IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.12.2016

Judgment Pronounced on : 24.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.871 of 2009
and MP.No.1 of 2013

Chinnakannu ...Appellant/Respondent

Vs

1.Shanthi
2.Thirunavukkarasu
3.Malar
4.Panneerselvam ...Respondents/Petitioners

[R4 impleaded as party respondent vide order of dated 04.9.2012 in MP.No.3 of 2009 in CMA.No.871 of 2009]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment in MCOP.No.688 of 2007 passed by the Principal District Judge, Vellore, Motor Accident Claims Tribunal, Vellore, Vellore District, dated 05.09.2008.

For Appellants : Mr.C.Umashankar
For Respondents : Mr.C.Prabhakaran & Mr.Sivakumar [for R1 to R3]
Ms.V.J.Latha [for R4]

JUDGMENT

In a road accident that took place on 04.3.2007 at 9.30 p.m., on Ariyur to Vellore main road, a pedestrian named Thanjan aged about 54 years was fatally knocked down by a motor cycle while he was crossing the road. The owner of the motor cycle who is the sole respondent before the Tribunal has now come forward with this appeal.

2. The legal representatives of the deceased Thanjan namely his widow and children have moved the MACT with a claim of Rs.10,00,000/- as against which the Tribunal has passed an award for Rs.5,05,200/-. It was contended by the claimants that Thanjan was a noon-meal organiser and was also engaged in real estate business and claimed to have made a monthly income of Rs.25,000/- However, the Tribunal fixed his monthly income at

Rs.5,400/- after making provision for his personal expenses at 1/3rd, applied a multiplier of 11 based on Sarala Varma dictum it arrived at loss of dependency at Rs.4,75,200/-. It distributed the remainder part of the award on various heads of general damages.

3.1 Before the Tribunal, the appellant had taken up a contention that the accident was a hit and run case where some passers-by had noted down the registration number of the motor cycle and passed on the said information to the police based on which a criminal case was registered in connection with the accident. The investigating agency in the course of its investigation zeroed in on one Kartheeban as the rider of the bike, whose negligence appeared to have resulted in the accident. The second limb of appellant plea before the Tribunal was that even on 17-11-2002, the appellant had sold the motor cycle to one Panneerselvam, who in turn appeared to have sold the vehicle to one Perumal on 09.03.2007 and the said Kartheeban was none other than this Perumal's son.

3.2 On the aspect of liability, the appellant would contend that inasmuch as he had already sold the vehicle to Panneerselvam and as the property in the good has already been vested in Panneerselvam he was under no obligation to pay compensation.

4. Before the Tribunal, the appellant had produced two documents namely Ext.R-1 and Ext.R-2 which respectively are the sale agreement which he purported to have entered into with his alleged transferee Panneerselvam, and a delivery-note dated 17-11-2002. The said Paneerselvam is now impleaded as the fourth respondent before this Court. The Tribunal while entering a finding as to the liability of the appellant to pay whatever sum it had quantified as just and fair compensation, has held that inasmuch as the appellant continued to be the registered owner of the motor cycle (since no transfer has taken place in the name of his alleged transferee) he was liable to pay the compensation. The Tribunal also observed that the appellant had not taken steps, as contemplated under Sec. 50 of the Motor Vehicles Act to intimate such transfer to the concerned authorities within 14 days of the said transfer. As to Ext.R-1 and Ex.R-2, the Tribunal goes on to disbelieve the former on the ground that the appellant had not signed the documents and that the appellant had not taken steps to implead his transferee Panneerselvam before it.

5. Before this Court, as earlier indicated and as directed by this Court, the appellant has impleaded Panneerselvam as the fourth respondent and he is now represented by his counsel.

6. The learned counsel for the appellant attacked the award on two scores:

- While fixing the liability on the appellant, the Tribunal ought to have refrained from passing any opinion as to the genuineness or otherwise of Ext.R-1 since the person competent to dispute it was not before the Court. At any rate, there is no law that requires that there should be a written sale agreement for transferring a movable good and if there was a possibility of determining the issue de hors Ex.R1, the issue as to who ought to meet the liability arising out of the accident in question should have been left open. This apart, Ext.R-2, the delivery note which is very critical to establish transfer of property in the good, has not appeared to have even passed the scrutiny of the Tribunal in that the Tribunal was silent on the evidentiary impact of this document.

- As to quantum awarded by the Tribunal, while the Tribunal has notionally fixed the income of the deceased at Rs.5,400/- p.m., the appellant has obtained his salary details as noon-meal organizer under Right to Information Act, which document is now produced as an additional document in CMP.No.1/2013 and it shows that the deceased at that relevant time was earning only Rs.2,535/- per month and hence Rs.30,420/- per annum and after deducting 1/3rd towards his personal expenses, the net multiplicand necessary for determining loss of dependency would be Rs.20,280/- and if 11 is taken as the relevant multiplier, the total loss of dependency would be Rs.2,23,080/- which is about half the value of loss of dependency that the Tribunal has unjustly and unfairly determined.

