

IN THE HIGH COURT OF JUDICATURE AT MADRAS

17.04.2017

CORAM

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

C.M.A.No. 1256 of 2017
and CMP No.6446 of 2017

The Manager,
Reliance General Insurance Company Ltd.,
"Rai's Tower", Plot No.2054,
2nd Avenue, 2nd Floor,
Anna Nagar, Chennai - 600 040. Appellant/2nd Respondent

Vs.

1. J.Latha
2. Minor J.Jayashree
3. Minor J.Manikandan
- Minors represented by their mother J.Latha
4. D.Vijaya ..Respondents 1 to 4/Claimants
5. P.Masilamani ... 5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 13.07.2016 made in M.C.O.P.No.64 of 2015 on the file of the Motor Accident Claims Tribunal I [Special District Court], Tiruvallur.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

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

Being aggrieved by the finding fixing negligence on the driver of the Ashok Leyland Comet Container Lorry bearing Regn.No.TN54-E-2058, liability and the consequential direction to pay compensation of Rs.20,38,000/- with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, awarded in MCOP No.64 of 2015 dated 13.07.2016, on the file of MACT [Special District Court], Tiruvallur, Reliance General Insurance Company Limited, Chennai, has filed the instant appeal.

2. Case of the respondents/legal representatives is that on 23.07.2012 about 10.30am, when D.Jayagopal was proceeding in his two wheeler, bearing Regn.No.TN20AV1865 on the Poonamallee High

Road from Koymabedu to Vanagaram, for his official duty, on the left side of the road a container lorry bearing Regn.No.TN54-E-2058, insured with Reliance General Insurance Co. Ltd., driven in a rash and negligent manner dashed the motorcyclist from behind and due to the impact, the motorcyclist fell down, sustained grievous injuries and died on the spot. In this regard, a case in Cr.No.983/PH3/12 under Sections 279 and 304-A IPC has been registered against the driver of the container lorry on the file of the Inspector of Police, Poonamallee Traffic Investigation.

3. Contending inter alia that at the time of accident, the deceased was engaged in business, under the name and style of Shree Ayyappa Traders and was also an agent of Anil Products Distributors in Maduravoyal, earned Rs.15,500/- per month, legal representatives filed a claim petition for compensation of Rs.50 Lakhs, under various heads.

4. Reliance General Insurance Company opposed the claim petition on the grounds inter alia that it was the motorcyclist who caused the accident. Insurance Company denied negligence attributed to the driver of Ashok Leyland Comet Container Lorry bearing Regn.No.TN54-E-2058 and consequently, liability to pay compensation. Without prejudice to the above, company disputed the quantum of compensation claimed under various heads.

5. Wife of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. PW2, is stated to be the eye witness. Ex.P1, FIR, Ex.P2, postmortem certificate, Ex.P3, Legal heir certificate, Ex.P4, Certificate of Registration, Ex.P5, Receipt of Shree Ayyappa Traders, Ex.P6, Sub Agents Certificate, Exs.P7 and P8, Income Tax Accounts and Receipts, Ex.P9, Charge Sheet, Ex.P10, Motor Vehicle Inspector's Report, Ex.P11, Rough Sketch, Ex.P12, Receipt of Shree Ayyappa Traders, Ex.P13, PAN Card and Ex.P14, Bank statement, have been marked. On the side of Reliance General Insurance Company, appellant herein no oral or documentary evidence, has been adduced.

6. On evaluation of pleadings and evidence, the claims tribunal held that the driver of the container lorry bearing Regn.No.TN54 E 2058 was negligent in causing the accident.

7. On the quantum of compensation, based on the documents marked viz., Ex.P4, certificate of registration, Exs.P5 and P12, receipts of Shree Ayyappa Traders, Ex.P6, Sub Agents certificate, Exs.P7 and P8, Income Tax Accounts and receipts and Ex.P14, Bank statement of accounts of Shri Ayyappa Traders for the period from 01.01.2010 to 25.08.2012, the tribunal accepted the avocation pleaded and determined the monthly income as Rs.10,000/-.

8. On the basis of the entry in Ex.P2, Post Mortem certificate and date of birth mentioned in Ex.P13, PAN Card, the tribunal determined the age of the deceased as 43 years. Following the decision of the Hon'ble Supreme Court in Rajesh and others vs Rajbir singh and others, reported in 2013 (2) TNMAC 55 (SC), the tribunal added 30% of the income under the head future prospects. For computing the loss of contribution to the family, the tribunal fixed the income as Rs.13,000/-. Following Smt. Sarla Varma & others Vs.Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1(SC) and Reshma Kumari and others Vs. Madan Mohan and another, reported in 2013 (1) TNMAC 481 (SC), the tribunal applied '14' multiplier. Having regard to number of dependents, the tribunal deducted 1/4th towards the personal and living expenses of the deceased. Thus the tribunal computed the loss of contribution to the family as Rs.16,38,000/-

9. Having regard to the age of the wife viz., 36 years, the tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.25,000/- for funeral expenses. At the time of accident, respondents 2 and 3 were minors, aged about 6 years and 2 years, respectively. The tribunal awarded Rs.50,000/- each, for the loss of love and affection. For the mother, aged about 65 years, tribunal awarded Rs.75,000/- under the same head. Following the decision of the Hon'ble Supreme Court in Kalpanaraj & Others Vs. Tamil Nadu Transport Corporation, reported in 2014 (5) SCALE 479, the tribunal awarded Rs.1,00,000/- under the head loss of estate. Altogether, tribunal awarded Rs.20,38,000/- with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs.

