

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2017

CORAM:

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

C.M.A.No.1369 of 2017  
C.M.P.No.7219 of 2017

Tamil Nadu State Transport Corporation,  
Represented by its General Manager  
Tiruvannamalai District ... Appellant/Respondent

vs.

1.P.Shanthi  
2.P.Raja  
3.P.Kalaiselvan  
4.J.Ezilarasi  
P. Chakkarapani (died)  
Amended as per order in I.A. No 15/16  
dated 05.01.2016 ... Respondents/Claimants

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 02.08.2016 made in M.C.O.P.No.223 of 2012, on the file of the Motor Accidents Claims Tribunal, (1st Additional District and Sessions Judge), Vellore.

For Appellant : Mr.D.Venkatachalam  
for M/s.K.J.Sivakumar

J U D G M E N T

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

Being aggrieved by the award made in M.C.O.P.No.223 of 2012, dated 02.08.2016, on the file of the Motor Accidents Claims Tribunal, (1st Additional District and Sessions Judge), Vellore, the present appeal has been filed.

2. On 28.02.2012, about 9.30 P.M., when the deceased, husband of the 1st respondent/claimant, was riding his Motorcycle, bearing Registration No.TN 25 X 5332, on the extreme left side of Chetpet to Vadavasi Road, near Chetpet Marketing

Committee, followed by the 2nd respondent/claimant, son of the deceased, a bus, bearing Registration No.TN 25 N 0183, owned by the appellant-Transport Corporation, driven by its driver, in a rash and negligent manner, dashed against the motorcyclist. He sustained grievous injuries and died on the spot. A case in Cr.No.338 of 2012, has been registered against the driver of the bus, for the offences, under Sections 279 and 304(A) IPC., on the file of Chetpet Police Station.

3. According to the legal representatives, the deceased was the sole breadwinner, working as an Assistant Quality Inspector, Tamil Nadu Civil Supplies Corporation, Tindivanam and earned Rs.20,000/- per month. For the death of the motorcyclist, legal representatives have claimed compensation of Rs.36,00,000/-, under various heads.

4. The appellant-Transport Corporation has denied the manner of accident and contended that a false case has been registered against the driver of the bus. According to the Corporation, on the said date, there was no accident, as pleaded by the respondents/claimants. That apart, it was also contended that the deceased had no valid driving licence. The accident occurred only due to the rash and negligent driving of the deceased. Without prejudice to the above, the Corporation disputed the age, avocation and income of the deceased and the compensation claimed under various heads.

5. Before the Tribunal, respondents 1 and 2/claimants examined themselves as PW.1 and PW.2 respectively, and PW.3 is the Assistant, TNCSC, Villupuram Division. Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, Ex.P3 - Legal Heirship Certificate, Ex.P4 - Salary slip of the deceased and Ex.P5 - Motor Vehicles Inspector's Report, have been marked on the respondents/claimants. On the side of the appellant-Insurance Company, driver of the bus and Arani Branch Manager, have been examined as Rws.1 and 2 respectively and they marked documents, Judgement copy in C.C.No.202/2012 of J.M.Court, Polur, Trip Sheet and two photographs as Exs.B1 to B3. That apart, Ex.X1 - First Page of Service Book of the deceased, Ex.X2 - Salary Slip and Ex.X3 - Authorization Letter, have been marked.

6. On evaluation of pleadings and evidence, the Tribunal held that the driver of the bus, bearing Registration No.TN 25 N 0183, owned by the appellant-Transport Corporation, was negligent in causing the accident and quantified the compensation as Rs.29,25,300/- with interest at the rate of 6% per annum and costs.

7. Being aggrieved by the finding, fixing negligence on the driver of the bus, the appellant-Transport Corporation has preferred the present appeal, on the following grounds,

"(i) The Tribunal failed to note that the appellant's bus was not involved in the accident. The bus reached its destination without accident.

(ii) The Tribunal failed to note that the appellant corporation examined its driver as RW.1, who has deposed that there was no such accident. After he reached the destination, the police called him and stated that his bus hit a motorcyclist. The MVI report corroborated his evidence and it revealed that there was no damage caused to the bus. But the tribunal failed to note the same and fixed liability on the appellant.