7. Countering very strongly the aforesaid arguments, the learned counsel appearing for the fourth respondent (Panneerselvam, the alleged transferee of motor cycle) argued that it was not appropriate for the appellant to contend that the Tribunal should have desisted from passing an opinion on the genuineness or on the evidenciary value of the documents that the had relied on (namely Ext.R-1 & R-2), and it is he who had walked on his own to obtain findings against him though in the absence of fourth respondent, it is not now given to him to turn around and put forth a contention against it. When it remains as an admitted fact that the appellant is the registered owner of the vehicle at the time of accident within the meaning of the Sec.50 of the MV Act, he is liable to meet third party claims arising out of such accident. The learned counsel relied on the authorities of the Hon'ble Supreme Court in Pushpa @ Leela & Others Vs. Shakuntala & Others in [2011(2) CTC 693] ;

Dr.T.V.Jose Vs. Chacko P.M. Alias Thankachan & Others in [(2001) 8 SCC 748] and in S.Gopalakrishnan Vs. M/s.Vijaya Pictures & Others [2011-4-L.W.256]

8. On the head of quantum, the learned counsel for the respondents 1 to 3, the claimants before the Tribunal has contended that it is impermissible for the appellant to introduce new and untested documents before the appellate court with the intention to reduce the monthly salary of the deceased and nothing prevented him from resorting to the same exercise when the matter was pending before the Tribunal. He also added that on the various heads of general damages, the compensation awarded by the Tribunal is inequitably low and they need a re-look by exercising power under Order 41 Rule 33 CPC.

On appellant's liability :

9. On the primary question of appellant's liability, it must be held that he would be liable to third party victims of accident as long as his name figures as a registered owner of the vehicle involved in it. The law is too firmly stated in the authorities already referred to and it does not require any reiteration. It must however, be stated in the context that the reasoning of the Tribunal in disbelieving Ext.R-1 is not entirely correct. First, an opinion on the genuineness of the said document is made in the absence of the party against whom it is sought to be used. There is a theoretical possibility for the 4th respondent Paneerselvam to admit Ext.R-1, and for it to happen his presence is necessary. Second, de hors Ext.R-1, there is Ext.R-2 delivery note, and on this the impugned award was silent. To fasten liability on the appellant based on Sec.50 of MV Act, the Tribunal need not have travelled to explore the genuineness of Ext.R-1 at all, and even to the extent it attempted, it does not conclusively decide the issue for it totally ignored the proof and evidenciary value of Ext.R-2.

10. It may be that the appellant might have sold the vehicle and the property in the good might have vested in the purchaser of the good when appellant is required to meet the liability arising out of such purchaser's negligence. It is however, made clear that the appellant would be entitled to recover that which he was required to part with from the one to whom he claims to have transferred the motorcycle and whose alleged negligence has occasioned in his meeting the liability in a separate proceeding.

On quantum of compensation :

11. As to quantum, the Tribunal while notionally determining the income of Thanjan has been careful enough to fix it at Rs.180/- per day. This is reasonable for anyone who is required to support a family of three in 2007. So far as

document that the appellant has now produced showing Thanjan's income as noon-meal organizer was only Rs.2,535/- is concerned, it needs to be stated:

- That no valid reason has been given by the appellant as to why he could not produce this document before the Tribunal when he had all the opportunity to produce it.
- It is not the case of the claimants that Thanjan's only avocation was noon meal organizer, but they also claimed that he was engaged in real-estate activities. In Indian conditions none of these could be proved by tangible evidence. At any rate, by 2007 standards when Thanjan died, it would be difficult for one to believe that a person could manage his family with a bare Rs.2,535/- a month. Surely, he would have engaged in other activities and if so viewed, the per day income of Rs.180/- that the Tribunal has fixed appears reasonable.

12. To conclude, the appeal fails. The appellant is directed to deposit such amount as is required to be deposited or remained to be deposited based on the award of the Tribunal whereupon the claimants are free to withdraw the same. The appellant's right to obtain the said amount from anyone to whom he claims to have sold the vehicle or from anyone who claims under such transferee is left open for him to agitate in a separate proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Motor Accidents Claims Tribunal,
Principal District Court,
Vellore.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Udhayakumar, Advocate, S.R.No.12462
+1cc to Mr.Prabakaran, Advocate, S.R.No.12073

CMA.No.871 of 2009

CA(CO)
RS(04/04/2017)