

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserveden :21.09.2017

Pronounced on 19/04/2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1995 of 2017

1. Dhanalakshmi
2. Manivannan
3. Chitra
4. Vimala

... Appellants / claimants

vs

1. Sivanandham
2. The Oriental Insurance Co. Ltd.,
30/6-E, 1st Floor, Deen Plaza,
State Bank Road, Mailadudurai

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 21.12.2012, made in MCOP No.192 of 2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal.

For Appellants : Mr. C.Kulanthaivel
For Respondent : Mr. D.Bhaskaran, for R-2

J U D G M E N T

When the lack of jurisdiction with reference to the subject matter makes the decree a nullity, while it is not so in a case of lack of territorial jurisdiction and pecuniary jurisdiction, whether the Tribunal is justified in adopting a hyper-technical approach in dismissing the claim petition on the technical ground of want of territorial jurisdiction, especially when the legislation is benevolent and the objective is rendering social justice.

2. Viewed so, the dismissal of the claim petition is more shocking than the accident itself, when the dismissal is based on an unwarranted approach.

3. Challenging the dismissal of the claim petition, this Appeal has been filed by the appellants / claimants.

4. The claim petition has been dismissed on the ground that the Tribunal has no jurisdiction to try the claim petition. In the claim petition, the claimants' address is furnished as Minnathampatti, Kamalapuram, Thottiyam Taluk, Trichy District and the address of the second respondent-Insurance Company is mentioned as No.30/6E First Floor, Dheen Plaza, State Bank Road, Mayiladuthurai. The Tribunal at Namakkal, giving a finding that it is not having jurisdiction to try the case and only the Tribunal at Trichy alone would have jurisdiction, dismissed the claim petition filed by the claimants, which is under challenge in this Appeal.

5. The jurisdiction for the Claims Tribunal has been prescribed under Section 166 of the Motor Vehicles Act reads thus:-

"166. Application for compensation. -

(1)

[(2) Every application under sub - section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides, or carries on business or within the local limits of whose jurisdiction the defendant resides and shall be in such form and contain such particulars as may be prescribed:]

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

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[(4)"]

6. The learned counsel appearing for the appellants / claimants relied upon the decisions of the Hon'ble Supreme Court, reported in 2009 (1) TN MAC 68 (SC) (Mantoo Sarkar v. Oriental Insurance Company) and 2016 (1) TN MAC 1 (SC) (Malati Sardar v. National Insurance Company) and contended that there is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business. In such cases, there is no prejudice to any party and the Claims Tribunal should not have dismissed the claim petition on the ground of jurisdiction.

7. The Supreme Court in the case of Malati Sardar vs. National Insurance Company Limited has restated its earlier position in Mantoo Sarkar vs. Oriental Insurance Company Limited (2009) 2 SCC 244 regarding the territorial jurisdiction of Motor Accident Claims Tribunal. The Apex Court held that there is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party has its business.

7.1. It was a case, where a young teacher from Hoogly, died in an accident in the year 2008. The Tribunal in Kolkata, on his application awarded a compensation of Rs.16,12,200/-. The appeal preferred by the Insurance Company was allowed on the ground that the Tribunal has no jurisdiction since the deceased is not a resident of Kolkata and the accident did not take place in Kolkata.

7.2. When the mother of the deceased approached the Apex Court, the Apex Court held that in absence of prejudice, no objection of lack of territorial jurisdiction be entertained. The Apex Court stated that, the view taken by High court is contradictory to the Apex Court ruling in Mantoo Sarkar's case wherein it held that with regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. In that case, it was further held that distinction was required to be drawn between a jurisdiction with regard to subject-matter on the one hand and that of territorial and pecuniary jurisdictions on the other. A judgment may be nullity in the former category, but not in the later. The Bench further stated that the High Court was not justified in setting aside the award of the Tribunal in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. The Apex Court further held that there is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party, in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice". The Apex Court also cautioned against adopting hyper technical approach in interpreting a benevolent provision for the victims of accidents of negligent driving and said that the provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated, the Bench said.

