

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.01.2017

JUDGMENT PRONOUNCED ON : 03.03.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3125 of 2007
and CROS.OBJ.No.2 of 2010

C.M.A.No.3125 of 2007

M/s.United India Insurance Company Limited,
Branch Office II,
23, E.E.V.R.Road, Puthur,
Trichy-620 017.

...Appellant/2nd defendant

Vs.

1. Rajathi,
2. Minor Selvakumar,
3. Minor Geetha,
(R2 & 3 rep. By R1)
4. Chinammal
5. Narayanasamy
(Ex-parte before Lower Court)

...Respondents/Petitioners &
1st Respondent

CROS.OBJ.No.2 of 2010

1. Rajathi,
2. Minor Selvakumar,
3. Minor Geetha,
(R2 & 3 rep. By 1st Cross Objector)
4. Chinammal

... Cross Objectors/
Petitioners

Vs.

1. M/s.United India Insurance
Company Limited,
Branch Office II,
23, E.E.V.R.Road, Puthur,
Trichy-620 017.

2. Narayanasamy
(Ex-parte before Lower Court) ..Respondents/Respondents

Prayer in C.M.A.No.3125 of 2007:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.12.2003 made in M.C.O.P.No.41 of 2002 on the file of the Motor Accidents Claims Tribunal (District Judge) at Perambalur.

Prayer in Cross.Obj.No.2 of 2010:- Cross Objection is filed under under Order 41 Rule 33 C.P.C., against the judgment and decree dated 31.12.2003 made in M.C.O.P.No.41 of 2002 on the file of the Motor Accidents Claims Tribunal (District Judge) at Perambalur.

In CMA.No.3125 of 2007 :

For Appellant : Mr.S.Arun Kumar
For R1 : Mr.K.Suryanarayanan
for Mr.R.Vasudevan
For R5 : Ex-parte before Trial Court

In Cros.Obj.No.2 of 2010 :

For Cross Objector : Mr.K.Suryanarayanan
for Mr.R.Vasudevan
For R1 : Mr.S.Arun Kumar

COMMON JUDGMENT

The appellant herein is the insurance company, which was arrayed as the second respondent before the Tribunal, has come forward with this appeal. The first respondent/claimant has preferred a cross-objection seeking enhancement of compensation.

2. The minimum facts that are required to appreciate the rival position in this case are: On 07-01-2002 at about 7.30 hours, one Asaithambi, stated to be aged 39 years, and an agriculturist by avocation, was carrying certain agricultural produce to the market in his bi-cycle and he was alleged to have been knocked down from behind, ran over and mowed down by a tractor bearing Registration No.TN-48-A-7651 belonging to the first respondent and insured with the appellant.

3. Seeking compensation, his widow and two children and mother moved the Tribunal with a claim of Rs.4,00,000/-, as against which the Tribunal has passed an award for Rs.1,89,500/- and mulcted the liability equally on the owner of the tractor and the appellant. Before the Tribunal, the insurance company contested strongly about the alleged involvement of the tractor in the accident.

4. It may be mentioned here that the owner of the vehicle also independently contested the claim. However, inasmuch as the insurance company disputed the very involvement of the tractor in the accident alleged and called foul of the claim as a fraudulent claim, it made an independent contest.

5. On this issue, the Tribunal has essentially relied on the driver of the tractor pleading guilty before the Criminal Court as a conclusive piece of evidence to prove both involvement of the tractor in question in the accident and also the negligence of its driver at the time of accident.

6. Challenging the said finding, the learned counsel for the appellant submitted that it is a case where F.I.R. was lodged by the widow of the deceased in Cr.No.6 of 2002 and she had stated that her husband was mowed over by an unknown vehicle. The effect of the accident was such that the face of the victim was badly crushed and the victim could not be even identified. According to the claimant, the accident was said to have been witnessed by one Panneerselvam, who was the younger brother of the victim and another Jayaraman [PW-2]. On the happening of the accident, Panneerselvam was stated to have rushed home to inform the wife of the deceased, while Jayaraman, the other witness on the spot, managed to spot the registration number of the tractor. RW-1 is the Inspector of Police, who investigated the criminal case arising out of the road accident. He has disclosed three facts:-

- The body was in a state of decomposition;
- The post-mortem was conducted on the spot of the accident;
- He interrogated PW-2 on the same day.

