

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

CORAM:

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

C.M.A.No.1196 of 2017
and CMP.No.6006 of 2017

The Branch Manager,
Reliance General Insurance Company Ltd.,
Sri Meenakshi Plaza, 1st Floor,
Plot No.HIG, 55, 80 Feet Road,
Anna Nagar, Madurai ...Appellant/2nd Respondent

vs.

1. Subha
2. Minor Kanini
3. Minor Kamili
4. Minor Kavya
5. Minor Periannan
6. Minor Kalaiarasi ...Respondents 1 to 6/Claimants
(minor respondents 2 to 6 are represented by their mother and
guardian subha the 1st respondent herein)

7. B.Geetha ...7th Respondent/1st Respondent/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the award and Decree in MCOP No.79
of 2014 dated 06.09.2016 on the file of Motor Accidents Claims
Tribunal, [Principal District Judge], Perambalur.

For Appellant : Mr.S.Arun Kumar
For Caveators/
Respondents : Mr.T.Gobinath (for R1 to R6)

J U D G M E N T

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

Challenging the finding fixing negligence on the driver of
Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-
2242, insured with M/s.Reliance General Insurance Company
Limited and the quantum of compensation of Rs.14,42,000/ with
interest at the rate of 7.5% per annum from the date of claim
till deposit and costs, awarded in MCOP No.79 of 2014 dated
06.09.2016 on the file of Motor Accidents Claims Tribunal,
[Principal District Judge], Perambalur, instant appeal has been
filed.

2. According to the respondents/claimants, on 03.09.2013 about 7.15am, at the entrance of New Bus stand of Perambalur, where there is a 'U' turn, when Nagarajan was riding a motorcycle bearing Regn.No.TN46K1649 at a normal speed, a Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242, belonging to the 7th respondent herein and insured with M/s.Reliance General Insurance Company Limited, driven by its driver in a rash and negligent manner, dashed against the motorcyclist. In the impact, Nagarajan, sustained fatal injuries and died instantaneously. A case in crime No.942 of 2013 under section 304-A IPC has been registered on the file of Perambalur Police Station, against the driver of Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242.

3. Contending inter alia that at the time of accident the deceased was aged 42 years and as a real estate businessman earned Rs.25,000/- per month, his legal representatives viz., wife, minor children numbering 5, filed MCOP No.79 of 2014 on the file of Motor Accidents Claims Tribunal, [Principal District Judge], Perambalur, claiming compensation of Rs.25 Lakhs under various heads.

4. M/s.Reliance General Insurance Company Limited, appellant herein refuted the manner of accident. According to the company, it was the motorcyclist who dashed the vehicle. Consequently, the company disputed its liability to pay compensation. Without prejudice to the above, insurance company disputed the age, avocation, income of the deceased and the quantum of compensation, claimed under various heads.

5. Before the tribunal, wife of the deceased examined as PW1, reiterated the manner of accident. PW2, is stated to be the eyewitness. Ex.P1, dated 03.09.2013, copy of First Information Report, Ex.P2, dated 11.09.2013, copy of postmortem certificate of the deceased, Ex.P3, dated 18.09.2013, Death Certificate of Nagarajan, Ex.P4, dated 28.10.2013, copy of legal heirship certificate of the deceased, Ex.P5, copy of Family Card [2005-2009], Ex.P6, Union Bank Passbook, Ex.P7, Pan Card of the deceased, Ex.P8, AIADMK membership Card, Ex.P9, AIADMK Ward Member Selection Order, Ex.P10, Auction Order, Ex.P11 series (8 No's), Photos, Ex.P12, AIADMK Resolution Book, Ex.P13, copy of Registration Certificate of TN46L1813, Ex.P14, copy of Registration Certificate of TN46K1649, Ex.P15, copy of Registration Certificate of TN46 M 5738, Ex.P16, copy of Registration Certificate of TN41AB2242, Ex.P17, copy of Insurance policy of the 1st respondent's vehicle and Ex.P18, driving licence of Sundarraju, have been marked on the side of the respondents/ claimants.

6. RW1, is the Special Sub Inspector of Police, through whom Ex.R1, dated 03.09.2013, copy of Rough Sketch and Ex.R2, Motor

Vehicle Inspector's Report, have been marked. RW2, is the driver of Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242.

7. On evaluation of pleadings and evidence, the claims tribunal held that the driver of the Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242 and insured with M/s.Reliance General Insurance Company Limited Company, the appellant herein was negligent in causing the accident.

