IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.2034 of 2016
and C.M.P.No.14859 of 2016

The Manager,
Reliance General Insurance Company Limited,
No.19, Reliance Centra, Walchand,
Hirachand Marg, Ballard Estate,
Mumbai - 400 001. .. Appellant/2nd respondent

Vs.

1. Begari Nagamma
2. Begari Bharathi
3. Minor Nandhini
4. Minor Naresh
5. Minor Navadeep
6. Minor Navaneetha ..1 to 6 Respondents/Petitions
7. M/s.TCI Hi-Ways Pvt Ltd.,

Plot No.76, Gail No.8, Industrial Area,
Pataudi Road,
Kadipur, Gurgaon - 122 001 .. 7th Respondent/1st Respondent

[Minor respondents R3 to R6 represented by 2nd respondent, mother]

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur in MCOP No.205 of 2011 dated 31.10.2014.

For Appellant : Mr.P.Suresh

JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

Challenging the award, dated 31.10.2014, made in MCOP No.205 of 2011, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur, Reliance General Insurance Company Limited, Mumbai, has preferred this appeal.

2. We have heard Mr.P.Suresh, learned counsel for the appellant-Insurance Company, on merits.

3. Short facts leading to the appeal are that on 05.06.2011 about 6.30 hours, when Begari Shiva Kumar S/o.Ashappa, was walking on the left side of the road, alongwith two others, a container lorry bearing Regn.No.HR55J5273, insured with the appellant Insurance Company, driven in a rash and negligent manner, dashed against a lorry and two others resulting in grievous injuries on his head and other parts of the body. Immediately, he was taken to Hosur Hospital, but, he died. In this regard, a case in Cr.No.153 of 2011 has been registered against the driver of the lorry bearing Regn.No.HR55J5273, insured with the appellant Insurance Company, under Sections 279, 337 and 304 (A) of IPC on the file of Hosur TIW Police Station, Krishnagiri District.

4. Respondents/claimants viz., wife, mother and four minor children, filed MCOP No.205 of 2011 on the file of the learned Subordinate Judge, Hosur, claiming compensation of Rs.20 Lakhs, contending inter alia that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Regn.No.HR55J5273, insured with Reliance General Insurance Company, the appellant herein. They further contended that at the time of accident, the deceased was aged 30 years and as a driver in M.G.Auto Transport, Hyderabad, earned Rs.15,000/- per month. Besides, he was getting duty batta also. For loss of contribution to the family and other heads, claim was made.

5. Disputing the accident, Reliance General Insurance Company, Mumbai, has filed counter affidavit. According to the Insurance Company, accident was not due to the negligence of the driver but, the pedestrian suddenly crossed the road, without observing the movement of the vehicles on the national highways. Before the tribunal, without prejudice to the above, the Insurance Company has also disputed the age, avocation, income of the deceased and the quantum of compensation claimed under other heads.

6. Before the tribunal, 1st respondent/claimant adduced evidence. However, she was not an eyewitness. PW2 is a pedestrian, who was also injured in the accident, supported the version of PW1/wife. PW3 is Doctor T.V.Gandhi. That apart, respondents/claimants have marked Ex.P1, Copy of FIR, Ex.P2, Copy of Motor Vehicle Inspector's report, Ex.P3, Copy of Registration certificate of the lorry, Ex.P4, copy of the insurance policy of the lorry, Ex.P5, Copy of the postmortem certificate of deceased Sivakumar, Ex.P6, Copy of Permit of the lorry, Ex.P7, Copy of the driving licence of the deceased, Ex.P8, Copy of the legal heir certificate of the deceased, Ex.P9, copy of the Ration Card and Ex.P10, Copy of the Aadhar cards of the family members of the deceased.

7. Though, Reliance General Insurance Company-appellant herein disputed the manner of accident, no oral or documentary evidence was been adduced.

8. On evaluation of pleadings and evidence, the claims tribunal has found that Ex.P1, FIR has been registered against the driver of the lorry bearing Regn.No.HR55J5273 under Sections 279, 337 and 304 (A) of IPC on the file of Hosur TIW Police Station, Krishnagiri District and that the oral testimony of PW1/wife has been duly corroborated by another pedestrian who was injured in the accident. PW2, another injured has witnessed the accident.

9. Perusal of the impugned judgment does not indicate that the appellant, was able to elicit any contra material from the deposition of the PW2, eyewitness.

10. On the quantum of compensation, on the basis of the evidence of PW1, that at the time of accident, her husband was a driver in MG Auto Transport and Ex.P7, driving licence of the deceased, the tribunal accepted the contention of the respondents/claimants, in so far as the avocation is concerned. Though, the respondents/claimants contended that the deceased earned Rs.15,000/- per month, in the absence of any documentary proof, but taking note of the number of dependants, the tribunal fixed the monthly income of the deceased as Rs.10,000/-. For the purpose of determining the age of the deceased, the claims tribunal, has taken note of the entries in the documents such as Ex.P9, copy of Ration card, Ex.P10, copy of Aadhar card and Ex.P5, postmortem report.

