

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

C.M.A.No.1719 of 2014
& M.P.No.2 of 2014

The Commissioner of Police,
Chennai Police,
Egmore, Chennai-600 008. ... Appellant/ Respondent

Vs.

Kamalaveni .. Respondent/ Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.04.2011 made in M.C.O.P.No.952 of 2007 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.2), Poonamallee.

For appellant : Mr.M.Venugopal, Spl.G.P.

For respondent: Mr.K.Sivakumar for Mr.J.Mahalingam

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

The Award of the Motor Accidents Claims Tribunal (Fast Track Court No.2), Poonamallee made in M.C.O.P.No.952 of 2007, dated 29.04.2011 is called in question in this Civil Miscellaneous Appeal filed by the appellant-Commissioner of Police, Egmore, Chennai, on the sole ground that the victim-respondent-claimant drove the vehicle in question under the influence of alcohol at the time of accident, and therefore, the liability and negligence may not be fixed against the appellant.

2. The Tribunal, after considering oral and documentary evidence, as against the claim of the respondent/claimant for Rs.15 lakhs, awarded a sum of Rs.14,64,576/- with interest at the rate of 7.5% per annum from 12.11.2007 till the date of payment by the appellant.

3. The respondent/claimant filed the Claim Petition before the Tribunal stating as follows:

On 30.09.2006 at about 10.30 p.m., when the deceased Karthikeyan, who was the son of the claimant, was riding motor cycle bearing Registration No.TN-05-K-0034 on the Ambattur Estate Road from East to West, a Tata Car bearing Registration No.TN-01-G-2184, driven by its driver in a rash and negligent manner, endangering the public safety, came at a dangerous speed from the same direction and dashed against the motor cycle of the deceased from backside and caused the fatal accident. Hence, the appellant being the owner of the vehicle, is liable to pay the compensation and accordingly, the respondent/claimant claimed a total compensation of Rs.15 lakhs from the appellant.

4. The appellant herein filed a counter statement before the Tribunal stating as follows:

The vehicle was driven by the deceased under the influence of alcohol, which has been certified by the Casualty Medical Officer attached to the Government Hospital on 30.09.2006 when he was examined immediately after the accident and hence, the claim of compensation as against the appellant is not sustainable. The traffic on Ambattur Estate Road where the accident took place near the round building, has a centre median. Admittedly, the deceased drove the vehicle not along the flow of traffic from East to West, but in the opposite direction to the traffic flow, i.e. from West to East and by such rash and negligent driving, the deceased contributed negligently to the accident and rendered himself ineligible for claiming compensation as against the appellant. It has been held by the Apex Court in various decisions that where a person drives the vehicle under the influence of alcohol, cannot take any shelter claiming compensation ignoring his own negligence. The claim of compensation under various heads is not sustainable. The appellant denies the employment of the claimant in M/s.Sutherland Global Services, Chennai and also his salary. No question of rash and negligent in driving can be attributed on the part of the driver of the vehicle belonging to the appellant and on account of the driving by the deceased under the influence of alcohol, which has been certified by the duty medical officer attached to Government Hospital on the same date of the accident, i.e. on 30.09.2006, all criminal proceedings have been dropped against the driver of the vehicle belonging to the appellant and also after due enquiry from the independent witnesses in the scene of occurrence. The deceased cannot take advantage of his own wrong and claim compensation as against the appellant, particularly when no cause of any rash and negligent driving had been attributed on the part of the driver of the appellant's vehicle. Immediately after the accident, the investigating officer attached to V-5 Thirumangalam Police Station, rushed to the scene and prepared a plan showing the positions of the vehicle at the time of accident and from the sketch, no allegation of any rash and negligent driving can be attributed to the appellant's vehicle, as it was the deceased who under the influence of alcohol drove the vehicle

in the opposite direction to the normal traffic flow and by his own negligent and on account of intoxication, caused the accident. In fact, the appellant's vehicle suffered extensive damage due to the rash and negligent driving of the deceased. The medical expenses claimed by the claimant is exorbitant and not supported by documentary proof and the loss of pecuniary benefits is also devoid of any particulars and the claim towards pain and suffering by the deceased is also devoid of any proof. The total compensation which has been restricted to Rs.15 lakhs from Rs.29 lakhs earlier claimed, is exorbitant. They prayed that the petition is liable to be dismissed.

