

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/4/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal Nos. 1265 and 1266 of 2017

The Deputy Director of Medical Service

Dharmapuri.

... Appellant in both
the appeals/1st Respondent

Vs

1. Velvizhi

2. Minor Indhuja

3. Minor Varshini

(Respondents 2 and 3 are rep.
by their natural guardian
first respondent)

4. Pachiammal

5. Kannugounder

6. C. Chandiran

...6thRespondent/
2nd Respondent in
C.M.A.No.1265 of 2017

and

1. Prema

2. K. Settu

...1st & 2nd Respondent/claimants

3. C. Chandran

...3rd Respondents/2nd
Respondent in
C.M.A.No.1266 of 2017

Prayer in C.M.A.No.1265 of 2017: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree, dated 1/6/2016, passed by the Motor Accident Claims Tribunal (Sub-Court), Harur, in M.C.O.P.No.383 of 2009.

Prayer in C.M.A.No.1266 of 2017: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree, dated 1/6/2016, passed by the Motor Accident Claims Tribunal (Sub-Court), Harur, in M.C.O.P.No.384 of 2009.

For appellant ... Mr.T.Jayarama Raj
Government Advocate (CS)

- - - - -

C O M M O N J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

In the accident, which occurred, on 28/4/2009, between a Hero Honda Motor Cycle, bearing Registration No.TN24D-7570 and a Tempo trax vehicle, bearing Registration No.TN09G-1814, belonging to the Deputy Director of Medical Services, Dharmapuri, Motorcyclist Balaji, aged about 32 years, stated to have worked as Assistant Manager (Administration), in S.R.C.Project Private Ltd., Salem and Manivannan, aged about 25 years, an Agriculturalist and Contractor/self-employed, sustained serious injuries and both died on the spot. In this regard, a case in Crime No.377 of 2009, under Sections 279, 337 and 304 A of the Indian Penal Code has been registered, against the driver of the tempo trax, on the file of Harur Police Station.

2. Legal representatives of Balaji, wife, two minor children and parents filed M.C.O.P.No.383 of 2009, on the file of the Motor Accident Claims Tribunal, Sub-Court, Harur, claiming compensation of Rs.20 lakhs, under various heads.

3. Legal representatives/parents of Manivannan filed M.C.O.P.No.384 of 2009, on the file of the Motor Accident Claims Tribunal, Sub-Court, Harur, claiming compensation of Rs.10 lakhs, under various heads.

4. In both the claim petitions, the Deputy Director of Medical Services, Dharmapuri, denied the manner of accident, as alleged by the legal representatives of the deceased. He further contended that while attempting to over take the bus and without noticing the tempo trax vehicle, the motor cyclist came to the wrong side of the road and despite the driver of the tempo trax, applying sudden brake, to avoid the accident, the motorcyclist dashed against the tempo trax and thus, caused the accident. Without prejudice to the above, the Deputy Director of Medical Services, Dharmapuri, disputed the age, avocation, income and the quantum of compensation claimed under various heads.

5. As both the claim petitions arose out of the same accident, evidence being common, they were tried together.

6. Wife of the deceased Balaji has been examined as P.W.1 and father of the deceased Manivannan has been examined as P.W.2. They deposed that when the motorcycle was driven, near Nambipatty bus stop bridge, about 16.30 hours, a tempo trax vehicle, bearing Registration No.TN09G-1814, driven in a rash and negligent manner, dashed against the motor cycle, dragged the same to some distance and then stopped. Both the rider and the pillion sustained grievous injuries, and died on the spot.

7. P.W.4 Selvaraj, stated to have witnessed the accident, has lent supportive evidence. Corroborating the oral testimony, legal representatives filed Ex.P.1, dated 28/4/2009, First Information Report registered against the driver of the tempo trax. On the other hand, R.W.1 driver of the tempo trax vehicle, has adduced evidence to the effect that while overtaking the bus, the motorcyclist, dashed against tempo trax vehicle and relied on the judgment, in C.C.No.197 of 2009, on the file of the learned Judicial Magistrate, Harur. He further drew the support of R.W.2, an other witness.