7. In this backdrop and the evidence that PW-1, PW-2 and RW-1 have deposed before the Tribunal, a conclusion as to the point raised by the appellant, vis-a-vis the involvement of the tractor in the accident, need to be judged.

On involved of the alleged offending vehicle in the accident:

8.1 The learned counsel argued that in Ext.P-2, post-mortem report, the doctor who conducted autopsy has noted that the right arm of the victim was seen severed. In all cases of road accident whenever a vehicle runs over a person, there is only a possibility for a crush injury and there is less possibility for severing of hand. Here arises the first element of suspicion about the very accident.

8.2 According to PW-2, he was informed by RW-1 [the Inspector of Police] that the tractor was in a garage, whereas according to RW-1, he was informed by PW-2 that the tractor in question was being washed in a lake. This is a material contradiction between the version of the Investigation Officer and PW-2 as to the very identity of the tractor that they are speaking about and it is doubtful, who found the vehicle first - whether it is the Investigation Officer or it is PW-2.

9. Panneerselvam, the other eye-witness was not examined before the Tribunal in a case where the insurance company has disputed the very involvement of the tractor in the accident alleged. The claimant is duty bound to examine Paneerselvam because PW-1 was not an eye-witness.

10. Per contra, the learned counsel for the appellant contended that a meticulous analysis of evidence is not called for in deciding a disputed involvement of a vehicle in the accident, and if so considered, the claimants indeed have discharged their burden.

11.1 There is merit in the submissions of the learned counsel for the claimants. The standard of proof required to decide the issue as to whether the alleged offending vehicle was actually involved in the accident must be decided by the rule of preponderance of probability and not based on the criminal law rule of proof beyond all reasonable doubt. Let the evidence available be now scanned to the extent necessary:

- According to the appellant, the nature of injury which a victim would suffer in a road accident would only be a crush injury and there is no possibility for severing of one of the hands. Is this sufficient to suspect the cause of death as not one occurred in a road-accident? This is after all the contention of the appellant, and if it is keen to prove the same, it should have examined the doctor who conducted the postmortem for he is the competent witness to speak about it. Mere inference that the appellant wishes to draw howsoever probable it might be from the document of another person, which in the instant case is the postmortem certificate, cannot bind the claimants.
- As to the evidence of R.W.1, the investigating officer who investigated the crime is concerned, he has given his opinion that the body is decomposed, but this opinion was not expressed in the postmortem report.
- Then there are inconsistencies about who has informed about the vehicle to the IO : Was P.W.2 informed about it to the I.O or vice versa? This has little relevance to the point in issue and cannot tilt the scale in favour of the appellant.

11.2 This leaves for consideration the evidence of P.W.2. He is Jayaraman and he cannot be termed a non-entity in the context of the accident involved in the case. In fact R.W.1, the I.O admits that he had interrogated him. P.W.2's evidence is categorical on material aspects regarding the accident and why should he be discredited and disbelieved merely because the claimants did not choose to examine the other eye witness Pannerselvam? It is not the number of witness that matters, but the quality of evidence available on record that counts. If so viewed, the claimants should be held to have passed the litmus test in proving the accident which the appellant suspected.

On cross objection:

12. The insurance company has preferred the appeal challenging only its liability, and therefore a cross objection seeking enhancement of compensation is a point that falls outside the purview of the appeal itself and hence it is not maintainable.