5. Before the Tribunal, the mother of the deceased, namely the claimant examined herself as P.W.1, besides examining P.W.2 who is an employee, i.e. H.R.O., in the organisation in which the deceased was employed and P.W.3 who is the eye-witness to the accident. On the side of claimant, the following exhibits were marked:

Exhibit Number	Description of the exhibit
Ex.P-1	First Information Report
Ex.P-2	Post-mortem Certificate
Ex.P-3	Legal Heirship Certificate
Ex.P-4	Medical bills
Ex.P-5	Document showing the proof for settling the medical bill for Rs.50,000/-
Ex.P-6	Medical prescriptions, receipts, bills, etc.
Ex.P-7	B.B.M. Course Completion and Conduct Certificate of the deceased
Ex.P-8	Appointment order of the deceased in Sutherland Global Services and the details of pay
Ex.P-9	Court Summons to the Executive Officer - Human Resources of Sutherland Global Services
Ex.P-10	Certificate for employment of the deceased issued by Sutherland Global Services
Ex.P-11	Details of revised salary issued by Sutherland Global Services
Ex.P-12	Letter to adduce evidence for P.W.2 by the Sutherland Global Services

On the side of the appellant/Commissioner of Police, R.W.1

driver/Head Constable was examined, besides R.W.2 Inspector of Police was examined and they marked the following documents:

Exhibit Number	Description of the exhibit
Ex.R-1	Driving licence of R.W.1
Ex.R-2	Unnamed Accident Register copy
Ex.R-3	Motor vehicle inspection report, dated 05.10.2006
Ex.R-4	Motor vehicle inspection report, dated 26.10.2006
Ex.R-5	Report of the Inspector intimating dropping of further action and requesting to take on file the FIR
Ex.R-6	Inspector of Police report to Deputy Commissioner and also the order of the Deputy Commissioner of Police, Traffic Central, Chennai, dropping further action
Ex.R-7	R.C. copy of the vehicle of the Commissioner of Police involved in the accident

6. On an analysis of the above oral and documentary evidence, the Tribunal awarded a sum of Rs.14,64,576/- as total compensation to the claimant, to be payable by the appellant, under the following heads:

Head under which the Tribunal awarded the compensation	Amount awarded by the Tribunal (in Rs.)
Loss of earnings	10,87,500
Loss of love and affection	20,000
Medical expenses	3,47,076
Transportation expenses	5,000
Funeral expenses	5,000
Total compensation awarded by the Tribunal	14,64,576

Challenging the said award of the Tribunal, the Commissioner of Police is on appeal before this Court.

7. The learned Special Government Pleader appearing for the appellant-Commissioner of Police, mainly contended that the Tribunal erroneously came to the conclusion ignoring the medical

certificate of the competent Doctor of the Government Hospital, stating that at the time of accident, the deceased was under the influence of alcohol and therefore, the negligence may not be attributed against the driver of the appellant's vehicle, that the Tribunal failed to note that the criminal proceedings initiated against the driver of the appellant were dropped after thorough enquiry, that the award of compensation under various heads, more particularly on the loss of income and medical expenses, is on the higher side, and hence, the compensation awarded by the Tribunal is excessive and arbitrary and the same is liable to be set aside.

