

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1028 of 2017
C.M.P.No.5082 of 2017

M/s.Reliance General Insurance Co. Ltd.,
Salem. .. Appellant/2nd Respondent

versus

1. Harshith (Minor)
2. Bhagyamma
3. Chikkasiddaiah ..RR1 to 3/Petitioners
(1st respondent Minor is represented
by his father, 3rd respondent)
4. Ramesh
5. Mallesh .. R4 & 5 Respondents 1 & 3

Civil Miscellaneous Appeal filed under Section 173 Motor
Vehicles Act, 1988 against the award and decree, dated
28.10.2015, made in M.C.O.P.No.230 of 2014, on the file of the
Motor Accidents Claims Tribunal, (Special District Court),
Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Appeal is directed against the judgment and decree, dated
28.10.2015, made in M.C.O.P.No.230 of 2014, on the file of the
Motor Accidents Claims Tribunal, (Special District Court),
Krishnagiri, by which, the Tribunal, after fixing negligence on
the driver of the lorry, bearing Registration No.TN 28 AE 8348,
insured with the appellant-Insurance Company, awarded
compensation of Rs.18,96,400/-, with interest, at the rate of
7.5% per annum, from the date of claim, till the date of
realisation.

2. Short facts leading to the appeal are as follows:

On 17.05.2013, the deceased Padma was travelling in a Hyundai i-20 Car, bearing Registration No.KA 51 ML 8365, driven by one Dr.Praveenkumar, from Salem to Bangalore and about 8.45 A.M., when they came near Shoolagiri Medupalli Bus Stop in Krishnagiri to Shoolagiri N.H. Road, a container lorry, bearing Registration No.TN 28 AE 8348, owned by the 4th respondent herein and insured with the appellant-Insurance Company, driven by its driver, in a rash and negligent manner, in the same direction, in front of the said car, suddenly applied brake, without any indication and as a result, the car dashed against the back side of the container lorry and thus, the accident occurred. The said Padma sustained severe head injuries and died on the spot. In this regard, a case in Cr.No.319 of 2013, has been registered, against the driver of the Tanker lorry, for the offences, under Sections 279 and 304(A) IPC., on the file of Shoolagiri Police Station. For the death of the deceased Padma, legal representatives have claimed compensation of Rs.20,00,000/-.

3. Opposing the plea of negligence and quantum of compensation claimed under various heads, the appellant-Insurance Company contended that the accident occurred, due to the negligence of the driver of the car, who did not follow the Traffic rules and therefore, the concerned Insurance Company of the car, is alone is liable to pay any compensation to the claimants. Without prejudice to the above, they disputed the quantum of compensation, claimed under various heads.

4. Before the Claims Tribunal, father of the deceased examined himself as PW.1 and 17 documents have been marked on the side of the respondents/claimants. PW.3 is an eye-witness to the accident. On the side of the appellant-Transport Corporation, no oral or documentary evidence has been adduced. Considering the oral and documentary evidence, adduced by the respondents/claimants and in the absence of any rebuttal evidence, the Tribunal held that the driver of the tanker lorry, insured with the appellant-Insurance Company was negligent in causing the accident. Having regard to the age of the deceased and loss of contribution to the family, the Claims Tribunal awarded Rs.18,96,400/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation, as hereunder:

Loss of contribution to the family	: Rs. 17,66,400/-
Funeral Expenses	: Rs. 25,000/-
Loss of Love and Affection	: Rs. 1,00,000/-
Transportation	: Rs. 3,000/-
Damages to clothes and articles	: Rs. 2,000/-

Total	: Rs. 18,96,400/-

Heard the learned counsel appearing for the parties and perused the materials available on record.

5. As regards manner of accident, PW.1, respondent/claimant has given evidence, reiterating the averments made in the claim petition. The version of PW.1 is corroborated by Ex.P1 - FIR, registered in Cr.No.319 of 2013, against the driver of the Tanker lorry, for the offences, under Sections 279 and 304(A) IPC., on the file of Shoolagiri Police Station, Ex.P3 - Charge Sheet and Ex.P5 - Motor Vehicles Inspector's Report, pertaining to the tanker lorry, bearing Registration No.TN 28 AE 8348. PW.3 is an eye-witness to the accident and his version supports the manner of accident, reiterated by PW.1. On the side of the appellant-Insurance Company, there is no oral or documentary evidence. Non-examination of the driver of the bus, would lead to adverse inference. 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.