8. Based on the entries in Ex.P2, postmortem certificate, Ex.P5, family card of the deceased, Ex.P6, Union Bank passbook and Ex.P7, PAN Card, the tribunal fixed the age of the deceased as 42 years. Upon perusal of Ex.P8, AIADMK membership Card, Ex.P9, AIADMK Ward Member Selection Order, Ex.P10, Auction Order issued by Commissioner, Perambalur, Ex.P11 series (8 No's), Photos and Ex.P12, AIADMK Resolution Book, the claims tribunal, came to the conclusion that the deceased Nagarajan, was a member of the 8th Ward of Perambalur and Exs.P13 to P15, Registration Certificate of the cars stated to have been owned by the deceased.

9. Though the respondents/legal representatives claimed that at the time of accident, the deceased earned Rs.25,000/- per month, in the absence of any proof of income, the tribunal notionally fixed the same as Rs.10,000/- per month.

10. Having regard to the judgment of the Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC), the tribunal applied '14' multiplier for the purpose of computing the loss of contribution to the family. After deducting 1/4 towards personal and living expenses of the deceased quantified the loss of contribution to the family as Rs.12,60,000/- [Rs.10,000/- x $\frac{3}{4}$ x 12 x 14]

11. That apart, the tribunal awarded Rs.1,00,000/- under the head loss of love and affection, Rs.50,000/- towards consortium, Rs.20,000/- towards funeral expenses, Rs.10,000/-towards transportation and Rs.2,000/- towards damages to clothes and articles. Altogether, the tribunal awarded compensation of Rs.14,42,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit.

12. Though, Mr.S.Arun Kumar, learned counsel for the M/s.Reliance General Insurance Company Limited Company, the appellant herein contended that the claims tribunal failed to consider that the deceased had attempted to take a 'U' turn, without noticing the insured vehicle and thus, caused the accident and further contended that the tribunal has failed to consider the evidence of RW2, driver of Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242, in proper

perspective alongwith R1, sketch and consequently, prayed for reversal of finding of negligence and in the alternative contended that the tribunal ought to have held that there was contributory negligence on the part of the motorcyclists in causing the accident, this Court is not inclined to accept the said contentions for the reason that though, PW1, wife of the deceased has not witnessed the accident, PW2, stated to be the eye witness, has deposed that on 03.09.2013 about 7.15 am, while he was walking on the 'U' turn road at the New Bus Stand, Perambalur, he saw the deceased, Nagarajan, was riding a motorcycle and at that time, a Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242, which came from East to West direction ,driven by its driver in a rash and negligent manner, dashed against the motorcyclist. Resultantly, the motorcyclists died on the spot. It is to be noted that it was he who lodged the complaint before the Perambalur Police and Ex.P1, FIR, has been registered under Section 304-A IPC against the driver of the goods vehicle. Special Sub Inspector of Police, Perambalur Police Station, examined as RW1, has marked Ex.R1, Sketch and Motor Vehicle Inspector's Report.

13. On the contra, RW1, driver of Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242 alone has testified refuting the manner of accident, as set out in the claim petition. According to him, it was the motorcyclist, who dashed against the back side of the lorry. Evidence of PW1, is supported by PW2-complainant in Ex.P1, FIR. On the contra, there is no corroborative evidence to the testimony of RW2, driver of Ashok Leyland Multi Axle Goods Vehicle bearing Regn.No.TN41-AB-2242.

14. It is settled law that in matters relating to Motor Accidents Claims, suffice there is preponderance of probability, as to the manner of accident and strict proof of evidence is not required. In the instant case, no concrete material is available to reverse the order of the Tribunal. On the other hand, there is ample evidence to conclude that the accident had occurred in the manner as detailed by the claimants. Therefore, the finding of the Tribunal regarding negligence is confirmed. Quantum of Corporation is not seriously disputed. Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

15. Consequent to the dismissal of the appeal, the appellant-Insurance Company, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim and costs, to the credit of MCOP No.79 of 2014 on the file of Motor Accidents Claims Tribunal, [Principal District Judge], Perambalur, within a period of four weeks from the date of receipt of a copy of this order

16. Respondents 2 to 6 were minors at the time of filing of the claim petition. On such deposit being made, except minors, the 1st respondent/claimant is permitted to withdraw her share, as apportioned by the tribunal, by making necessary applications. Share apportioned to the minors/respondents 2 to 6, shall be in the bank deposit till they attain majority. Interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. On attainment of majority, they shall file necessary applications for withdrawal.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Motor Accident Claims Tribunal,
[Principal District Judge], Perambalur.

+1cc to Mr.S.Arunkumar,Advocate sr.21269

+1cc to Mr.T.Gopinath,Advocate sr.21112

C.M.A.No.1196 of 2017
and CMP.No.6006 of 2017

kgk(co)
ss(21/4/2017)

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