

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2017

CORAM:

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

C.M.A.NO.2451 OF 2016
AND CMP NO.17251 OF 2016

M/s.National Insurance Co. Ltd.,
2nd Floor, Thanthai Periyar Market Complex,
Opposite to Old Bus Stand,
Salem - 1. Appellant/2nd Respondent

Versus

1.V.Mohanambal
2.V.Sharmila
3.V.Madhavan
4.R.Dhanaraj Respondents/Petitioner 1to3
1st Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.01.2015 passed in M.C.O.P.No.2164 of 2010 by the Motor Accident Claims Tribunal (Special District Judge) Salem District.

For Appellant : Ms.N.Gnana Soundari
for Mr.J.Chandran

For Respondents
1 to 3 : Mr.P.Jagadeesan

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the compensation awarded in M.C.O.P.No.2164 of 2010, dated 28.01.2015, by the Motor Accidents Claims Tribunal (Special District Judge) Salem, insurance company has preferred the above appeal.

2. One Venkatachalam, rider of a Moped bearing Registration No.TN30-H-7762, died on the spot, in the accident, which occurred on 01.06.2010, in which, a bus bearing Registration No.TN-30-AC-0408, was involved.

3. The Tribunal below has found rash and negligence on the

part of the bus driver and held that the insurance company is liable for payment of compensation. Challenging liability and quantum of compensation, insurance company has preferred the above appeal among other grounds.

4. Learned counsel for the appellant-insurance company contended that the sketch marked as Ex.R1 would show that the accident occurred in the middle of the road. On either side of the road, 30 feet space was available. The deceased was driving a two wheeler in a zig zag manner, recklessly crossed the road and thus, caused the accident. The bus driver was vigilant and adduced evidence before the Tribunal, denying negligence on his part. Before the Tribunal, he has clearly deposed that the deceased came to the right side of the road, from the edge of the road, and then went to left side, again came to the middle of the road, and thereafter, to the left. On his third attempt, he suddenly crossed the road and due to his reckless action, invited the accident.

5. Learned counsel for the appellant further submitted that there is no negligence on the part of the bus driver and that the deceased alone was solely responsible for the accident. The Tribunal, without considering the evidence, in proper perspective, has decided the issue of negligence, solely on the basis of First Information Report. The complaint was given by the pillion rider and naturally, he would attribute negligence, only to the bus driver, but the fact remains that the deceased was negligent and caused the accident.

6. Learned counsel for the appellant-Insurance Company further submitted that the Tribunal has erred in finding fault with the driver of the bus, in not having lodged the complaint. She further submitted that in rural areas, once an accident happens, the immediate reaction of the people would be to attack the driver, whether he is at fault or not and in such circumstances, the driver could not lodge the complaint immediately after the accident. Merely because, a complaint was not lodged by the bus driver, adverse inference cannot be drawn against him.

7. Inviting the attention of this Court to Ex.R1 - sketch, learned counsel for the appellant submitted that ATM is on the right side of the road and it is highly probable that in order to go to ATM, the deceased could have recklessly crossed the road and for some reason, the vehicle was stopped. From the impact on the victim's vehicle, it could be seen that the headlight, wind screen glass, front left side bumper, left side wheel were damaged and there was dent. The Motor Vehicle Inspector's report would also show that all the damages were only in the front side of the two wheeler. If at all, the

vehicle was hit from behind, the damage could have been caused to the vehicle in the rear side. She therefore submitted that the probability would be that when the deceased had crossed the road, the accident had taken place in the middle of the road and the vehicle was not hit from behind, as deposed by P.W.2.

8. It is the case of the appellant that the evidence of P.W.2 - eyewitness is not reliable, as he would state that the two wheeler was stopped on the extreme left of the road and that the bus hit the same from behind. If that be the case, the first person, to be affected would be the pillion rider. Therefore, negligence should have been attributed to the motorcyclist, much less contributory negligence. Learned counsel for the appellant contended that the finding of the Tribunal on the issue of negligence is liable to be set aside.

