

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.02.2017

CORAM:

**THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ**

**C.M.A. No.682 of 2017
and
C.M.P.No.3819 of 2017**

M/s.Reliance General Insurance Company Limited
2nd Floor, Sony World, Haritha Towers
965, Avinashi Road, Lakshmi Mills
Coimbatore - 641 005

... Appellant

Vs.

1.Mrs.Kalamani

2.Mrs.Soundharya

3.Miss. Keerthana

4.D.Ravikumar

5.Coimbatore Integrated Waste Management Company
Limited
B 007, Raheja Enclave, 238 (286) Race Course
Coimbatore - 641 018

6.United India Insurance Company Ltd.
Dr.Nanjappa Road
Coimbatore

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 10.10.2013 made in MCOP No.761/2012, on the file of Motor Accidents Claims Tribunal (III Additional District Judge), Coimbatore.

For Appellant : Mr.K.Moorthy

JUDGMENT

(Judgment of the court made by **S.MANIKUMAR, J.**)

Challenge in this appeal is to the judgment and decree made in M.C.O.P.No.761 of 2012, dated 10/10/2013, on the file of the the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Coimbatore.

2. According to the respondents 1 to 3/claimants, on 17.11.2011 about 2.45 p.m, husband of the first respondent and father of the respondents 2 and 3, after remitting money in Muthoot Finance at Cross Cut Road, Gandhipuram were proceeding towards a place called Ganapathy, Selvaraj was riding his Bajaj Discover Motorcycle bearing Registration No.TN-37 BR-2542, his son-in-law Balraj was following him from behind in another Motorcycle. Selvaraj was riding his motorcycle from south to North direction. When he reached Corporation Garbage Godown road junction, a tipper lorry bearing Regn. No.TN-38 AV 7022, which was coming from west to east direction on the Corporation Garbage Godown Road, in a rash and negligent manner, dashed against the motorcycle driven by Selvaraj. He was thrown away from the two wheeler and the Tipper lorry, which lost its control, ran over him and caused instantaneous death. The accident was witnessed by

the son-in-law of the deceased. Body of the deceased was sent to CMC hospital for postmortem.

3. A complaint has been filed with the Traffic Investigation Wing (Central) and that a case was filed against the driver of the vehicle, namely Tipper lorry, in Crime No.352 of 2011 under Sections 279 and 304-A of IPC. Case was pending before the Judicial Magistrate No.VIII, Coimbatore.

4. At the time of accident, the deceased was working as a Grinder Motor Fitter, in Asian Appliances, Ganapathy and was earning Rs.15,000/- per month. The deceased was the sole bread winner of his family. Legal representatives of the deceased Selvaraj, filed the claim petition seeking for a compensation of Rs.30,00,000/- from the appellant and the respondents 4 and 5.

5. Before the Tribunal, the appellant contested the claim petition on the ground that the accident occurred only due to sole negligence of the deceased, who was riding his two wheeler, without adhering to the traffic rules and thus invited the accident and the fourth respondent, being the insurer of the said two wheeler alone is liable to pay compensation to the claimants. Contention has been made that at the time of accident, the driver

of the tipper lorry was not having a valid and effective driving licence to drive the lorry and hence there is a violation of policy and therefore, the appellant is not liable to pay any compensation. Without prejudice to the above, the appellant has denied avocation, income, age and earning prospects of the deceased and prayed for dismissal of the claim petition.

6. Regarding the manner of accident, PW1 - son-in-law of the deceased has adduced evidence and based on his complaint, Ex.P1 - FIR has been registered. Wife of the deceased Selvaraj, deposed as PW2 has stated that at the time of accident, her husband was working as a Grinder Motor Fitter in Asian Appliances and was earning Rs.15,000/- as salary per month. Ex.P10 is the Legal Heir certificate, Ex.P11 is the Salary Certificate of the deceased Selvaraj, Ex.P12 is the family ration card and Ex.P13 is the Authorisation letter given to Mr.Binu for adducing evidence as PW3.