13. However on going through the award I find that the claimants are inadequately compensated. I therefore, find a need to enhance the compensation under Order XLI Rule 33 CPC. The deceased was stated to be aged 45 years and was an agriculturist by occupation. He may be presumed to have earned Rs.3,000/- at least per month. With four persons to support, $\frac{1}{4}$ deduction must be given towards his personal expenses. Applying a multiplier of 14, the total compensation payable is Rs.3,78,000/-. For loss of consortium Rs.25,000; and Rs. 20,000/- each for loss of love and affection for the two minor children and Rs.10,000/- for the mother of the victim. Towards funeral expenses, the amount determined by the Tribunal is retained. The total compensation amount hereby now determined is as below:

Heads	Amount enhanced (Rs.)
Loss of dependency	3,78,000.00
Loss of consortium	25,000.00
Loss of love and affection for 2 minor children @ Rs.20,000/- each	40,000.00
Loss of love and affection for the mother of the victim	10,000.00
Funeral Expenses	2,000.00
Total :	4,55,000.00

14. In conclusion the appeal is dismissed, and the cross objection is allowed. The award of compensation is enhanced from Rs.1,89,500/- to Rs.4,55,000/- and the appellant is directed to deposit the enhanced award as determined now, less if any already deposited with interest at 9% per annum, within four weeks from the date of receipt of copy of this order, whereupon the claimants are entitled to withdraw the same forthwith. The claimants are entitled to pay the necessary court fee for the enhanced amount. The apportionment of the award to the claimants shall be in the ratio as it was done by the Tribunal. The claimants are not entitled to the interest of award for the period of delay in filing the cross objection. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To:

1. The District Judge
Motor Accident Claims Tribunal
Perambalur.

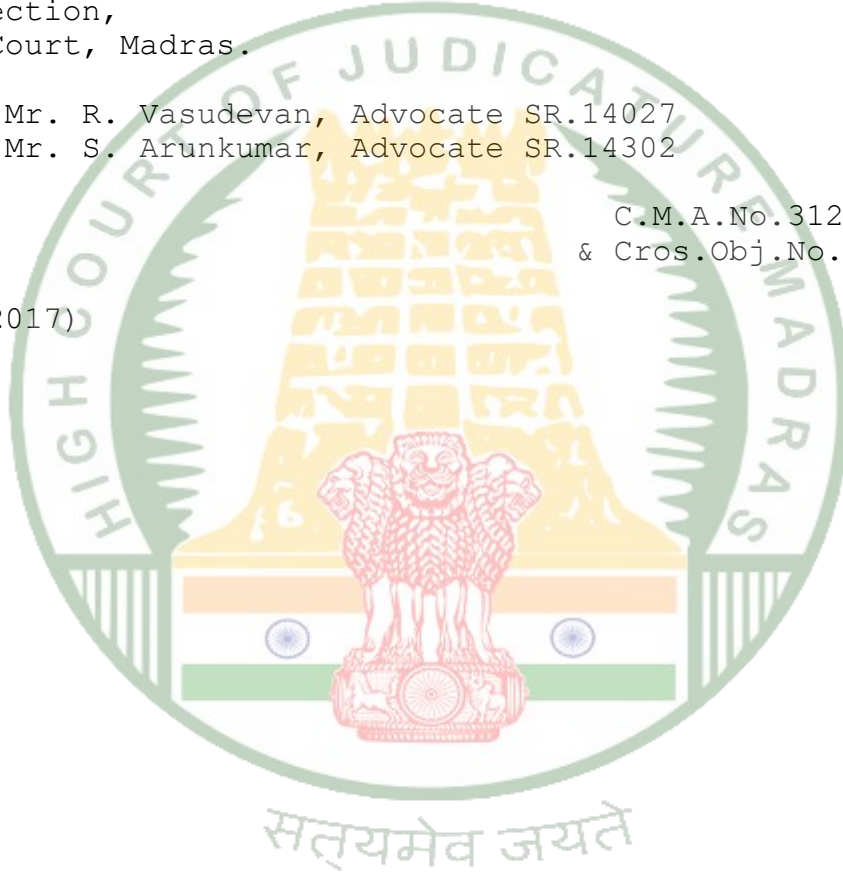
2. The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to Mr. R. Vasudevan, Advocate SR.14027

+ 1 cc to Mr. S. Arunkumar, Advocate SR.14302

C.M.A.No.3125 of 2007
& Cros.Obj.No.2 of 2010

KK(CO)
EU(04/10/2017)



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