



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2018

PRONOUNCED ON : 24.09.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.773 of 2017

Nagammal

... Appellant/Claimant

Vs.

1. Muthiraiyan

2. Vijayaragavan

3. National Insurance Company Ltd.,

B.O. II Jermoe Building,

1st floor, Fort Station Road,

Trichy - 2.

... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree, dated 28.09.2016, made in M.C.O.P.No.4831 of 2013 on the file of Motor Accident Claims Tribunal / Special District Judge, Tiruchirapalli.

For appellant : Mr.Srinivasasn

For respondents 1 & 2 : No appearance

For 3rd respondent : Mr.D.Rajkumar

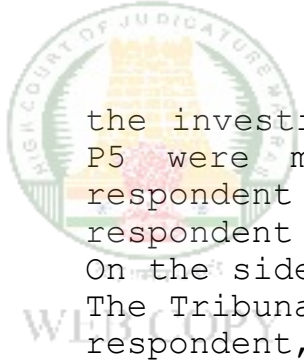
JUDGMENT

This appeal has been filed by the claimant challenging the dismissal of the claim petition.

2. On 16.10.2001, during night hours, a two wheeler bearing Registration No.TN-48- 7600 which was ridden by the first respondent in rash and negligent manner, dashed against the son of the claimant and he succumbed to the injuries on the spot. The said vehicle was owned by the second respondent and insured with the third respondent. The first respondent remained *ex parte* before the Tribunal. The second respondent has disputed the manner of the accident. However, he submitted that the 3rd respondent is liable to pay the compensation amount, as the policy was in force and the first respondent had valid license at the time of the accident. The third respondent / Insurance Company has stated that the claimant and the respondents 1 and 2 colluding together filed the claim petition and that the said vehicle had not involved in the accident.

<https://hcservices.ecourts.gov.in/hcservices/>

3. On the side of the claimant, the claimant herself was examined as PW1 and two eyewitness were examined as PWs.2 & 3 and



the investigating officers were examined as PWs.4 & 5 and Exs.P1 to P5 were marked. On the side of the respondents, the first respondent was examined as RW1 and the officials of the third respondent were examined as RWs.2 and 3 and Exs.R1 to R6 were filed. On the side of the Court, Ex.X1 - copy of the family card is marked. The Tribunal has dismissed the claim petition holding that the first respondent, rider of the vehicle, was acquitted in the criminal case in C.C.No.318 of 2002 and therefore, the negligence has not been proved and that involvement of the vehicle also has not been proved.

4. The learned counsel appearing for the appellant / claimant would submit that in this case, PW2 and PW3 have categorically stated in their evidence that the accident had occurred due to the rash and negligent riding of the two wheeler by the first respondent. Though the first respondent has stated in his evidence that it is the second respondent, who had got his license and handed over the same to the Police and he had not driven the vehicle at the time of the accident, he was remained *ex parte* before the Tribunal and he has not proved the same by producing oral and documentary evidence and therefore, the evidence of RW1 cannot be relied upon. Further the Tribunal, by relying upon the decision of the criminal Court, has held that the act of the negligence of the first respondent has not been proved. The Tribunal has failed to consider that the acquittal of the rider of the vehicle in the criminal case was not on merits but merely on the ground of benefit of doubt and the same is not binding on the civil Court.

5. The learned counsel appearing for the appellant / claimant would further submit that at the time of the accident, the deceased was aged about 22 years and earning a sum of Rs.3,000/- by doing building work. Thus, he requested to fix a sum of Rs.3,000/- as notional monthly income of the deceased and to award reasonable compensation by adopting multiplier method.

6. The learned counsel appearing for the Insurance Company would submit that the first respondent has clearly stated in his evidence that he is a flower vendor and he used to go to the house of the second respondent in order to give flowers. As the second respondent requested to give a copy of driving license, the first respondent has given his driving license to the second respondent. Subsequently, he came to know that the Police registered a case against him as if he had committed the accident by riding two wheeler belonging to the second respondent. The Criminal Court has acquitted the first respondent on merits. He would further submit that in this case, though PW1 has stated that immediately after the accident, the mother and brother of the deceased and the Police came to the occurrence place of accident, the complaint has been given only on the next day of the said accident and therefore, there is a delay in lodging the FIR. He would further submit that the vehicle was sent to the Motor Vehicle Inspection nearly after nine months of the accident and the petitioner did not submit any reason for such delay. The Tribunal, after considering all the above aspects, has



rejected the claim petition filed by the claimant and hence, the same need not be interfered with. Thus, he prayed to dismiss the appeal.