(iii) The Tribunal failed to note that the criminal case registered against the driver of the bus ended in acquittal. The judgment of the criminal case has been marked as Ex.R1, corroborated the stand taken by the Corporation. The accident might have occurred due to the involvement of any other vehicle. But the Police has registered false case against the driver of the appellant Corporation. Based on the above, the Tribunal ought not to have fixed liability on the appellant."

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

8. As regards manner of accident, PW.1, respondent/claimant has adduced evidence, reiterating the averments made in the claim petition. Though PW.1 has not witnessed the accident, her version is supported by an eye-witness to the accident, PW.2, son of the deceased and duly corroborated by Ex.P1 - FIR, registered in Cr.No.338 of 2012, against the driver of the bus, for the offences, under Sections 279 and 304(A) IPC., on the file of Chetpet Police Station. Though the appellant-Transport Corporation has taken a stand, in the counter affidavit that at the time of accident, the deceased was not having a valid driving licence, perusal of the impugned judgment shows that, absolutely, no evidence has been adduced by the appellant-Transport Corporation to prove the same. Further, it has nothing to do with the manner of accident.

9. Though it is the contention of the appellant-Transport Corporation that PW.2, son of the deceased, is an interested witness and that therefore, no credence should be given to his oral testimony, we are not inclined to accept the said contention, for the reason that PW.2, in his evidence, has clearly deposed that while he was following his father, by another two-wheeler, near Market Committee, the driver of the

Transport Corporation bus, drove the same, in a rash and negligent manner, dashed against the motorcycle and that he did not stop the bus. Merely because, an eye-witness, who happened to be related to the deceased, has adduced evidence, narrating the manner of accident, credence of the same, cannot be discarded by the Tribunal or the Court, as the case may be. Anybody, who had witnessed the accident, can adduce evidence. It is always open to the appellant-Transport Corporation, to elicit materials to discredit his evidence. On the facts and circumstances of this case, we find that nothing adverse to the interest of the claimants, has been elicited. The defence of the appellant-Transport Corporation, in the counter affidavit, is unacceptable.

10. After considering the cumulative evidence let in by the respondents/claimants, the Claims Tribunal has arrived at a conclusion that the bus, bearing Registration No.TN 25 N 0183, owned by the appellant-Transport Corporation, was involved in the accident, which resulted in the death of the breadwinner of the family. Perusal of the judgment indicates that there was some delay in lodging FIR. Mere delay in registering a crime is not fatal. Reference can be made to the decision in Ravi V. Badrinarayan, reported in 2011 ACJ 911, wherein at paragraph Nos. 20 and 21, the Court held as follows:

"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in

doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons".

11. In the light of the above decision, mere delay in lodging a complaint cannot always give rise to a conclusion that a vehicle has been falsely implicated, for the purpose of making a claim for compensation. Delay would occur, if the injured is not in a state of physical condition to note down the number of the vehicle. It depends upon the speed of the offending vehicle, impact on the injured, situs of the injury, say for instance, head or other vital parts of the body, physical and mental shock, suffered by him, immediately after the accident and so on and so forth. Therefore, merely because, there was a delay in lodging a complaint, it cannot be said that a false claim has been made.

12. Though the learned counsel for the appellant-Transport Corporation has submitted that the Claims Tribunal has erred in fixing negligence, on the driver of the transport corporation bus, on the sole ground that Ex.P1 - FIR has been registered, this Court is not inclined to subscribe to the same, for the reason that though RW.1, driver of the bus, has stated that he drove the bus in a slow and careful manner, adhering to all the traffic rules and when he reached Tiruvannamalai, the police stopped the bus and informed him that he had caused the accident and that he was taken to Chetpet Police Station, oral testimony of RW.1, has not been corroborated by any independent evidence. Whereas, the evidence of PW.1, first respondent/claimant is duly supported by PW.2, eye-witness, and corroborated by Ex.P1 - FIR and Ex.P5 - Motor Vehicles Inspector's Report. Further, in the case on hand, police, after investigation, has filed a charge sheet against the driver of the bus. If there was any falsity, the appellant-Transport Corporation could have very well challenged the registration of a false case. In the light of the above, this Court is not inclined to accept the contention of the appellant.