7.3. This exactly is the defence taken by the Insurance Company in this case. Thus, it is clear that the Claims Tribunal at Namakkal ought not to have dismissed the Claim Petition even though a specific defence has been taken by the Insurance Company with regard to the lack of territorial

jurisdiction, but in the absence of the Insurance Company showing any prejudice, the dismissal is unwarranted.

Brief facts:-

8. Duraisamy, aged 73, a retired teacher, met with a fatal accident on 07.04.2012, near Thethithottiyam - Michael Naickenpatti Road and succumbed to the injuries, while in hospital. The Legal Representatives claimed a sum of Rs.15,00,000/- for the death of the deceased.

8.1. After the Insurance Company filing the counter, the Tribunal framed the necessary points for consideration. Since the Tribunal found that the claimants are the residents of Trichy District, the place of accident was also within the jurisdiction of Trichy District and the Insurance Company was having its business at Mayiladuthurai, the Tribunal at Namakkal is not having jurisdiction. With this finding, the claim petition was not considered on merits and it was dismissed.

9. When this matter was taken-up for consideration before this Court, during Appeal, this Court expressed the view that as the accident itself was on 07.04.2012, instead of remanding the matter back to the Tribunal, this Court can record the evidence and give the final verdict. Both sides agreed for the procedure to be adopted and thereafter, evidence was recorded.

10. On 22.08.2017, Manivannan-(P-2)-second appellant, the son of the deceased, was examined as A.W.1 and he was also cross-examined and for further evidence, the matter was adjourned to 06.09.2017. On 06.09.2017, an affidavit on chief-examination was filed by one, Mr.Vinoth, an eye-witness to the accident, and he was cross-examined. On 10.07.2017, Exs.P-1 to P-8 have been marked, the details of which are furnished in the list of documents.

11. No oral evidence was adduced on the side of the respondents and thereafter, arguments on both sides were heard.

12. The learned counsel appearing for the claimants / appellants submitted that the claimants have proved the accident, death, the status of the claimants as the Legal Representatives of the deceased and the negligence on the part of the driver of the first respondent, through the oral and documentary evidence.

12.1. A.W.2, who is an eye-witness to the accident has spoken about the cause of accident and nothing has been elucidated in the cross-examination shaking the cause of accident or credibility of the witness. No contra evidence has been adduced refuting the evidence of P.Ws.1 and 2.

12.2. Even though in the counter filed, the Insurance Company has taken a defence that the deceased in an anxiety to meet his son-in-law, who was standing in the opposite side of the road, suddenly crossed the road after alighting from the vehicle, no material has been placed to substantiate the same. The evidence of the claimants stand without challenge. Therefore, this Court concludes that the accident took place only on account of the rash and negligent driving on the part of the first respondent.

13. Then the next issue to be considered is the quantum of compensation awarded.

14. The learned counsel appearing for the claimants / appellants submitted that the deceased at the time of accident was a retired teacher, who received a monthly pension of Rs.15,455/- and he is entitled to the enhanced allowances every year; for the age of 73, the appropriate multiplier to be adopted is 5; the entire pension of the deceased was contributed to the family of the deceased and therefore, the deceased would have spent much lesser amount for his personal and living expenses and further since the dependants are four in numbers, the deduction towards his personal expenses would be 1/4th; the other non-conventional damages like loss of consortium to wife and loss of love and affection to the legal heirs and funeral and transport expenses are to be awarded based on the settled legal positions.

15. On the other hand, the learned counsel appearing for the second respondent disputed the manner of accident, by submitting that even in the First Information Report, the incident is stated to have happened while the deceased immediately got down from the bus and while crossing the road to reach the other side of the road from back side of the bus, he was hit by the vehicle, which came from the other part and in the claim petition also, the claimants clearly pleaded that the incident happened, while the deceased was crossing the road; no reasons have been assigned for non-examinations of the persons, who gave the First Information Report and the son-in-law, who took the deceased to the hospital, to prove the manner of the accident and negligence; no material has been filed on behalf of the claimants to prove that the driver of the first respondent's vehicle was responsible for the accident; in the absence of evidence of persons who gave First Information Report, the accident should be held to have occurred due to the negligence of the deceased himself.