8. Resisting the said submissions, the learned counsel appearing for the respondent-claimant contended that the Tribunal, on a consideration of the oral and documentary evidence, particularly Ex.P-1 FIR and Ex.P-2 post-mortem certificate, which if at all, are the clinching evidence to prove the influence of alcohol by the deceased, came to the conclusion that the driver of the appellant's vehicle alone is negligent in driving and was held responsible for the accident and has rightly concluded that the appellant's driver is negligent and responsible for the accident, for which, the appellant is liable to pay the compensation, which has been arrived at by the Tribunal based on the settled principles of law, warranting no interference by this Court.

9. On the above background of pleadings and submissions, we have heard the learned counsel appearing for the parties and perused the material documents available on record.

10. It is seen that the deceased Karthikeyan, on 30.09.2006, was driving his motor cycle bearing Registration No.TN-05-K-0034 and was proceeding in the direction from East to West on the Ambattur Estate Road and at that time, the vehicle belonging to the appellant, bearing Registration No.TN-01-G-2184 Tata Spacio car, came on the same direction and dashed from behind against the deceased, in which impact, the deceased sustained grievous injuries on his head and all over the body and with the help of public, he was taken to Government Hospital at Chennai and was initially treated there and thereafter, he was admitted in the Apollo Hospital and was in ICU, and thereafter he died. It is claimed that the deceased was working as Customer Support Executive in M/s.Sutherland Global Services, Santhome, Chennai and earning Rs.1,45,001/- per annum and due to his death, the claimant is suffering and therefore, the claimant claimed a compensation of Rs.15 lakhs.

11. The above claim of the claimant was resisted by the appellant before the Tribunal stating that the deceased was driving the motor cycle in the opposite direction from West to East contrary to traffic rules and was driving the vehicle under the influence of alcohol, which was been duly certified by the Casualty Medical Officer of the Government Hospital on 30.09.2006, i.e. the date of accident, when he was immediately examined after the accident and therefore, it is proved that the deceased drove

the motor cycle under the influence of alcohol and hence, the claim of the respondent/claimant against the appellant is not sustainable and hence, the claim petition is liable to be dismissed.

12. It is the contention of the appellant that the traffic in the Ambattur Estate Road where the accident had taken place, i.e. near the round building, has a centre median and the deceased has driven the vehicle not along with the flow of traffic from East to West, but in the opposite direction to the traffic flow from West to East and by such rash and negligent driving under the influence of alcohol, he has caused the accident, thereby rendered himself ineligible to claim compensation against the appellant.

13. The Tribunal, on a consideration of the above pleadings and oral and documentary evidence placed before it, particularly the evidence of the mother of the deceased, namely P.W.1, the evidence of the employee of the organisation where the deceased worked, namely P.W.2 and the evidence of the eye witness, namely P.W.3 and the abovesaid documents on either side and also the evidence on the side of the appellant in R.W.1 and R.W.2, came to the conclusion that the driver of the vehicle belonging to the appellant alone was responsible for the accident and accordingly, fixed the liability to pay the compensation by the appellant and awarded the compensation as tabled above.

14. The appellant also relied on Ex.R-6, which is the order of the Deputy Commissioner of Police, Traffic Central, Chennai, dropping further action in the case based on the report of the Inspector of Police, V-5 Thirumangalam Police Station, Traffic Investigation, Chennai that no one was responsible for the death of the deceased.

15. While fixing negligence, the Tribunal took into consideration the oral and documentary evidence, more particularly, the evidence of the eye-witness in P.W.3, as also the evidence of the mother of the deceased in P.W.1, who spoke about the accident that occurred on the fateful day and the deceased having been admitted till 01.10.2006 in the hospital as in-patient and he died due to failure of treatment on 12.10.2006 and that they have spent about Rs.5 lakhs for his treatment, that he was working in Sutherland Global Services as Customer Support Executive and earning Rs.1,45,001/- per annum, and she denied that her son was under the influence of alcohol.