8. On evaluation of pleadings and evidence, by observing that the decision, in C.C.No.197 of 2009, on the file of the learned Judicial Magistrate, Harur, would not bind the claimants/respondents and that R.W.2 during cross-examination has deposed that he did not see the accident that therefore, his evidence cannot also be relied on, the Claims Tribunal came to the conclusion that the driver of tempo trax was negligent in causing the accident.

9. On the quantum of compensation, in M.C.O.P.No.383 of 2009, legal representatives have contended that Balaji Motorcyclist was working as Assistant Manager (Administration) in S.R.C Project Private Limited, Salem and earned Rs.20,000/- p.m. To prove the educational qualifications, P.W.1 wife of Balaji has relied on Ex.P.5 Transfer Certificate, Ex.P.8 Provisional certificate of B.SC degree, Ex.P.9 computer training program certificate and Ex.P.10 Certificate of Diploma in Co-operation. Added further, legal representatives have also examined P.W.3 Gopinathan, Senior Manager of the said Private Company, who has deposed that at the time of accident, Balaji was employed in the said Company and drawn a sum of Rs.9,650/- as salary and Rs.50/- as daily batta. She has also produced Ex.P.6 salary certificate of the deceased Balaji and Ex.P.11 salary list.

10. P.W.1 has also filed a memo and letter of the Employees Provident Fund Organisation in No.TN/SLM/Pension/09. Upon perusal of the same, the Claims Tribunal has noticed that salary of Balaji was attached with Provident Fund Organisation. Thus, based on the oral and documentary evidence of the legal representatives of Balaji, by accepting the avocation, the Tribunal, fixed the monthly income as Rs.9,650/-. Taking note of the Date of Birth entered in Ex.P.5 Transfer Certificate, the Tribunal fixed the age of the deceased Balaji as 35 years.

11. Based on the decisions of the Hon'ble Supreme Court in SANTHOSH DEVI Vs. NATIONAL INSURANCE Co. LTD {2012 (2) TNMAC - 1 (SC)} and MUNNA LAL JAIN AND ANOTHER Vs. VIPIN KUMAR SHARMA AND OTHERS {2015 (1) TN MAC - 814 (SC)}, the Tribunal added 50% of the actual income of the deceased under the head future prospects, which works out to Rs.14,475/- (Rs.9,650/- + Rs.4825/-). The Tribunal deducted 1/4th towards the personal and living expenses of the deceased and computed the loss of monthly income as Rs.10,856/-. Having regard to the age of the deceased, as per the decision of the Hon'ble Supreme Court in SARLA VERMA Vs. DELHI TRANSPORT CORPORATION {2009 ACJ 1298 (SC)}, applied 16 multiplier and computed the loss of contribution to the family as Rs.20,84,352/-. Added further, the Tribunal awarded Rs.80,000/- for loss of consortium, Rs.80,000/- under the head loss of love and affection to the children (Rs.40,000 + Rs.40,000/-), Rs.20,000/- for loss of love and affection to the mother of the deceased, Rs.10,000/- for funeral expenses and Rs.5,000/- for transportation. Altogether, the Tribunal awarded compensation of Rs.22,79,352/-, together with interest at the rate of 7.5% p.a., from the date of petition till realisation.

12. In so far as M.C.O.P.No.384 of 2009 is concerned, though legal representatives of the deceased, claimed that as an agriculturalist and Contractor, the deceased maximum earned Rs.10,000/- p.m., in the absence of any documents, based on the decision of the Hon'ble Supreme Court in Syed Sadiq, etc Vs. Divisional Manager, United India Insurance Co. Ltd., {2014 (1) TN MAC 459 (SC)}, the Tribunal fixed the notional income as Rs.6,500/-p.m. Based on the Date of Birth mentioned in Ex.P.12, Transfer Certificate, the Tribunal fixed the age of Manivannan as 24 years and 9 months and rounded off to 25 years. Following the said judgment, the Tribunal added 50% of the actual income under the head future prospects, which works out to Rs.9,750/- (Rs.6,500/- + Rs.3,250/-). Parents were the claimants. The deceased was a bachelor. The Tribunal, by deducting 1/2 towards the personal and living expenses of the deceased, computed the loss of contribution to the family as Rs.10,53,000/- (4875 x 12 x 18). Added further, the Tribunal awarded Rs.80,000/- under the head loss of love and Affection (Rs.40,000 + 40,000),