7. Heard the learned counsel appearing for the appellant / claimant and the learned counsel appearing for the third respondent / Insurance Company and perused the records carefully.

8. According to the claimant, on 16.10.2001 during night hours, the two wheeler bearing Registration No.TN-48-7600, which was ridden by the first respondent in rash and negligent manner, dashed against the deceased, who was moving on the left side corner of the road and the deceased succumbed to the injuries. The complaint was given by the younger brother of the deceased without mentioning the registration number of the vehicle involved in the accident. After thorough investigation, the Police had found that the first respondent had caused the accident by riding the said two wheeler and therefore, included the name of the first respondent and also the respondents 2 and 3, who are the owner and Insurance Company of the vehicle respectively.

9. It is 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 this case, it is not in dispute that the death of the deceased is an accidental one. The witnesses PW2 and PW3 have categorically stated in their evidence that it is the first respondent, who drove the vehicle in rash and negligent manner and dashed against the deceased. The first respondent remained *ex parte* before the Tribunal. However, the first respondent has been examined as RW1. Though RW1 has stated in his evidence that he has been wrongfully dragged in this case by the second respondent and he did not ride the vehicle in question at the time of the accident and cause the accident, he has not given any complaint against the second respondent and he has not substantiated his case by any piece of evidence. Further, it would be general denial of the rider in all the cases that he did not cause the accident for avoiding payment of any compensation. Therefore, the evidence of RW1 cannot be relied upon. On the other hand, the claimant has proved by preponderance of probabilities that it is the first respondent who had ridden the vehicle and caused the accident.

10. It is stated by the learned counsel appearing for the third respondent that PW2 - eyewitness has stated in his evidence that immediately after the accident, the mother and brother of the deceased and the Police came to the place of occurrence. But, the complaint has been belatedly filed on the next day of the accident. Admittedly, the accident had occurred at 7.00 p.m. Due to night hours and distress, they would have given complaint on the next day. Mere delay in lodging the FIR is not fatal. The delay in lodging the FIR cannot be a ground to doubt the claimant's case. Therefore, the



said contention of the third respondent cannot be sustained.

11. In this case, the Tribunal has rejected the claim holding that the first respondent was acquitted from the criminal case. When the issue as to whether the judgment of the Criminal Courts are binding on the Civil Court/Motor Accident Claims Tribunal, arises for consideration, a Division Bench of this Court in an unreported decision in C.M.A.No.1369 of 2017 (TNSTC Vs. P.Shanthi and others) dated 28.04.2017, after referring to various decisions, has held as follows:

"19. Mere acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of RW1, driver of the bus. The standard of proof required is entirely different from the Criminal Court. In Motor Accident Claims Cases, preponderance of probability is the test to arrive at the conclusion regarding negligence.

20. **In Vinobabai and others versus K.S.R.T.C. and another**, reported in 1979 ACJ 282, the High Court of Karnataka held as follows:

8.Thus, the law is settled that when the driver is convicted in a regular trial before the Criminal Court, the fact that he is convicted becomes admissible in evidence in a civil proceeding and it becomes prima facie evidence that the driver was culpably negligent in causing the accident. The converse is not true ; because the driver is acquitted in a criminal case arising out of the accident, it is not established even prima facie that the driver is not negligent, as a higher degree of culpability is required to bring home an offence."

21. In **N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc.**, reported in AIR 1980 Supreme Court 1354, a bus hit an over-hanging high tension wire resulting in 26 casualties. The driver earned acquittal in the criminal case on the score that the tragedy that happened was the Act of God. The Hon'ble Apex Court held that the plea that the criminal case had ended in acquittal and that, therefore, a civil suit must follow suit, was rightly rejected by the Tribunal. It is worthwhile to reproduce para 2 of the judgment herein:

"2. The Facts: A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an over-hanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an



act of God. The Accidents Claims Tribunal which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly; several lost their limbs likewise. The High Court, after examining the materials, concluded:

"We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of R.W.1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant."

