

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6/6/2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.1665 of 2017

The Managing Director
Tamil Nadu State Transport Corporation
(VPM Dvn I) Ltd
Vazhudhareddy Post
Villupuram.

...

Appellant

Vs

1. G. Aruna

2. Minor Nadhakumar

3. Minor Nandhini

(Minors 2 and 3 are represented by
mother, guardian/natural friend
G. Aruna

4. N. Thangamani

...

Respondents

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act,
1988 against the Judgment and decree, dated 19/9/2016, made in
M.C.O.P.No.2104 of 2012, on the file of the Motor Accidents Claims
Tribunal, (1st Additional District Judge), Cuddalore.

For Appellant ... Mr.P.Paramasivados

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J U D G M E N T

(Judgement of the Court was made by **S.MANIKUMAR, J.**)

Being aggrieved by the award made in M.C.O.P.No.2104 of 2012, dated 19/9/2016, on the file of the Motor Accidents Claims Tribunal, (1st Additional District Judge), Cuddalore, the present appeal has been filed.

2. On 6/8/2012, about 21.25 hours, when Gopalakrishnan, was riding a TVS Sport Motorcycle, bearing Registration No.TN32L-7987, from west to east, a bus, bearing Registration No.TN32N-2449, belonging to Tamil Nadu State Transport Corporation, Villupuram Division, came from the opposite direction, driven in a great speed, in a rash and negligent manner, dashed against the motorcycle. As a result, he sustained injuries and given first aid in Government Hospital, Kallakurichi and referred to further treatment in Government Hospital, Salem. Thereafter, given treatment in Sri Ramachandra Hospital, Porur, Chennai. In spite of the treatment, he died on 8/8/2012. A case in Crime No.425 of 2012, has been registered against the driver of the bus, for the offences, under Sections 279 and 304(A) IPC., on the file of Thiyagadurgam Police Station.

3. According to the legal representatives, the deceased was a owner-cum-driver of goods vehicle, bearing Registration No.TN32W-3088 and earned Rs.30,000/- per month. For the death of the deceased, legal representatives claimed compensation of Rs.40,00,000/-, under various heads.

4. The appellant-Transport Corporation denied the manner of accident and contended that a false case has been registered against the driver of the bus. According to the Corporation, the accident occurred only due to the rash and negligent riding of the deceased. Without prejudice to the above, the Corporation disputed the age, avocation, income of the deceased and the compensation claimed under various heads.

5. Before the Tribunal, respondents/claimants examined P.W.1 (wife of the deceased) and P.W.2 (eye witness) and marked Exs.P.1 to P.13. On the side of the appellant-Insurance Company, driver of the bus has been examined as R.W.1 and no document has been marked.

6. On evaluation of pleadings and evidence, the Tribunal held that the driver of the bus, bearing Registration No.TN32N-2449, was negligent in causing the accident and quantified the compensation as Rs.14,35,950/- with interest, at the rate of 7.5% per annum and costs.

7. Being aggrieved by the finding, fixing negligence on the driver of the bus, the appellant-Transport Corporation has preferred the present appeal, on the following grounds,

"(i) The Tribunal failed to note that the appellant's bus was not involved in the accident.

(ii) The Tribunal failed to note that the appellant corporation examined its driver as RW.1, who has deposed that there was no such accident. The MVI report corroborated his evidence and it revealed that the vehicle was not involved in the accident. But the tribunal failed to note the same and fixed liability on the appellant.

(iii) The Tribunal failed to note that the driver of the bus was released on bail. The accident might have occurred due to the involvement of any other vehicle. But the Police has registered false case against the driver of the appellant Corporation. Based on the above, the Tribunal ought not to have fixed liability on the appellant."

8. Heard the learned counsel for the parties and perused the materials available on record.

9. As regards manner of accident, P.W.1, respondent/claimant has adduced evidence, reiterating the averments made in the claim petition. P.W.1 has not witnessed the accident, but her version is supported by an eye-

witness to the accident, P.W.2, Dhanraj. Though the appellant-Transport Corporation has taken a stand, in the counter affidavit that at the time of accident, the deceased was not having a valid driving licence, perusal of the impugned judgment shows that, no evidence has been adduced by the appellant-Transport Corporation to prove the same. Nevertheless, the defence of the appellant-Transport Corporation, in the counter affidavit, is unacceptable, when negligence is attributed to the driver of the bus.

10. Though Mr.P.Paramasiva Doss, learned counsel for the appellant-Transport Corporation submitted that the Claims Tribunal has erred in fixing negligence, on the driver of the transport corporation bus, this Court is not inclined to subscribe to the same, for the reason that the evidence of PW.1, first respondent/claimant is duly supported by PW.2, eye-witness. Further, in the case on hand, the police, after investigation, has filed a charge sheet against the driver of the bus. If there was any falsity, the appellant-Transport Corporation could have very well challenged the registration of a false case. In the light of the above, this Court is not inclined to accept the contention of the appellant.

11. In **N.K.V.Brother's Private Limited v. Kurmai** reported in **AIR 1980 SC 1354**, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

12. In a decision in **Union of India v. Saraswathi Debnath** reported in **1995 ACJ 980**, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the *Motor Vehicles Act*, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case

the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

13. In **Bimla Devi & Ors. Vs. Himachal RTC** reported in **2009 (13) SCC 530**, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

14. After considering the cumulative evidence adduced, the Claims Tribunal has arrived at a conclusion that the bus, bearing Registration No.TN32N-2449, was involved in the accident, which resulted in the death of the breadwinner of the family. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the above decisions and discussion, we do not find any perversity in the finding.

15. Perusal of the impugned judgment indicates that there was some delay in lodging FIR. Mere delay in registering a crime is not fatal. Reference can be made to the decision in **Ravi V. Badrinarayan**, reported in **2011 ACJ 911**, wherein at paragraph Nos. 20 and 21, the Court held as follows:

"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of

kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for

such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons".

16. Delay in lodging a complaint cannot always give rise to a conclusion that a vehicle has been falsely implicated, for the purpose of making a claim for compensation. Delay may occur, if the injured is not in a state of physical condition to note down the number of the vehicle. It depends upon the speed of the offending vehicle, impact on the injured, situs of the injury, say for instance, head or other vital parts of the body, physical and mental shock, suffered by him, immediately after the accident and so on and so forth. On the facts and circumstances of this case, merely because, there was a delay in lodging a complaint, it cannot be said that a false claim has been made.

17. Quantum of compensation awarded to the respondents/claimants

is also just and reasonable.

18. In the result, the **Civil Miscellaneous Appeal is dismissed**. The appellant-Transport Corporation is directed to deposit the entire award amount, with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.No.2104 of 2012, on the file of the Motor Accidents Claims Tribunal, (1st Additional District Judge), Cuddalore, within a period of four weeks, from the date of receipt of a copy of this order. The share of the minors/respondents 2 and 3, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. On such deposit being made, except the minors, the respondents 1 and 4/claimants are permitted to withdraw the award amount as apportioned by the tribunal, by making necessary applications.

No costs. Consequently, connected Miscellaneous Petitions are also closed.

(S.M.K., J.) (M.G.R., J.)
6th June 2017

mvs.

Index: yes/No

website: yes/No

S. MANIKUMAR, J

AND

M.GOVINDARAJ, J

mvs.

To

1. The Motor Accidents Claims Tribunal,
(1st Additional District Judge),
Cuddalore.

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