Rs.10,000/- for funeral expenses and Rs.5,000/- for transportation. Altogether, the Tribunal awarded compensation of Rs.11,48,000/-, together with interest at the rate of 7.5% p.a., from the date of petition till realisation.

13. Though Mr.Jayaraman Raj, learned Government Advocate (CS) contended that while overtaking the bus and without noticing the tempo trax vehicle, the motorcyclist caused the accident and that the Department driver was in no way responsible for the same and further relied on the decision of C.C.No.197 of 2009, on the file of the Judicial Magistrate, Harur, and sought for reversal of the finding regarding negligence, this Court is not inclined to accept the said contentions for the reason that the finding of the criminal Court on the aspect of the rash and negligent driving, under Section 279 of the Indian Penal Code, is not binding on the claims Tribunal, which is empowered to independently assess the evidence adduced by the parties, to arrive at the conclusion of the negligence, in Motor Accident Claims cases.

14. It is well settled that the finding of negligence in motor accident claims cases is decided on the principles of preponderance of probability and not strict evidence. At this juncture, it is useful to extract the observations of the Hon'ble Division Bench of this Court in Oriental Insurance Co. Ltd., Vs. K.Balasubramanian, reported in 2007 (2) TN MAC 399, wherein, this Court held as follows:-

"It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal nor relevant in a Civil case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

15. Negligence attributed to the driver of an offending vehicle in motor accident cases, and rash and negligent driving under Section 279 of the Indian Penal Code, is distinct and

different. The above aspect has been succinctly explained by the Hon'ble Apex Court in Jacob Mathew Vs. State of Punjab reported in {2005 (4) CTC - 540}, wherein at paragraph Nos.13 to 17, the Hon'ble Apex Court, explained the difference between tort and crime, as follows:-

"13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimizing violations, may be motivated by thrill-seeking. These are clearly reckless.

14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews V. Director of Public Prosecutions, [1937] A.C.576, stated,

"Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case -

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth & Percy, *ibid*, para 1.13)

15. The fore-quoted statement of law in Andrews has been noted with approval by this Court in Syad Akbar V. State of Karnataka (1980) 1 SCC 30. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence, viz., the proof, in civil and criminal proceedings. In civil proceedings, a mere

preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

16. Law laid down by Straight, J in the case Reg V. Idu Beg (1881) 3 All. 776, has been held good in cases and noticed in Bhalchandra Waman Pathe V. State of Maharashtra 1968 Mh.L.J 423, a three Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which is a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."

16. Evidence of P.Ws.1 and 2, is duly corroborated by Ex.P.1 First Information Report, supported by P.W.4 eye witness, whose evidence has been found to be cogent and that the Tribunal has also recorded P.W.4 is not an interested witness. On the other hand, R.W.2 examined on behalf of the Deputy Director of Medical Services, Dharmapuri though deposed in the chief examination that the motorcyclist dashed against the tempo trax, but during the cross-examination, he has categorically admitted that he did not see the occurrence. Therefore, the Tribunal has discredited his testimony. Now what remains to be considered is only the oral testimony of R.W.1, which is not supported by any other independent witness.

17. Thus, on evaluation of oral and documentary evidence, the Claims Tribunal has concluded that the evidence adduced on behalf of the legal representatives of the deceased was tenable and therefore, held that the driver of the tempo trax alone was

negligent in causing the accident. Testing the finding of negligence on the principles of preponderance of probability and taking note of the decisions stated supra, this Court is not inclined to hold that the finding is perverse, warranting interference.

