

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No. 1158 of 2017

and CMP.No.5875 of 2017

National Insurance Company Limited,
751, Mount Road, Chennai - 2. ... Appellant/2nd
Respondent

vs.

1. Kaliammal
2. Mariappan
3. Iyyappan
4. Muthuraj
5. R.Thyagarajan ... Respondents 1 to 4/Petitioners
... 5th Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decreetal Order in MCOP No.951 of 2011 dated 07.06.2016 on the file of Motor Accidents Claims Tribunal, [2nd Additional District Judge], Poonamallee.

For Appellant : Mr.D.Bhaskaran

For Caveators/

Respondents : Mr.Ma.P.Thangavel (for R1 to R4)

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

Caveator is on record. With the consent of parties, appeal is taken up for hearing and disposed of.

2. Challenging the finding, fixing negligence on the driver of the container lorry bearing Regn.No.TN28AH7357, insured with National Insurance Company Limited and the consequential liability, to pay compensation of Rs.12,32,000/- with interest, at the rate of 7.5% from the date of claim till deposit and

costs, awarded to the legal representatives in MCOP No.951 of 2011 dated 07.06.2016 on the file of Motor Accidents Claims Tribunal, [2nd Additional District Judge], Poonamallee, instant appeal has been filed, by the insurance company.

3. According to the legal representatives of the deceased, that on 11.01.2011, about 6.00am, on CFS Gateway Yard, Manali, a container lorry, bearing Regn.No.TN28AH735, and insured with National Insurance Company Limited, Chennai, the appellant herein, driven in a rash and negligent manner, dashed against, Seetha Kannan, S/o.Mariappan. He sustained grievous injuries and died. A case in Crime No.14 of 2011, under Section 304 (A) IPC, has been registered on the file of Manali Police Station.

4. Contending inter alia that at the time of accident, the deceased aged 28 years was a driver and earned Rs.1,000/- per day, legal representatives have filed MCOP No.951 of 2011 on the file of the Motor Accidents Claims Tribunal, [2nd Additional District Judge], Poonamallee, claiming compensation of Rs.30,00,000/-, under various heads.

5. Before the tribunal, Insurance company has disputed the involvement of the container lorry bearing Regn.No.TN28AH7357. According to the National Insurance Company Limited, as per Ex.P1, FIR, it was a case of hit and run. The Police, who could not trace the vehicle, has falsely implicated the container lorry bearing Regn.No.TN28AH7357. Without prejudice to the above, Insurance Company has disputed the age, avocation, income of the deceased and compensation claimed under various heads.

6. Wife of the deceased examined herself as PW1, has reiterated the manner of accident. She has not witnessed the accident. PW2, is stated to be the Sub Inspector of Police. On the side of the claimants, Ex.P1, First Information Report, Ex.P2, Postmortem Report, Ex.P3, Death Certificate, Ex.P4, Legal Heir Certificate, Ex.P5, Policy, Ex.P6, Motor Vehicle Inspector Report, Ex.P7, Licence of the lorry driver, Ex.P8, charge sheet, Ex.P9, licence of the deceased, Ex.P10, Family Card, Ex.P11, Bank account statement, have been marked.

7. RW1, is the law officer of National Insurance Company Limited. Ex.R1, Confession statement of lorry driver, Ex.R2, true copy of the policy, Ex.R3, Advocate's Notice, Ex.R4, letter of the lorry owner and Ex.R5, Motor Vehicle Inspector's Report, have been marked on the side of the Insurance Company.

8. On evaluation of pleadings and evidence, the claims tribunal held that driver of the lorry bearing Regn.No.TN28AH7357 and insured with National Insurance Company Limited, was negligent in causing the accident. Based on the oral and documentary evidence, adduced by the respondents/claimants, the tribunal quantified the compensation

as Rs.12,32,000/- with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs, as hereunder:

Loss of contribution to the family : Rs. 8,80,000/-

Funeral and transportation expenses: Rs. 50,000/-

Loss of love and affection

to parents : Rs. 2,00,000/-

to brothers : Rs. 1,00,000/-

Loss of articles and

damages to clothes : Rs. 2,000/-

Total : Rs.12,32,000/-

9. Though, Mr.D.Bhaskaran, learned counsel for the National Insurance Company Limited, appellant herein, reiterated the very same defence taken before the claims tribunal, and on appeal, contended that the claims tribunal has failed to note that, as per Ex.P1, First Information Report, it was a case of hit and run and though evidence was elucidated from PW2, to the effect that the owner of the lorry was none other than the neighbour of the deceased, and considering the discrepancies, the tribunal ought to have arrived at a conclusion that vehicle insured with the appellant-Insurance company had been falsely implicated, with a motive to gain unjust enrichment of compensation, this Court is not inclined to accept the said contention, for more than one reason. Even taking it for granted that as per Ex.P1, First Information Report, it was a case of hit and run, we could see that the police on investigation has laid a charge in Ex.P8, against the driver of the container lorry. Judicial notice can also be taken that if any false case has been registered against the owner of a vehicle, for the purpose of making a wrongful gain or compensation, insurance companies tend to take up the matter with the higher police officials or lodge a complaint with CBCID.

10. Admittedly, in the case on hand, no such complaint has been made. PW2, Sub Inspector of Police, examined on behalf of the legal representatives of the deceased, has deposed that on 11.01.2011, in the accident, Seethakannan, breadwinner died. As regards Ex.R1, alleged confessional statement of the driver of the container lorry, marked on behalf of insurance company and relied on, is concerned, the same cannot be taken on record, as it is self incriminating. Credentiality of the said statement, in our considered view, should not be the basis to arrive at the conclusion of negligence, in accidents cases, when the same is not on the basis, to arrive at the guilt of an offence.

11. Going through the material on record, we are of the view that the contention that vehicle bearing Regn.No.TN28AH7357, has been falsely implicated, has not been substantiated. Though, there could be some discrepancy, in the testimony of the witnesses, documentary evidence, Ex.P1, FIR, Ex.P8, Charge sheet laid against driver of the container lorry bearing Regn.No.TN28AH7357 and insured with National Insurance Company, appellant herein and corroborative evidence, cannot be eschewed. Preponderance of probability, is the test in Motor Vehicle Accident cases.

(i) In N.K.V.Brother's Private Limited v. Kurmai reported in AIR 1980 SC 1354, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(ii) In a decision 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."

(iii) In Bimla Devi & Ors. Vs. Himachal RTC reported in 2009 (13) SCC 530, the 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."

12. Testing the finding fixing negligence on the driver of the container lorry, on the abovesaid principle, we are of the view that the same cannot be said to be perverse warranting interference. Quantum of compensation appears to be reasonable and there is no serious challenge to the same.

13. In the light of the above discussion and decisions, we confirm the impugned judgment. Civil Miscellaneous Appeals is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. Mr.D.Bhaskaran, learned counsel for the appellant-Insurance Company submitted that compensation awarded has already been deposited to the credit of MCOP No.951 of 2011 on the file of MACT [2nd Additional District Judge], Poonamallee. Respondents/claimants are at liberty to seek for withdrawal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars/skm
To

The Motor Accident Claims Tribunal,
[2nd Additional District Judge], Poonamallee.

+1cc to Mr.D. Bhaskaran, Advocate, S.R.No.19852
+1cc to Mr.P. Thangavel, Advocate, S.R.No.19935

rsi (CO)
md(17/04/2017)

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