

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2325 of 2017

1. Santhanam
2. Selvam
3. Ganapathi

... Appellants/Petitioners

versus

1. S.Kalivaradhan
2. United India Insurance Co.
Pondicherry.

... Respondents/Respondents

Prayer:Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 29.01.1996 made in M.C.O.P.No.16 of 1989 on the file of the Motor Accident Claims Tribunal, Sub Court, Villupuram.

For Appellants : Mr.R.Sunilkumar

For R2 : Mr.T.Ravichandran

JUDGMENT

To realise the value of ONE YEAR, ask a student who failed a grade.

To realise the value of ONE MONTH, ask a mother who has given birth to a premature baby.

To realise the value of ONE WEEK, ask the editor of a weekly newspaper.

To realise the value of ONE HOUR, ask the lovers who are waiting to meet.

To realise the value of ONE MINUTE, ask a person who just missed a train.

To realise the value of ONE SECOND, ask someone who just avoided an accident.

To realise the value of ONE MILLISECOND, ask the person who won a silver medal at the Olympics.

The above said fable drives home the value of time. Nobody could have realized the value of a DAY more than the appellants in this case, who had to wait for almost two decades for the High Court's Judicial consideration of their defeated claim in the lower Court.

2. This case is a classic and typical example of how an innocuous and seemingly inconspicuous delay in filing the appeal by the appellant has led to erection of an invisible wall precluding the appellants herein to get their rightful share of compensation due to the much ado procedural aspect rather than the dispensation of justice, more especially, in the benevolent motor accident legislation. The supposedly procedure-less compensation jurisprudence has been brought to a grinding halt in the above process thus making the claimants/appellants the losers.

3. The fatal accident triggering the sufficiently long process of court room odyssey is said to have taken place sometime in early part of 1987 with the death of one Ravana Gounder. Consequently, the legal heirs of the deceased came up with a claim petition which was enquired into and dismissed at last after almost 9 years. The claimants, pursued the appeal before this Court, filing the memorandum of grounds on 28.10.1996. Alas, the hapless claimants/appellants and their counsel appeared to have missed the limitation by a whisker, that is by a precious day. Just this one day delay could be so effective and act as an injunction, in the literal sense, in favour of the respondents herein, stands reflected through the functioning of this Registry, as the appeal did not see the light of the day, not even once, during the 20 years of its classic dormancy, that could only be equated with that of Kumbakarna of the great epic Ramayana.

4. The appeal came to be listed, for the first time, after almost twenty years and I wonder what made this Registry to do a sort of Rip Van Winkle adventure by listing it after a period of 20 years. It has been said and proclaimed umpteen times that listing delays are to be shown the door if the judiciary is to complement the democracy in India in its great leap forward to the digital era.

5. Venerable jurist Justice V.R.Krishna Iyer has this to say about this malady as hereunder:

"When justice is denied by any society, including a socialist, secular and democratic one as in India, expectations darken into depression. Then that depression turns into dread, dread transforms itself into despair and despair evolves into

explosive terrorism. State violence as an instrument to suppress terrorism is futile: after a time the bitterness and revengefulness that is generated will seek to overthrow those very forces that control state power – call it fascism, naxalism, Maoism or whatever. This dangerous deterioration of democracy into bedlam terrorism is hastened when access to justice ceases to be a reality and the only alternative is violence. When the rule of the robes proves a mirage, the rule of robbery gets support and sanction.”

6. Even after 70 years of independence in the ever vibrant democracy, judiciary is not yet ready to be the ultimate saviour of the masses with so many claims as to creation of infrastructure, fast tracking of the trial, establishment of specialized courts, computerizing the environment, the reality is not promising and it is showing every sign of system stagnation.

7. In the above backdrop, the ball is now in the court of this Court to render justice keeping in mind the age old saying that Justice should not only be done, but it should seem to be done. With the above avowed object in mind, this Court is venturing to decide the case at this point of time, though being rather belated.