16. It is true that in the petition it is stated that the accident took place while the deceased was crossing the road. But, in the evidence, the second claimant / second appellant has

stated that he was not the eyewitness to the occurrence. Therefore, the claim petition should have been filed based on the information furnished by some unauthenticated source. The First Information Report is not a substantive piece of evidence. The statement made in the First Information Report can be made use of only for the purpose of contradiction. When the eyewitness has stated that the vehicle was coming from north to south and while overtaking a vehicle moving in the front of it, it happened to hit the deceased, who was standing on the left hand side of the road after alighting from the bus which was going from south to north. The probability appears to be that the deceased was right in keeping the left and the driver of the first respondent committed mistake in hitting against the deceased on account of his rash and negligent driving. Once the claimants have adduced evidence, it is for the Insurance Company to have examined the maker of the First Information Report to disprove the case of the claimants. In the absence of any evidence being adduced on the side of the respondents, the contention of the respondents cannot be accepted.

17. Contending that there is no evidence to show that the deceased was either negligent or contributed for the negligence, the decision reported in 1982 ACJ 70 (Hamirpur Cooperative Transport Society Ltd., v. Kaushalya Devi and others) is relied upon, where-under it is held as follows:-

"Contention that the deceased was killed of his own negligence in jumping out of the bus. Nothing on record to show that the deceased jumped out of the bus. Held, the deceased was not guilty of contributory negligence."

17.1. This decision is applicable to the facts of this case and in the absence of anything in the evidence to show that the deceased crossed the road, the deceased cannot be held guilty of the contributory negligence.

18. The learned counsel appearing for the second respondent further submitted that though the claimants / appellants stated that the deceased was aged 75, they have not placed any materials to prove the correct age of the deceased and the age of the dependants; the second claimant, the son of the deceased, is a Government servant and having a permanent job and regular source of income, but for getting more compensation he has deposed evidence to the effect that the deceased was the sole breadwinner of the family and depending on the pension of the deceased father and the claimants 3 and 4 are also married daughters and therefore, claimants 2 to 4 are not the dependants of the deceased father; furthermore, the first claimant, being the wife of the deceased, is getting 50% of the pensionary benefits. Thus, the contention is that the claimants /

appellants are not the dependants of the deceased and therefore, they are not the losers and therefore, they are not entitled to any compensation. In support of the contentions, the learned counsel appearing for the Insurance Company / second respondent, relied upon the following two decisions:-

(i) CDJ 2008 SC 1154 (Bhakra Beas Management Board v. Kanta Aggarwal and others):-

"Compensation of Rs.8,48,160/- along with interest at the rate of 9% per annum. Widow had been provided with compassionate appointment. On appeal, the High Court lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be only considered, while fixing the compensation. The first respondent was getting Rs.4,700/- per month and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident. In view of what has been stated above, the High Court's judgment is clearly unsustainable. However, the accident took place more than 14 years back and it would not be desirable to send the matter back to the Tribunal for fresh consideration. A sum of Rupees Five Lakhs already deposited shall be permitted to be withdrawn by the claimants in full and final settlement of the claim relatable to the death of the deceased. It is for the Tribunal to fix the quantum of fixed deposit and the amount to be released to the claimants."

(ii) CDJ 2017 MHC 3548 (The Tamil Nadu State Transport Corporation Limited, through its General Manager and others v. V.Venkataragavan and others):-

"... In the absence of proof of other source of income, the Tribunal has wrongly fixed the income of the deceased and there is no proof with regard to the age of the deceased. There was loss of income. Compensation awarded by the Tribunal, therefore, modified. In the absence of clarifications, it would be appropriate to remit back the matter to Tribunal for fresh consideration. Therefore, the appeal is partly-allowed and the appellant is directed to deposit the compensation amount, as enhanced. As far as the findings of negligence and liabilities are concerned, the same is confirmed. The judgment and decree of the Tribunal is partly set-aside. The appeal is disposed of."