16. The only contest made by the learned Special Government Pleader appearing for the appellant is that the victim was driving the vehicle under the influence of alcohol, and to substantiate the same, it is claimed that the said fact has been certified by the Casualty Medical Officer of the Government Hospital on the date of the accident itself, i.e. on 30.09.2006, when the deceased was examined immediately after the accident, and thus, it is proved that the deceased drove the vehicle under the influence of alcohol. However, no evidence has been let in on the side of the

appellant either by calling upon the said Casualty Medical Officer to the Tribunal for adducing evidence or by marking any certificate of the said Casualty Medical Officer, to prove that the victim was under the influence of alcohol at the time of accident when he drove the vehicle. In the absence of any such evidence, there was no other option for the Tribunal, but to accept the evidence of P.Ws.1 to 3, particularly the eye-witness P.W.3 and the documentary evidence in Ex.P-1 FIR and Ex.P-2 post-mortem certificate. In this regard, when the contents of Ex.P-2 post-mortem certificate are perused, there is nothing to indicate that the deceased was under the influence of alcohol and there is no word of food particles with alcohol in the said post-mortem certificate, which only showed the injuries and particularly, the stomach, liver, intestine, bladder, etc., did not indicate that he was under the influence of alcohol, which if so, would have been stated by the Doctor while stating the contents of those parts. Therefore, on an examination of the entire materials available on record, and in the absence of any contra evidence let in by the appellant before the Tribunal, the conclusion arrived at by the Tribunal with regard to the negligence aspect, cannot be interfered with, and therefore, we confirm the negligence as concluded by the Tribunal on the part of the driver of the appellant.

17. As regards the quantum of compensation, it is relevant to notice that the mother P.W.1 spoke about the employment of her son, the deceased, in Sutherland Global Services as Customer Support Executive and earning Rs.1,45,001/- per annum and produced Ex.P-8, Ex.P-10 and Ex.P-11 to substantiate the same. Besides that, P.W.2 who is the HRO of the said organisation in which the deceased was employed, was examined and Ex.P-12 which is the letter given by the Management of the said organisation to adduce evidence by P.W.2. Therefore, the amount of compensation has been awarded by the Tribunal by taking into account the abovesaid oral and documentary evidence and also taking into account the fact that had he continued in the said organisation in the same position, would have drawn salary of Rs.2,50,000/- per annum and therefore, taking into consideration the above evidence and the fact that the deceased was a Bachelor, the Tribunal deducted half of his income towards personal expenses and that remaining amount would have been given by him to his family and accordingly the Tribunal fixed the salary at Rs.72,500/-, by taking into account his age as 22 years based on the specification in Ex.P-2 post-mortem certificate and also taking into account the age of the mother as 41 years and thereby, the Tribunal adopted the multiplier "15" and calculated the annual dependency at Rs.10,87,500/- (Rs.72,500/- x 15). The award of compensation by the Tribunal under the other heads does not warrant any interference, as the same appears to be reasonable considering the facts and circumstances of the case and the Tribunal awarded the

same based on oral and documentary evidence. In the absence of any cross appeal by the claimant for enhancement of compensation, we are not dwelling on the same and accordingly confirm the compensation under those heads. The Tribunal, by considering each and every factor involved in the case, and based on the settled principles of law, rightly awarded the compensation, which in our considered opinion, does not warrant any interference and there is no reason to disbelieve the same as profound by the appellant. Accordingly, we confirm the award of the Tribunal.

18. In the result, the appeal is dismissed. The appellant shall deposit the entire compensation, after adjusting the amount (s) already deposited, including interest as on date, within a period of eight weeks from the date of receipt of a copy of this judgment and on such entire deposit, the respondent/claimant is permitted to withdraw the amount after adjusting the amount(s) if any already withdrawn and the Tribunal shall not insist on any formal petition for withdrawal and disburse the entire compensation to the claimant within two weeks on entire deposit by the appellant. No costs. The miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cs

To

The Presiding Officer,
Motor Accidents Claims Tribunal
(Fast Track Court No.2), Poonamallee.

1 cc to Government Pleader, Sr. 19571

WEB COPY

C.M.A.No.1719 of 2014

UG (CO)
kk 17/4