

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3253 of 2004

The Branch Manager,
United India Insurance Co. Ltd.,
Tindivanam. ... Appellant/2nd Respondent

Vs.

1.Santha
2.M.Dinakaran
3.Minor M.Munusamy
(Minor rep. by next friend and mother
the first respondent herein)
4.V.Perumal ... Respondents/Petitioners and
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, against the award and decree dated
09.10.2003 made in M.C.O.P.No.623 of 2002 on the file of the
Motor Accidents Claims Tribunal, Fast Track Court No.I,
Tindivanam.

For Appellant :Mr.S.Arun Kumar

For Respondents :No appearance [R1 to R3]
R4 - Died

JUDGMENT

The Insurance Company/the second respondent before the Tribunal
has come forward with this appeal challenging the alleged
involvement of a mini lorry insured with it in the accident that
led to the claim before MACT.

2. On 12.11.1998 at about 19.00 hours one Mannankatti, aged 49
years, and working as an Accountant in a private concern in
Tindivanam was alleged to have been fatally knocked down by
a mini lorry bearing Registration No.TAF-2547 belonging to the
fourth respondent and insured with the appellant. P.W.2 was
supposedly travelling in his two wheeler some 50 feet from the
accident scene claimed to have seen the accident. The victim
was admitted in the hospital by P.W.2. The next day at about

11.00 a.m, P.W.2 lodged a FIR in the Olangoor Police Station. Subsequently, a claim petition was filed by the widow and the two children of the victim and they made a claim for Rs.4,00,000/-, as against which Rs.2,42,000/- was awarded and reduced it by 50%.

3. Before the Tribunal, the appellant/insurance company had pleaded Vide its additional counter that the lorry in question was not involved in the accident but in considering this aspect, the Tribunal has not entered a pointed decision guided by cogent reasoning, but has perambulated along the peripheral facts and concluded that since the claimants had lost their only breadwinner and since the extent of his role in the occurrence of the accident was not evident, on sympathetic consideration fastened 50% liability on the appellant and the owner of the vehicle. It may be mentioned here that the Tribunal, in the course of its discussion refers to the fact that the driver of the mini lorry had pleaded guilty to rash and negligent driving before the criminal court, still, it did not make certain if it entirely relied on this fact to arrive at the conclusion that it had ultimately arrived. Again having determined that the total compensation payable at Rs. 2,42,000/-, the Tribunal proceeded to reduce it by 50% to Rs.1,21,000/- and fastened the liability on the insurance company. But why this reduction by 50% when there is no finding that the deceased has contributed in equal terms for the occurrence of the accident? The Tribunal has not explained it.

4. The learned counsel for the appellant submitted that the evidence on record very strongly indicate the non-involvement of the alleged mini lorry in the accident and this could be gathered on a plain reading of the testimony of P.W.2. P.W.2 is a village headman and according to him, he was travelling some 50 feet away from the accident site. He would also admit that the mini lorry involved in the accident used to come to his village every day for collecting vegetables and that he knew both its driver and owner. He would go further and depose that upon sighting the accident, he stopped his vehicle and rushed to the place of accident and on seeing him the driver of the lorry ran from the SOC, probably on the impression that the former was hurrying to assault him. This implies that the driver of the vehicle should have abandoned the vehicle there and should have run away from the SOC. However, in the FIR that was registered at his instance he had merely stated that an unknown lorry was responsible for the accident. Thereafter, it is the same P.W.2 who had brought the driver of the vehicle to the police station and actively involved in ensuring that the said vehicle was inspected by Motor Vehicle Inspector. If only the vehicle was known to this eye-witness and if the vehicle under consideration was plying to the village almost twice a day, it is illogical

for him not to provide the details of the vehicle at the first instance when he lodged the FIR, and inasmuch as these details are not provided, it creates the right circumstance to believe that the alleged mini lorry was subsequently planted solely for the purpose of claiming compensation. He also highlighted that the Tribunal appears to have accepted the theory of the Insurance Company about the non-involvement of the mini lorry in the accident, but relied on a weak piece of evidence that the driver of the vehicle admitted his guilt in the criminal case and had passed an award against the owner of the Insurance Company.

5. The respondents have been served and represented by their counsel, but none appeared when the case was heard today.

6. No compensation shall be paid on charitable grounds or on sympathetic considerations. It may be unfortunate that someone was fatally knocked down in a road accident, but that doesn't mean the Tribunal should be anxious to tap someone under no liability to compensate in law and pat another who might have suffered some financial repercussions due to an unfortunate accident. There must be an unassailable nexus between the right to claim compensation and the person who faces an obligation to pay compensation. If in law an unbridgeable distance separates the two, there should not be a forced bridging, no matter how honourable the objectives and motives behind them are. Here the approach of the Tribunal stands on a slippery turf. The Tribunal's finding displays its oscillation if not vacillation between the defence of the insurance company and its own humanistic consideration that the claimants might have to go without any compensation should the defence of the insurance company be upheld.

7. Turning to the merit of the argument advanced, the basic rule of appreciation of evidence is that evidence shall be tested on a plane of ordinary course of human conduct and should be guided by the conduct of a reasonable man of law in similar circumstances. P.W.2 is the only witness who speaks to the involvement of the vehicle in question in the accident. If he had known the vehicle and known it only too well, and if the driver had run away from SOC, is it not logical for any reasonable man to name him at the first available opportunity when he lodged the FIR. This was not done. And no explanation is there on record either to negate the logical inference that would otherwise flow from it. This implies that the involvement of the mini lorry in the accident is suspect and there is ample merit for suspecting so.

8. The only other piece of evidence is that the driver of the vehicle has pleaded guilty and has paid fine. This however, cannot be conclusive since there can always be motives for someone to plead guilty. After all, given the rate and incidence of crime of rash and negligent driving in this country with drivers of certain class of vehicles making it almost their trait to drive so, the sentencing law on it is too soft that it literally mocks at the deterrent theory of criminal jurisprudence. Therefore, when the very accident as alleged is doubted and is put under a scanner, the driver of the offending vehicle pleading guilty is a weak piece of evidence that a Tribunal should rely on.

9. For the reasons stated, I find adequate merit in this appeal. I allow the same but without costs. The learned counsel for the appellant submitted that the appellant/Insurance Company has deposited the entire amount of compensation and the claimants were allowed to withdraw Rs.50,000/-. I allow the appellant to withdraw whatever balance amount that lies in the deposit of the Tribunal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal,
Fast Track Court No.I,
Tindivanam.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.2600

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srg 21/03/2017