9. Contradicting the arguments of the appellant, learned counsel appearing for the respondents/claimants submitted that the sketch, prepared much later in time, cannot be the conclusive evidence to arrive at a finding on negligence. The sketch only shows, as to where the two wheeler and bus, were found after the accident. It is clearly proved by the evidence of P.W.1 and P.W.2 that the vehicle was hit from behind. The eyewitness has clearly deposed that the accident occurred due to the rash and negligent driving of the bus driver and hit the two wheeler from behind, while they were standing on the left side of the road. Due to the impact of the heavy vehicle, the two wheeler and the deceased were thrown away, and that the two wheeler was dragged to a distance, by the bus. In fact, the eyewitness, pillion rider had also suffered injuries all over the body. The evidence of P.W.2 is very clear and reliable. In his cross examination also, eyewitness has clearly deposed that it was only on account of the rash and negligent driving of the bus driver, the accident occurred. Police has also registered a case against the bus driver.

10. Learned counsel for the respondents further submitted that even the bus driver, in his evidence has stated that he has to reach the destination within 28 minutes. Though the bus driver has stated that the two wheeler was driven in a zig zag manner, it is not the case of the appellant, before the Tribunal. On the other hand, it is the case of the appellant that the deceased has suddenly stopped the vehicle without any signal, in the middle of the road, to go to ATM centre and thus, contributed to the accident. This contradictory stand by itself would prove that the grounds raised by the appellant-insurance company, cannot be accepted. Nobody would stop the vehicle in the middle of the road, when a bus is coming from behind. If at all the two wheeler was in the middle of the road, it would have been thrown away, down the road. But it is clear that the two

wheeler was hit from behind on the left side of the road and dragged to the middle of the road.

11. In any event, even assuming, but without admitting, when the deceased was riding a two wheeler in a zig zag manner, a duty is cast upon the driver to be more vigilant than in ordinary circumstances. Admission of the driver that he could not stop the vehicle shows that it was driven at high speed. Thus, the driver has admitted negligence. Therefore, no further evidence is required from anyone to prove negligence.

Heard the submissions made on either side and perused the materials available on record.

12. The driver of the bus has clearly stated that the deceased suddenly crossed the road and that is why, the accident occurred, in the middle of the road. The deposition of the driver that he was not negligent, cannot be accepted for the following reasons:-

- (i) Admittedly, bus hit the two wheeler;
- (ii) According to the driver of the bus, the deceased attempted to come to the middle of the road twice and went back to the left side. It means that the two wheeler was driven on the left side of the road, and not in the middle of the road, as alleged;
- (iii) The driver had seen the deceased attempting twice, and that he had gone to left side.

13. In that event, the driver should have been more vigilant. But the driver has deposed that he could not stop the bus and thus, it is evident that the bus was driven in an uncontrollable speed. As per the evidence, the road is 60" feet wide. There is no evidence that it was crowded and other vehicles were approaching in the opposite direction. Had the driver been vigilant, he could have avoided the accident by using the breadth of the road. The fact that he could not avoid the accident, clearly proves that the bus was driven in a rash and negligent manner. This finding is fortified by the statement of P.W.2 - eyewitness that the two wheeler was thrown off and dragged to a distance.

14. As contended by the learned counsel for the respondents that the sketch marked as Ex.R1 would reveal only the existence of things after the accident, when a collision had taken place. Therefore, on careful perusal of the evidence and more particularly, on the basis of the statement of the driver that he could not stop the bus, it could be inferred that the bus was driven at a high speed. Certainly, when a moped was hit by a heavy vehicle, the impact will be very heavy and there is every probability that the smaller vehicle, as well as the rider of

the vehicle, thrown away. It is also probable that the vehicle could have been dragged by the bus.