11. Entry in the adhar card has been taken. Needless to state that determination of the age as per the entry in Ex.P4 Post Mortem Certificate, also cannot be found to be fault with, in view of the decision of this Court in The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515], wherein, this Court has held that in the absence of proof relating to the age, such as birth extract or any supporting document, entry in the Postmortem Report, can always be considered for the purpose of computation of compensation.

12. Taking note of the decision of the Hon'ble Apex Court in Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), by determining the age of the deceased as 30, fixing the monthly income as Rs.10,000/- and after deducting 1/5th towards the personal and living expenses of the deceased and applying '17' multiplier, the tribunal computed the loss of contribution to the family as Rs.16,32,000/- (Rs.10000 - 2000 x 12 x 17). That apart, the tribunal has awarded a sum of Rs. 1,00,000/- to the wife for loss of consortium and Rs.1,50,000/- under the head, loss of love and affection and Rs.10,000/- has been awarded towards

funeral expenses. Altogether, the tribunal has awarded Rs.18,92,000/- with interest, at the rate of 9% per annum, from the date of claim, till deposit and apportioned the same as hereunder.

Loss of contribution to the family	:	Rs.16,32,000/-
Loss of Consortium	:	Rs. 1,00,000/-
Loss of love and affection	:	Rs. 1,50,000/-
Funeral Expenses	:	Rs. 10,000/-
Total	:	Rs.18,92,000/-

13. Though, Mr.P.Suresh, learned counsel for the appellant-insurance company assailed the correctness of the judgment and decree in MCOP No.205 of 2011, on the grounds that the tribunal erred in fixing negligence on the driver of the lorry bearing Regn.No.HR55J5273 insured with them, contrary to law and probabilities of the case, this Court is not inclined to accept the said contention for the reason that the tribunal after careful consideration of the evidence, has rightly come to the conclusion that the driver of the lorry was negligent in causing the accident.

14. Though, the appellant insurance company has filed a counter affidavit disputing the manner of the accident, stating that it was the pedestrian, who suddenly crossed the road, without noticing the ongoing movement of the vehicle in the national highway and invited the accident, we are not inclined to accept, for the reason that mere averments do not amount to proof.

15. Perusal of the judgment further goes to show that the appellant Insurance company has not even chosen to summon the driver to adduce evidence supporting the averments. Adverse inference can also be drawn, when the driver has not been examined. Reference can be made to few decisions.

(i) In New India Assurance Co. Ltd., v. Debajani Sahu reported in I (2002) ACC 103 (Ori.), the Orissa High Court held that,

> "8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of res ipsa loquitur is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident

occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii). In Sitabai v. Ishak Hussain reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim res ipsa loquitur. Their Lordships of the Supreme Court in case of Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co., reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

(iii) In Beni Bai & others v. A. Salim & another reported in II (1999) ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

"In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have

> got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver and conductor."

16. Therefore, In the light of the above discussion and decisions stated supra, this Court is of the view that there is absolutely no perversity in the finding of the tribunal fixing negligence on the driver of the lorry bearing Regn.No. Regn.No.HR55J5273 insured with them. Finding of negligence is confirmed.

17. On the quantum of compensation, it could be seen that the case of the respondents/claimants is that the deceased was a driver in M.G.Auto Transport, Hyderabad and earned Rs.15,000/- per month. To support contention of avocation, respondents/claimants have marked Ex.P7, driving licence of the deceased. That apart, to maintain a large family comprising of wife, mother and four minor children, and to provide, food, shelter and other basic necessities, one may require a considerable income. Though, sum of Rs.15,000/- has been claimed as the monthly income, taking note of the number of dependants, the tribunal has fixed the monthly income as Rs.10,000/- only.

18. In terms of the judgment of the Hon'ble Apex Court in Sarla Varma's case, the tribunal has deducted 1/5th towards the personal and living expenses of the deceased and thus computed the compensation towards loss of contribution to the family. Therefore, income determined for computation cannot be said to be on the higher side.

19. Quantum of compensation awarded at Rs.1,00,000/- under the head loss of consortium can be sustained in the light of the decision of the Supreme Court in Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883. Though, there are four minors and mother, at the time of accident, Rs.1,50,000/- alone has been awarded by the tribunal

under the head loss of love and affection. That appears to be less. Further, the award as against the the head funeral expenses, is also less.

20. In the light of discussion and decisions stated supra, we are not inclined to interfere with the impugned judgment either on the finding of negligence or on the quantum of compensation. The Civil Miscellaneous Appeal is dismissed. No costs.

21. Consequent to the dismissal of the appeal, the appellant-Reliance General Insurance Company Limited, Mumbai, is directed to deposit the entire award amount with proportionate accrued interests and costs, less the amount already deposited, to the credit of MCOP No.205 of 2011, on the file of the Motor Accidents Claims Tribunal (Sub Court), Hosur, within a period of six weeks from the date of receipt of a copy of this order.

22. The share of the minors/respondents 3 to 6, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 2nd respondent/mother of the minors once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permited to withdraw the award amount as apportioned by the tribunal, by making necessary applications. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Motor Accidents Claims Tribunal,
Sub Court, Hosur.

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