7. On the side of the appellant, no oral or documentary evidence was adduced.

8. On evaluation of pleadings and evidence, the Tribunal held that the driver of the tipper lorry drove the vehicle in a rash and negligent manner, hit the motorcyclist Selvaraj. Tribunal held that

the lorry driver was negligent in causing the accident. The Tribunal computed the compensation as Rs.16,64,000/- with interest at the rate of 7.5% per annum and that from the date of claim till realisation, as hereunder:

Loss of income	: Rs. 15,36,000/-
Love and affection	: Rs. 50,000/-
Mental agony and shock	: Rs. 50,000/-
Transportation	: Rs. 2,000/-
Loss of consortium	: Rs. 25,000/-
Damage to clothes	: Rs. 1,000/-

Total	: Rs. 16,64,000/-

9. Though the appellant/Reliance General Insurance Company Limited, has contended that contributory negligence, should be fixed on the motorcyclist, this court is not inclined to accept the same, for the reason that, as the driver of the lorry has not been examined, adverse inference can be drawn against him. On this aspect, we deem it fit to consider, few decisions.

(i) In **New India Assurance Co. Ltd., v. Debajani Sahu** reported in **I (2002) ACC 103 (Ori.)**, the Orissa High Court held that,

"8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of res ipsa loquitur is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii) In **Sitabai v. Ishak Hussain** reported in **I (2001) ACC 761 (DB)**, the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim res ipsa loquitur. Their Lordships of the Supreme Court in case of Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co., reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove

the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to

rash and negligent driving of the vehicle by respondent No. 1."

10. Further, testimony of PW1, eyewitness is clearly corroborated by Ex.P1-FIR. It is well settled law that in Motor Accident Claims cases, preponderance of probability is the test. Applying the same to the facts of this case, no concrete material has been placed before this Court to discard the evidence of the respondents/claimants.

11. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in **N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354]**, 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 emphasizing 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 [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."

In the light of the above discussion and decisions, we are of the considered view that the manner of accident and the negligence on the part of the driver of the tipper lorry, has been substantiated by the claimants and therefore, there is no perversity in the findings regarding negligence, warranting interference.

13. Perusal of the award further discloses that the Tribunal has failed to award compensation under the head future prospects and funeral expenses. Compensation awarded under the head loss of love and affection and consortium is less. As per the decision of

the Hon'ble Apex Court in ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54 = 2013 (2) TN MAC 55 (SC)***, for the loss of love and affection and consortium, the same shall be fixed as Rs.1,00,000/-. As per the decision in ***Rajesh's case***, for funeral expenses a sum of Rs.25,000/- should have been awarded, but the Tribunal has not done so. There is no award under the head conventional damages and that a sum of Rs.5,000/- ought to have been awarded. If re-working is done, compensation would be more.

14. In the light of the above discussion, we are of the view that the quantum of compensation of Rs.16,64,000/-, awarded to the respondents 1 to 3 herein/claimants, cannot be said to be a bonanza or windfall, warranting any reduction. Civil Miscellaneous Appeal is dismissed.

15. In the result, the appeal is dismissed. The judgment and decree of the Motor Accident Claims Tribunal (III Additional District Sessions Judge), Coimbatore dated 10.10.2013 made in M.C.O.P.No.761 of 2012, is confirmed, with the following directions.

(i) The appellant-Insurance Company, is directed to deposit the entire award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of the above said

MCOP, within a period of four weeks from the date of receipt of a copy of this judgment.

(ii) The Tribunal is further directed to affix a copy of this judgment in the Notice Board of the Tribunal, mentioning the names of the parties to above said MCOP, and also the disposal of the appeal, filed by Reliance General Insurance Company Limited.

(iii) The Tribunal is further directed to disburse the compensation amount, only, after due verification and identity of the claimants/respondents 1 to 3 herein. We direct that, there should be strict compliance.

(iv) Deposit should be made within four weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K., J.) (M.G.R., J.)
27.02.2017

Index : Yes/No
Internet : Yes/No
asr

To
The Motor Accident Claims Tribunal
(III Additional District and 0Session Judge), Coimbatore

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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