8. The first claimant as the wife, second and third claimants as sons of the victim, suffered dismissal of the claim petition on 29.01.1996, which was filed in O.P.No.16 of 1989, in respect of death of Ravana Gounder, on 01.03.1987, on account of injuries sustained in the accident on 21.02.1987. Challenging the dismissal, they have filed the appeal before this Court on 28.10.1996, along with a petition to condone the delay of one day.

9. The appeal has been filed on 28.08.1996, but listed for hearing on 25.07.2016 and in the above backdrop of facts and circumstances, the delay was condoned.

10. The first respondent in the claim petition is the owner of the vehicle and he denied the involvement of his motor cycle (Reg.No.PYP.10) in the accident and the specific claim is that the victim did not die on account of the accident.

11. The contention of the second respondent Insurance Company in the claim petition is that the accident was not on account of negligence on the part of the driver of the vehicle, but, on account of negligence on the part of the deceased, who suddenly and unexpectedly tried to cross the road.

12. The claimants filed the claim petition claiming a sum of Rs.60,000/- as compensation.

13. On behalf of the claimant, Selvam, the 2nd claimant examined himself as P.W.1 and one Anantharaman, who was an eye-witness to the occurrence, was examined as P.W.2. On behalf of the first respondent, one Kalivarathan has been examined as R.W.1.

14. The sum and substance of the evidence adduced on the side of the claimants is that on 21.02.1987, the deceased Ravana Gounder while walking on the Pondy Main Road (from East to West) going from Ariyur to Kandamangalam, was hit by the vehicle (Rajdoot Motorcycle) belonging to the first respondent; the deceased was admitted at JIPMER Hospital, but inspite of treatment, succumbed to the injuries and died on 01.03.1987. The Tribunal dismissed the claim by giving a finding that the evidence was bereft of details with regard to mode of transport used by the deceased, the direction from which the deceased was proceeding and the details of the vehicle have not been explained.

15. The discrepancies between the evidence of P.W.1 before the Tribunal and his earlier statement in the complaint have been relied upon by the Tribunal to dismiss the claim made by the claimants.

16. Even though the eye-witness P.W.2 corroborated the evidence of P.W.1 in all material particulars, however, the Tribunal disbelieved his evidence on the ground that P.W.2 would only have been in the Ariyur Sugar Mill, where, he was working and he could not have been present at the scene of occurrence.

17. The prosecution as against the accused (the driver of the offending vehicle) resulted in acquittal of the accused, but the acquittal was mainly on the ground that despite repeated summons, the Investigating Officer did not appear to give evidence.

18. Whether the acquittal of the driver would lead to the conclusion that there was no accident at all and would absolve of the insurance company of its liability to compensate the claimants, is the critical issue.

19. The nature and extent of proof required in a criminal case totally different from the nature and extent of proof required in motor accident cases. While in criminal cases, the nature and extent of proof should be of such a manner that the proof is beyond reasonable doubt, however, in cases of civil

nature, more particularly, motor accident cases, the nature of proof required is only preponderance of probability.

20. It would be appropriate to quote the decision reported in 2008 ACJ 133 (Zoological Park Vs. S.Kalyana Raman & Ors.), wherein, the Court has held that the finding of the criminal court, is not binding on the claims tribunal. Mere acquittal in the criminal case does not amount to absolving a person of his rash and negligent driving. It is well known that the test to prove the guilt of an offence in the court of criminal jurisdiction is proof beyond all reasonable doubt, whereas, in claim for compensation under the Motor Vehicles Act, 1988, it is suffice that the Claims Tribunal adjudge negligence on the principles of preponderance of probability.

