lorry, insured with the appellant company.

8. In this connection, it is material to refer to some of the decisions, regarding strict proof of evidence. Strict proof of evidence is not required in claims cases and it is suffice to arrive at the conclusion, based on preponderance of probability.

9. In Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

10. In Bimla Devi & Ors. Vs. Himachal RTC reported in 2009 (13) SCC 530, the Hon'ble Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

11. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it would be suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

12. Thus, in the light of the above discussion, and in the absence of any strong contra evidence and also the failure in taking effective steps, either to examine the driver or the police, testing the finding of negligence, in view of the above decisions, this Court is of the view, that reversal need not be made, nor contributory negligence be fixed on the deceased. Hence, finding of negligence is confirmed.

13. On the quantum of compensation, it could be seen, that the claim was for Rs.20,00,000/-. On the basis of annual income for the assessment year 2009-2010, as per Ex.P-16-document, to prove payment of income tax for the assessment year 2009-2010, the Tribunal has fixed the monthly income of the deceased as Rs.18,000/-, and computed the loss of contribution to the family. Tribunal has not added up any income under the head 'future prospects'. Compensation of Rs.10,000/- for funeral expenses, Rs.45,000/- under the head 'loss of love and affection' and Rs.50,000/- towards consortium, is less.

14. Considering all the above aspects, this Court is not inclined to interfere with the finding, fixing negligence on the driver of the lorry, and the quantum of compensation, awarded to the legal representatives of the deceased. Award is confirmed.

15. Civil Miscellaneous Appeal is dismissed. Appellant-insurance company is directed to deposit the award amount with interest to the credit of M.C.O.P.No.105 of 2012, on the file of Motor Accident Claims Tribunal, (Additional District Court), Namakkal, less the statutory deposit, within a period of six weeks from the date of receipt of a copy of this judgment. Respondents/claimants, being majors, are permitted to withdraw the award amount, as per their respective shares apportioned by the Tribunal, by filing necessary application before the Tribunal. Connected M.P.No.1 of 2015 is closed.
Dixit

Sd/-

Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal-
cum-Additional District Judge,
Namakkal.

C.M.A.No.2075/2015

MP (CO)
sd : 03/11/2015



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