18.1. The above two decisions are distinguishable on facts. In the former decision, after the death of the deceased, the widow had been provided with compassionate appointment and a

residence. In the latter decision, the deceased was a housewife and her age was also disputed and in that context, the Division Bench proceeded to modify the quantum of compensation awarded by the Tribunal. Hence, the two decisions would not be of much use to the respondents herein.

19. So far as this case is concerned, in the post-mortem certificate, the age of the deceased has been mentioned as 68 and in the death certificate, the age is mentioned as 73. It is the same as mentioned in the claim petition. Hence, there is no impediment to fix the age of the deceased as 73. Since the age of the deceased would decide the multiplier to be adopted, the age of the claimants need not be proved strictly.

20. The learned counsel appearing for the claimants / appellants submitted that the family pension is receivable even otherwise than the accidental death and therefore, it cannot be taken into account for the purpose of deciding the quantum of loss and in support of the same, the following decisions are relied upon:-

(i) 2009 ACJ 992 (National Insurance Co. Ltd., v. Neelam and others):-

"28 "(37) Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two."

(ii) 2002 ACJ 1116 (Oriental Insurance Co. Ltd., v. Narinder Kaur and Others):-

"14. In relation to the compensation awarded to the heirs of Atinderjit Singh, it has been submitted that the Tribunal had while working out the compensation payable to them has deducted a sum of Rs. 1050/- which according to the learned counsel would be payable to the heirs on account of the family pension. This part of the deduction is assailed on behalf of the appellants on the ground that the same is contrary to the view taken by a Full Bench of this Court in Bhagat Singh's case (supra) wherein it has been observed, "that financial benefits like insurance, provident fund, family pension or gratuity are in essence the deferred earning of the victim of the accident or the result of his savings, his thrift or foresight. The dependants, even otherwise, would have had the benefit of these sums in due course. To take these away from the rightful claimants and to enure them only for the benefit of the tortfeasor is something which rightly shocks the judicial conscience. That the receipt of insurance, provident fund, pension

or gratuity benefits by the dependants of the victim of an automobile accident must be altogether excluded from consideration in the award of compensation to them." To the same effect are the judgments in Oriental Insurance Company Ltd. v. Gowramma and others, 1994(1) ACJ 63, Pallavan Transport Corporation Ltd. (Metro) v, P. Murthy and others, 1989 ACJ 413. In this view of the matter, the deduction made by (he Tribunal of Rs. 1050/- from Rs, 3856/- while working out the pendency (dependency ?) of the heirs of the deceased cannot be sustained. The compensation will have to be worked out by taking into consideration the monthly salary as Rs. 38567-P.M. on the basis of which the compensation will come out to Rs. 5,55,264/-. This amount shall be payable to the claimants with 12% interest w.e.f. the date of their application till realisation as per the directions of the Tribunal."

(iii) 2010 ACJ 569 (Vimaladevi and others v. Ram Chandra and others):-

"The tribunal while calculating loss of earnings has deducted the amount of pension payable to the appellant no. 1. The finding as recorded is not in conformity with the law laid down by the hon'ble supreme court in the case of helen c. Rebello v. Maharashtra state road trans. Corpn. , 1999 ACJ 10 (sc) and recently in the case of lal dei v. Himachal road transport corporation, 2008 acj 1107 (sc). Thus, the findings recorded by the tribunal deducting the family pension while calculating the compensation is illegal. The claims tribunal has further awarded rs. 15,000 under conventional heads. Looking to the facts and circumstances of the present case, this court is of the view that the amount under conventional heads may be further enhanced by rs. 10,000, which comes to rs. 25,000. In view of the foregoing discussion, the total amount of compensation payable to appellant due to death of deceased comes to rs. 6,36,000 along with the interest at the rate of 6 per cent per annum on the enhanced amount from the date of application."