18. In so far as M.C.O.P.No.383 of 2009 (C.M.A.No.1265 of 207), the Tribunal has considered the oral and documentary evidence, stated supra and accordingly, fixed the monthly income. Addition of future prospects, application of multiplier, cannot be found fault with. Computation of loss of contribution to the family and quantum of compensation awarded under other heads cannot be said to be erroneous or on the higher side.

19. In so far as M.C.O.P.No.384 of 2009 (C.M.A.No.1266 of 2017) is concerned, the claims Tribunal, has fixed the notional income of the deceased Manivannan as Rs.6,500/-. Quantum of compensation awarded, under other heads, cannot be said to be on the higher side, warranting interference.

20. Thus, the finding of negligence fixed on the driver of Tempo Trax vehicle and the quantum of compensation awarded in both the claim petitions are sustained.

21. In the result, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the Deputy Director of Medical Services, Dharmapuri is directed to deposit the entire award amount of Rs.22,79,352/- and Rs.11,48,000/-, with proportionate interest and costs, to the credit of M.C.O.P.Nos.383 of 2009 and 384 of 2009, respectively, on the file of the Motor Accident Claims Tribunal (Sub-Court), Harur, within a period of six weeks, from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mvs

To

The Motor Accident Claims Tribunal (Sub-Court), Harur

copy to

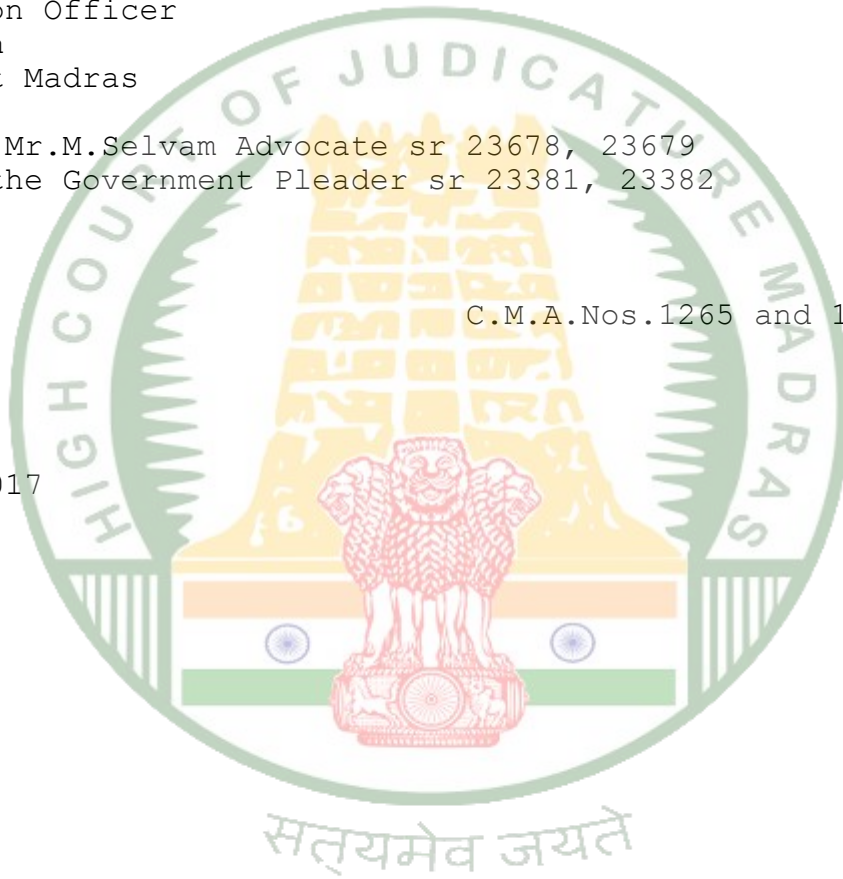
The Section Officer
VR Section
High Court Madras

+2 ccs to Mr.M.Selvam Advocate sr 23678, 23679

+1 cc to the Government Pleader sr 23381, 23382

C.M.A.Nos.1265 and 1266 of 2017

aa09/05/2017



WEB COPY