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirements of culpable rashness under Section 304A, I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation."

22. In **Oriental Insurance Co. Ltd., v. K.Balasubramanian** reported in **2007 (2) TN MAC 399**, as follows:

"It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal no relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

23. In **Himachal Road Transport Corporation and another versus Jarnail Singh and others**,



reported in **2009 ACJ 2807**, wherein it has been held that acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal, as to whether the driver was negligent or not in causing the accident. At Paragraph 15, it is held as follows:

"15. In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court and the judgments cited hereinabove, it is now well settled law that the acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal whether the driver was negligence or not in causing the accident."

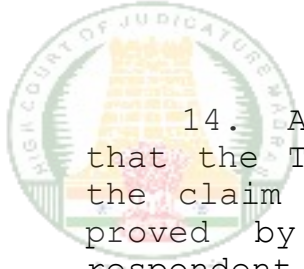
24. In **Geeta Devi v. Rajesh** reported in **2011 ACJ 279**, the Rajasthan High Court held as follows:

"It is, indeed, trite to state that while the finding of a civil Court is binding on the criminal Court, the finding of the criminal court could not and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the criminal Court."

25. Therefore, considering the object of the beneficial legislation, this Court is of the considered view that the approach of the Tribunal, in determining negligence, on the basis of evidence, cannot be said to be manifestly illegal, warranting interference. Hence, finding regarding negligence, is confirmed. Quantum of compensation awarded to the respondents/claimants is also just and reasonable."

12. From the above decisions, it is clear that the acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of the driver / rider of the vehicle. Further, the acquittal of the driver in the criminal case will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal. Therefore, the rejection of the claim based on the acquittal of the first respondent in the criminal case is nothing but a flaw.

13. The other ground on which the claimant has rejected the claim petition is that the motor vehicle inspection has been done after nearly nine months of the accident. Admittedly, it is a fault on the part of the Police and not the claimant. Therefore, for the fault committed by the Police, the claimant should not suffer. This ground also does not hold good.



14. A perusal of the judgment of the Tribunal would go to show that the Tribunal, on mere conjectures and surmises, has rejected the claim of the claimant. On the other hand, the claimant has proved by examining the eyewitnesses that it was the first respondent, who had ridden the vehicle in rash and negligent manner at the time of the accident and caused the death of the deceased. Therefore, this Court hold that the first respondent has caused the accident and as the policy was in force, at the time of the accident, the Insurance Company is liable to pay the compensation.

15. Now let us determine the compensation amount. The accident is of the year 2001. According to the claimant, the deceased was a bachelor, aged about 22 years and earning a sum of Rs.3,000/- by doing building construction work. Considering the age, year of the accident and avocation of the deceased, this Court is of the view that Rs.3,000/- can be reasonably fixed as the notional income of the deceased. If 40% is added as future prospects, the monthly income of the deceased comes to Rs.4,200/- p.m. and annual income comes to Rs.50,400/-. As the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses and accordingly, if 50% of the amount is deducted, the annual loss of income comes to Rs.25,200/-. As per the decision reported in **2009 (2) TN MAC 1 (SC) (Sarla Verma and others Vs. Delhi Transport Corporation and another)**, the multiplier No.18 has to be adopted, according to the age of the deceased. If the annual loss of income of the deceased is multiplied with 18, the total loss of income comes to Rs.4,53,600/-. As per the decision reported in **2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others)**, the claimant is entitled to get Rs.40,000/- on conventional heads. Thus, the claimant is entitled to get total compensation of Rs.4,93,600/- with 7.5% interest from the date of petition till the date of deposit. The third respondent / Insurance Company is directed to deposit the entire award amount with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the entire award amount by filing a petition before the Tribunal. As per the undertaking given in paragraph No.5 of the affidavit filed in support of the exemption petition in C.M.P.(MD). No.6279 of 2017, the claimant is directed to pay the Court fee, less the amount already paid.

16. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)



To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirapalli.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.D.RAJKUMAR, ADVOCATE IN SR No. 86522

+ 1 CC TO Mr.R.NANDAKUMAR, ADVOCATE IN SR No. 86052

GCG

TE/PM/SAR-1 : 13/12/2018 : 8P/6C

Judgment in
C.M.A(MD) .No.773 of 2017
24.09.2018