21. The only remaining issue to be considered is the quantum of compensation.

22. The main contention raised by the learned counsel appearing for the second respondent is that there is an admission by the second claimant (A.W.1) that there is no financial loss to him.

23. This sentence cannot be interpreted meaning thereby that the deceased did not contribute anything for the entire family. When the second claimant is an earning member, perhaps, he might have contributed for the father, but that does not mean that father would not ever contribute anything to the son. When the mother is an aged person and not an earning member, naturally the mother is dependant only upon the earnings of the husband. More than the dependency, the compensation is paid on account of the loss caused to the claimants.

24. What is lost is to be compensated? Even if the father is not contributing to the members of the family, everyday / every month / every week even then the accumulation or the savings of the father would go to the estate and estate would devolve upon the legal representatives after the natural death of the father. Therefore, the contention that there is no loss to the family cannot be accepted.

25. Though it is stated by the claimants that the deceased was receiving pension at Rs.15,455/- and by taking tuitions also he was earning a sum of Rs.5,000/- and evidence to that effect has also been adduced, this Court can take note of the fact that, being a Government retired teacher, the pay commission of the year 2017 would have the effect on the monthly pension of the deceased. Therefore, the monthly income of the deceased could be safely taken at Rs.20,000/-. Thus, taking the monthly income at Rs.20,000/- and deducting $1/4^{\text{th}}$ towards the personal expenses and adopting the multiplier of 5, the contribution of the deceased to the family would be Rs.9,00,000/- (Rs.20,000/- (-) Rs.5,000/- ($1/4^{\text{th}}$) x 5 x 12). Further, the loss of consortium to the wife, loss of love and affection to claimants 2 to 4, funeral expenses and transport expenses are awarded at Rs.40,000/-, 60,000/-, 15,000/- and Rs.10,000/-, respectively.

26. In the result, the Civil Miscellaneous Appeal, filed by the claimants / appellants, is allowed, by awarding the compensation at Rs.10,25,000/-, payable with interest at 7.5% per annum, from the date of petition till the date of deposit. Out of the said amount, the first appellant / first claimant is entitled to a sum of Rs.5,75,000/- and the appellants 2 to 4 / claimants 2 to 4 are each entitled to a sum of Rs.1,50,000/-, (totalling Rs.4,50,000/-), along with the proportionate interests.

27. The second respondent / Insurance Company is directed to deposit the amount of compensation, as determined by this Court, along with interest at 7.5% per annum, from the date of petition before the Tribunal till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the award amount to the

Savings Bank Accounts of the claimants 2 to 4 / appellants 2 to 4, through RTGS, as stated in paragraph 26 above. The share of the first claimant / first appellant shall be deposited in a Fixed Deposit, in any one of the Nationalized Banks, for a period of three years, and the interest accrued thereon shall be withdrawn by her, once in three months, directly from the Bank. The appellants shall pay the necessary court fee for the compensation amount awarded by this Court. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

List of witnesses examined:-

On the side of the appellants / claimants:

1. A.W.1-Manivannan
2. A.W.2-Vinoth.

On the side of the respondents: Nil

List of documents: On the side of the appellants / claimants:-

S.No.	Exhibit	Details
1.	Ex.A-1	Copy of the First Information Report
2.	Ex.A-2	Copy of the Post-mortem Certificate
3.	Ex.A-3	Copy of the Death Certificate.
4.	Ex.A-4	Copy of the Legal-Heir Certificate
5.	Ex.A-5	Copy of the Pension Book
6.	Ex.A-6	Copy of the Insurance Policy
7.	Ex.A-7	Copy of the Bank Statement of the deceased.
8.	Ex.A-8	Copy of the Aadhar Card of Vinoth (A.W.2)

List of documents: On the side of the respondents :- Nil.

To

1. The Principal District Judge,
Motor Accident Claims Tribunal, Namakkal.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+lcc to Mr.D.Bhaskaran, Advocate, S.R.No.29309

+lcc to Mr.C.Kulanthaivel, Advocate, S.R.No.29141

C.M.A.No.1995 of 2017

PA(CO)

EU(19/07/2018)