15. On the side of the appellant, there is no convincing evidence that the deceased was negligent. But on the other hand, the stand taken by the appellant in their counter affidavit and oral evidence before the Tribunal and stand now taken in the present appeal are contradictory. Preponderance of probability is that the accident occurred due to the rash and negligent driving of the bus driver. The Tribunal has rightly held that there was rash and negligent act, on the part of the bus driver. Ex.P1 - First Information Report and evidence of P.W.1 and P.W.2 clearly substantiate negligence on the part of the driver. Therefore, the finding of the Tribunal on the aspect of negligence and liability fixed on the appellant-insurance company are correct and cannot be interfered with.

16. Insofar as the quantum is concerned, on the basis of the salary slip marked as Ex.P6 and evidence of P.W.3, Manager of the institution where the deceased worked, the Tribunal has fixed the income of the deceased. After giving 30% towards future prospects, the Tribunal has rightly arrived at the income of the deceased and after deducting the personal and living expenses, arrived at the annual income at Rs.2,75,694/-.

17. Following the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] multiplier has been rightly fixed as 13, as the deceased was 46 years of age, at the time of accident. After deducting income tax, the Tribunal has calculated the compensation in a proper manner. Therefore, the contribution to the family as computed by the Tribunal below need not be interfered with.

18. Learned counsel for the respondents/claimants would submit that the Tribunal has awarded Rs.30,000/- towards loss of consortium to the wife and Rs.40,000/- each, to the children for loss of love and affection of the father. Insofar as compensation awarded for the loss of consortium is concerned, it is the contention of the respondents/claimants that the amount is meager and the Hon'ble Supreme Court in such cases, has awarded Rs.1,00,000/- towards loss of consortium and love and affection. Therefore, he pleaded that there should be some enhancement on this aspect.

19. In our considered opinion, submission made by the learned counsel for the respondents / claimants, on the basis of the judgment of the Hon'ble Supreme Court has some force. Therefore, we are inclined to accept the said contention and enhance the award amount under the head loss of consortium to

the wife from Rs.30,000/- to Rs.1,00,000/-. Considering the tender age of minor children, we enhance the award amount under the head loss of love and affection from Rs.40,000/- to Rs.1,00,000/- to each, of the two minor children. Further, a sum of Rs.10,000/- is awarded towards transportation and Rs.1,000/- towards conventional damages. Thus, the award amount is modified as under:

Loss of income	=	Rs.32,24,567/-
Loss of consortium to wife	=	Rs. 1,00,000/-
Loss of love and affection (Rs.1,00,000/- each to two minors)	=	Rs. 2,00,000/-
Transportation	=	Rs. 10,000/-
Funeral expenses	=	Rs. 25,000/-
Conventional damages	=	Rs. 1,000/-
Total	=	Rs.35,60,567/-

After revision, the compensation is enhanced from Rs.33,59,567/- to Rs.35,60,567/-.

20. The appellant-insurance company is directed to deposit the above said amount, with proportionate interest at the rate of 7.5% per annum and costs, from the date of petition, till the date of realization, within a period of six weeks from the date of receipt of a copy of this order, to the credit of MCOP No.2164 of 2010, on the file of Motor Accidents Claims Tribunal [Special District Court] Salem. On such deposit being made, the first respondent / claimant is permitted to withdraw her respective share, on filing proper applications before the Tribunal. In so far as the share apportioned to the minors is concerned, the same should be deposited in their names viz., respondents 2 and 3, in a Nationalised Bank, proximate to the residence of the first respondent, in a reinvestment scheme, till they attain majority. The first respondent / mother is entitled to withdraw interest accrued thereon, once in three months, for the welfare of the minors. The enhanced amount is allotted to the first respondent / wife. The apportionment given by the Tribunal is confirmed for the rest of the amount.

21. In fine, this Civil Miscellaneous Appeal is disposed of with the above directions. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TK/skm

To
The Motor Accident Claims Tribunal
(Special District Judge)
Salem District.

The Section Officer,
VR Section,
High Court Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.39482

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.39467

C.M.A.NO.2451 OF 2016

PA (CO)

RRK (03/01/2018)



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