

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.3248 of 2003

National Insurance Co. Ltd.,
By Branch Office I,
Post Box No.15,
Thanthaiperiyar Big Bazaar,
Salem - 1.

.... Appellant/Respondent

Vs.

1.Kalaivani
2.Minor Priyanka
3.Minor Surya
4.Govindaswamy

.... Respondents

(Minors 2 & 3 rep. by guardian and
mother Kalaivani)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, against the judgment and decree dated
17.07.2002 in MCOP.NO.1450 of 1998 on the file of the Motor
Accident Claims Tribunal, (Additional District Sessions Judge,
Fast Track Court), Salem.

For Appellant : Mr.R.Sunil Kumar

For Respondents : Mr.R. Jaikumar
for M/s.T.Fenn Walter Associates

JUDGMENT

The Insurance Company of the alleged offending vehicle, a lorry bearing Registration No.MD-E-5173, has moved this Court challenging the award passed in MCOP.No.1450 of 1998 on the file of the Motor Accident Claims Tribunal, (Additional District Sessions Judge, Fast Track Court No.I), Salem. It primarily challenges the involvement of the said lorry in the accident.

2. The short sketch of the facts relevant for the purpose is that on 13.02.1998, the victim of the road accident was travelling in a moped when it was hit by a lorry. It appears to be a case of hit and run by the lorry and the FIR in this case was registered at the instance of the wife of the victim, who at any rate was not an eye-witness. Subsequently, it had come to light that the lorry involved in the accident was identified as

the one bearing No.MD-E-5173 and insured with the appellant/National Insurance Co. Ltd., Thereafter, the claimants have approached the Tribunal with a claim of Rs.5,00,000/-, whereas the Tribunal has passed an award for Rs.2,13,500/- payable with interest @ 9% per annum.

3. The learned counsel for the appellant/Insurance Company has contended that it is a case of hit and run, where no particulars of vehicle was provided in the FIR and a criminal case registered was closed as un-detectable. RW.1 was the Investigating Officer of Crime No.214 of 1998 of Ammapettai Police Station, and he had filed a charge sheet on 08.07.1996 (marked as Ext.RW-1) in which he has stated that the vehicle involved in the accident could not be traced. He added that the claim petition was filed on 30.11.1998 and P.W.2 was specifically set up to speak about the involvement of the lorry, now alleged by the claimants as the one involved in the accident. Indeed, the driver of the lorry was a relative of the claimants and this fact is also admitted by the first claimant herself in her cross-examination when she was examined as P.W.1.

4. Per contra, the learned counsel for the respondents argued that the Tribunal has given a categorical reasoning as to why R.W.1 could not be relied on and why P.W.2 should be preferred to R.W.1. He recalled the passage from the impugned order where the Tribunal has reasoned that whatever investigating procedure that R.W.1 said to have done were all confined to what he did on the spot on the date of occurrence and that he has admitted that his investigation did not go beyond the SOC to arrive at any just conclusion about his claim that the vehicle in the accident was un-detectable. Indeed, R.W.1 has not even checked in the nearer toll-booth about the various vehicles that crossed the toll at that relevant time. The learned counsel argued that the factum of negligence is one to be determined by preponderance of probability, and merely because the driver of the lorry also happened to be a relative of the claimants, that not imply that the accident should be suspected.

5. It is P.W.2 Vs. R.W.1. The believability of any one of the witnesses would necessarily tilt the verdict, more particularly, the factum of negligence which is the foundation for awarding compensation. Admittedly, P.W.1 is not an eye-witness and P.W.2 claims to be an eye-witness who has seen the vehicle. If I keep aside the testimony of P.W.1 for a while and concentrate on P.W.2, it gives a narrative completeness regarding to the involvement of the lorry bearing No.MT-E-5173 in the fatal road accident involved in this case. The point is can P.W.2 be believed? It is here the Insurance Company introduce R.W.1, the Investigating Officer, who investigated Crime No.214 of 1998 registered under Section 279 & 304(A) of IPC. In evaluating the evidenciary value of R.W.1, in my mind, the Tribunal correctly held that R.W.1's efforts have not travelled beyond the SOC and has not travelled beyond the date of accident.

He has not even checked with the nearest toll-booth and verified the various vehicles that had crossed the tollgate immediately after the accident to give completeness to his efforts and conclusiveness to his conclusion. It is a half-hearted admission of the Investigating Officer and it cannot be a real foundation for believing what he says. Has his evidence, the efficacy to settle the testimony of R.W.1? In my mind it does not. Here a completed version of P.W.2 cannot be discredited by an incomplete effort of R.W.1. The only other point is should P.W.2 be disbelieved, because the driver of the vehicle happened to be a relative of the claimant? In a given case, it perhaps lend suspicion to the involvement of the vehicle but even then that is only a remote probability. One needs more material than proximity of relation between the driver of the vehicle and the first claimant to discredit the version of an eyewitness.

6. In conclusion, I do not find merit in the appeal and the same is dismissed but without costs. The appellant is directed to deposit the entire award amount less any amount already deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimants would be entitled to withdraw the same forthwith.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To:

1. The Motor Accidents Claims Tribunal,
Additional District Sessions Judge,
Fast Track Court, Salem.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.R.Sunil Kumar, Advocate, S.R.No.1918
+1cc to M/s.T.Fenn Walter Associates, Advocate, S.R.No.1884

C.M.A.No.3248 of 2003

CP(CO)
CA(15/02/2017)