13. After investigation, the Police has filed a Charge

Sheet against the driver of the bus. In the case on hand, manner of accident is duly corroborated by Ex.P1 - FIR and Charge Sheet and supported by a witness. Merely because the occurrence witness, happened to be the son of the deceased, his evidence cannot be discarded.

14. 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."

15. 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."

16. 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."

17. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required.

18. At this juncture, this Court also deems it fit to consider a decision in Jacob Mathew v. State of Punjab reported in 2005 (4) CTC 540, wherein, the Hon'ble Apex Court has explained the distinction between a tort and crime, where negligence is the fact, required to be proved and at Paragraphs 13 to 17, held 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 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."

19. Mere acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of RW.1, driver of the bus. The standard of proof required is entirely different from the Criminal Court. In Motor Accident Claims Cases, preponderance of probability is the test to arrive at the conclusion regarding negligence.

20. In Vinobabai and others versus K.S.R.T.C. and another, reported in 1979 ACJ 282, the High Court of Karnataka held as follows:

"8. ....Thus, the law is settled that when the driver is convicted in a regular trial before the Criminal Court, the fact that he is convicted becomes admissible in evidence in a civil proceeding and it becomes prima facie evidence that the driver was culpably negligent in causing the accident. The converse is not true ; because the driver is acquitted in a criminal case arising out of the accident, it is not established even prima facie that the driver is not negligent, as a higher degree of culpability is required to bring home an offence."

21. In N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc., reported in AIR 1980 Supreme Court 1354, a bus hit an over-hanging high tension wire resulting in 26 casualties. The driver earned acquittal in the criminal case on the score that the tragedy that happened was the Act of God. The Hon'ble Apex Court held that the plea that the criminal case had ended in acquittal and that, therefore, a civil suit must follow suit, was rightly rejected by the Tribunal. It is worthwhile to reproduce para 2 of the judgment herein:

"2. The Facts: A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an over-hanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God. The Accidents Claims Tribunal which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly; several lost their limbs likewise. The High Court, after examining the materials, concluded:

"We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of R.W.1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant."

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirements of culpable rashness under Section 304A, I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum

of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation."

22. In *Oriental Insurance Co. Ltd., v. K.Balasubramanian* reported in 2007 (2) TN MAC 399, 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."

23. In *Himachal Road Transport Corporation and another versus Jarnail Singh and others*, reported in 2009 ACJ 2807, wherein it has been held that acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal, as to whether the driver was negligent or not in causing the accident. At Paragraph 15, it is held as follows:

"15. In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court and the judgments cited hereinabove, it is now well settled law that the acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal whether the driver was negligence or not in causing the accident."

24. In *Geeta Devi v. Rajesh* reported in 2011 ACJ 279, the Rajasthan High Court held as follows:

"It is, indeed, trite to state that while the finding of a civil Court is binding on the criminal Court, the finding of the criminal court could not and should not influence the decision of the Tribunal. The

Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the criminal Court."

25. Therefore, considering the object of the beneficial legislation, this Court is of the considered view that the approach of the Tribunal, in determining negligence, on the basis of evidence, cannot be said to be manifestly illegal, warranting interference. Hence, finding regarding negligence, is confirmed. Quantum of compensation awarded to the respondents/claimants is also just and reasonable.

26. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount, with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.No.223 of 2012, on the file of the Motor Accidents Claims Tribunal, (1st Additional District and Sessions Judge), Vellore, within a period of four weeks from the date of receipt of a copy of this order. 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/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accident Claims Tribunal,  
(1st Additional District and Sessions Judge),  
Vellore.

+1 CC to Mr.K.J. Sivakumar, Advocate sr 26335

C.M.A.No.1369 of 2017

GP(CO)  
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