6. As stated supra, version of the respondents/claimants is duly corroborated by documentary evidence. It is settled law that in matters relating to Motor Accidents Claims, it is suffice that there is preponderance of probability, as to the manner of accident and strict proof of evidence is not required. In the instant case, no material is available to reverse the order of the Tribunal. On the other hand, there is ample evidence to conclude that the accident occurred in the manner, as detailed by the respondents/claimants. Testing the findings of negligence, on the principles of preponderance of probability, there are no grounds for reversal. Hence, the finding with regard to negligence is confirmed.

7. According to the respondents/claimants, the deceased was aged about 30 years, a Nurse in M.G.Diagnostics & Imaging Centre (P) Ltd., and earned Rs.14,000/- per month. According to the claimants, the deceased was the only earning member and they were depended on him. The date of birth of the deceased as per Ex.P12 - Nursing completion certificate, is 01.06.1981 and hence, the Tribunal has determined the age of the deceased as 32 years.

8. Though it was contended that the deceased was earning Rs.14,000/- per month, upon considering the evidence of PW.2, Administrative Officer of M.G.Diagnostics & Imaging Centre (P) Ltd., and other documents, the Tribunal has determined the income at Rs.13,800/- per month and after deducting one-third amount for her personal expenses, fixed Rs.9,200/- as monthly family contribution. As per Sarala Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1, the multiplier that may be adopted for the age group of persons, for 31 years to 35 years is "16". The Tribunal has rightly applied '16' multiplier and arrived at the loss of contribution, as Rs.17,66,400/-. That apart, the Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- for Funeral Expenses, Rs.3,000/- for transportation and Rs.2,000/- for damages to clothes and articles. Compensation awarded under the head, love and affection, transportation and loss of damage to clothes, is less. There is no award towards loss of estate. Considering the overall quantum of compensation of Rs.18,96,400/- with interest at the rate of 7.5% per annum, to the respondents/claimants, this Court is of the view that there is no need to interfere with the same.

9. Hence, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, with proportionate accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.230 of 2014, on the file of the Motor Accidents Claims Tribunal, (Special District Court), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order, if not deposited already. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

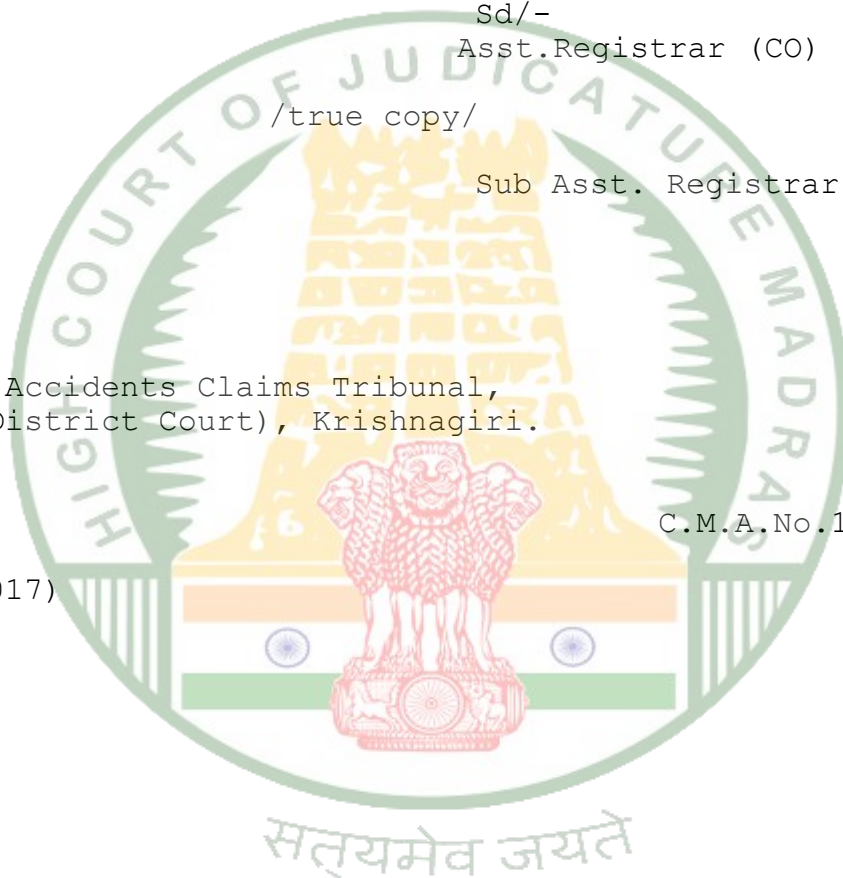
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To

The Motor Accidents Claims Tribunal,
(Special District Court), Krishnagiri.

C.M.A.No.1028 of 2017

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