21. R.W.1, the owner of the vehicle, has admitted that he owns land in Ariputhripalayam village, which is situated 5 km away from his village and he used to go to his lands only in his motorcycle via Kandamangalam. R.W.1 has categorically stated in his evidence that he normally goes to his lands only in the motorcycle. However, he has not adduced any evidence to speak about the fact that on the fateful day he was not driving the vehicle, though he merely denied the involvement of the vehicle in the accident. When the evidence can be interpreted in more than one way, it is incumbent upon the Tribunal, more particularly in motor accident cases, to assess the probability while arriving at a finding. Therefore, it is left open to the Tribunal to arrive at an independent conclusion not only regarding the involvement of the vehicle in the accident, but also the nature of driving of the vehicle while causing the accident.

22. The Tribunal was within the parameters of law to entertain a doubt with regard to the evidence of P.W.1, who is the son of the deceased and, therefore, in all probability, is an interested witness. The Tribunal has taken into consideration the discrepancies in the evidence given by P.W.1 before the Tribunal and the statement given at the earliest point of time, which is found in the First Information Report. The Tribunal might have felt that the claimant being a beneficiary of compensation would be interested in imputing allegations against the driver of the offending vehicle. Therefore, the finding relating to doubting the veracity of the deposition of P.W.1 cannot be said to be erroneous.

23. However, that cannot be the reason to disbelieve even the evidence of P.W.2, who is said to be an eye witness to the occurrence. Considering the evidence of P.W.2 (eye witness), coupled with the admissions made by R.W.1 during cross examination about the probability of his vehicle having been

involved in the accident, coupled with the evidence of one of the eye witness before the criminal court that it is only the first respondent who hit the victim and went without even stopping the vehicle, the dismissal of the claim petition by the Tribunal that the evidence of the claimants is doubtful and does not inspire the confidence of the Court deserves to be set aside.

24. Further, the finding of the Tribunal that the claimants have not proved the mode of transportation of the deceased is also liable to be set aside. It is the categorical case of the claimants before the Tribunal that the deceased was walking on the road when the ill-fated accident occurred. Such being the case, the finding of the Tribunal that the evidence has not been adduced to prove the mode of transportation of the deceased is far from satisfactory. Further, once the deceased is said to have been walking on the road, the necessary inference is that the accident had happened due to the rash and negligent driving of the vehicle belonging to the 1st respondent. Therefore, this Court holds that the accident has been caused due to the rash and negligent driving of the vehicle belonging to the 1st respondent and, therefore, the respondents are jointly and severally liable to compensate the claimants.

25. The issue that remains to be decided only relates to the quantum of compensation. The accident had happened almost three decades before. It is a case where after the dismissal of the claim petition, appeal has been filed with a minuscule delay of one day, but for reasons best known, the case has seen the light of the day only after a long delay of two decades. Though there is a mistake inherent in the system itself, yet either of them ought to have taken steps to have the matter listed, which they failed to do. Therefore, both sides were requested to arrive at a quantum, so that, nobody's interest should be under jeopardy. Both sides consented that there shall be an award for a sum of Rs.2,50,000/- in full quit, payable by the 2nd respondent/insurance company to the claimants, within a period of four weeks from the date of receipt of a copy of this Judgment.

26. Accordingly, this Court, while allows the appeal filed by the appellants, quantify the compensation in a sum of Rs.2,50,000/= to be paid by the 2nd respondent towards full quit within a period of four weeks from the date of receipt of a copy of this order. Of the said amount, the first claimant will be entitled to a sum of Rs.1,00,000/- and claimants 2 and 3 are entitled to a sum of Rs.75,000/- each. However, there shall be no order as to costs.

27. The 2nd respondent/insurance company is directed to deposit the compensation amount of Rs.2,50,000/= as quantified by this Court above to the credit of the claim petition within a period of four weeks from the date of receipt of this order. On such deposit being made, the Tribunal shall transfer the share of the respective claimants as per apportionment made above directly to their bank account through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

The Motor Accident Claims Tribunal,
(Sub Court), Villupuram.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.[2 Copies]

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.64872

+1cc to Mr.R.Sunilkumar, Advocate, S.R.No.64825

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srg 23/05/2018