10. Though Mr.S.Arun Kumar, learned counsel for Reliance General Insurance Company Ltd., appellant herein contended that the claims tribunal has erred in relying on the interested testimony of PW2 to conclude negligence against the driver of the container lorry and further contended that the tribunal ought to have applied the doctrine of res ipsa loquitur and ought to have held that the deceased contributed to the accident, this Court, is not inclined to accept the said contention for the reason that the oral testimony of P.W.1 is duly supported by P.W.2, eye witness. Added further, their testimony is corroborated by Ex.P1, FIR, registered against the driver of the container lorry. After investigation, police has also laid charge sheet against the driver of the container lorry, which is marked as Ex.P9. Rough Sketch, Ex.P11, has also been marked. On the other hand, no contrary evidence has been adduced by Reliance General Insurance company Limited, appellant herein.

11. Preponderance of probability, is the test in Motor Vehicle Accident cases. 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 Hon'ble 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."

(i) In a decision in Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati at Paragraph 6 held 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."

(ii) 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 principles, we are of the view that when clinching and uncontroverted evidence has been adduced by the legal representatives of the deceased, as to the manner of the accident, finding fixing negligence on the container lorry bearing Regn.No.TN54-E2058 cannot be said to be perverse warranting interference. Added further, no materials have been placed before the tribunal to prove that Reliance General Insurance company Limited, had taken sincere steps to examine the driver of the container lorry bearing Regn.No.TN54 E 2058. In the absence of examining the driver, adverse inference can also be drawn.

(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.

13. In the light of the above discussion and decisions, finding of negligence fixed on the driver of the container lorry, is confirmed.

14. Determination of age as 43 years, on the basis of date of birth mentioned in Ex.P13, PAN Card, cannot be said to be erroneous. To prove the avocation that the deceased was engaged in business, in the name and style of Shree Ayyappa Traders at

Maduravoyal, respondents/claimants have marked appropriate documents as stated supra. Determination of the monthly income as Rs.10,000/- also cannot be said to be erroneous or excessive. Application of the decisions of the Hon'ble Supreme Court in Rajesh and others vs Rajbir singh and others, reported in 2013 (2) TNMAC 55 (SC), and Smt. Sarla Varma & others Vs.Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC) to the case on hand is correct. Estimation of loss of contribution to the family, cannot be found fault with.

15. The only contention that requires to be considered is whether the tribunal has awarded any excessive compensation under the head loss of estate. Perusal of the award shows that the tribunal has taken note of the decision of the Hon'ble Supreme Court in Kalpanaraj & Others Vs. Tamil Nadu Transport Corporation, reported in 2014 (5) SCALE 479. Even taking it for granted that the abovesaid sum is excessive, we are of the view that the same could be adjusted against lesser compensation awarded under the head loss of love and affection, to the children. Tribunal has awarded Rs.1,00,000/- only, ie. at Rs.50,000/- each. They were aged about 6 years and 2 years, respectively. Considering their age, we deem it fit to adjust the excess compensation, under the head loss of estate.

16. Tribunal has not awarded any compensation under the head transportation and damages to clothes and articles. Quantum of compensation of Rs.20,38,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit, cannot be said to be a bonanza or a windfall to the legal representatives of the deceased, who have lost the breadwinner.

17. In the result, the Civil Miscellaneous Appeal is dismissed. No Costs. consequently, the connected Miscellaneous Petition is closed.

18. In view of the above, Reliance General Insurance Company Limited, Chennai, the appellant herein is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, awarded by the tribunal, less the statutory deposit, to the credit of M.C.O.P.No.64 of 2015 on the file of the Motor Accident Claims Tribunal [Special District Court], Tiruvallur, within a period of four weeks from the date of receipt of a copy of this order.

19. On such deposit, except the minor respondents/claimants 2 and 3, other claimants are permitted to withdraw their share, as apportioned by the tribunal, with proportionate interest, by making necessary applications. Share apportioned to the minor claimants 2 and 3, shall be in the bank deposit till they attain majority. The interest accruing on the share of the minors

shall be paid to the mother of the minors viz., J.Latha, 1st respondent/claimant, once in three months, till they attain majority. On attainment of majority, they shall file necessary applications for withdrawal.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Special District Judge
The Motor Accident Claims Tribunal I,
Tiruvallur.

+1 CC to Mr. S. Arunkumar, Advocate sr 23193

C.M.A.No. 1256 of 2017
and CMP No.6446 of 2017

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