



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :25.09.2018
(Reserved on 26.07.2018)
CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.545 of 2018

Susaiammal

... Appellant

vs.

1)Shantilal Gangji Kimsariya
2)The New India Assurance Co.Ltd.,
Noti, Rahal, 6th Floor,
Jawshadji late Road,
Charachagate,
Mumbai-20.

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.520 of 2002 on the file of the Motor Accidents Claims Tribunal, (3rd Additional District and Sessions Judge), Tirunelveli, dated 28.02.2013.

For Appellant: Mr.T.Selvakumaran
For R1 : No appearance
For R2 : Mr.J.S.Murali

JUDGMENT

This appeal has been filed against the judgment and decree made in MCOP.No.520 of 2002 on the file of the Motor Accidents Claims Tribunal, IIIrd Additional District and Sessions Judge, Tirunelveli, dated 28.02.2013.

2.It is the case of the appellant/claimant that on 16.09.2000 about 23.40 hours, at L.B.S. Marg, Thane, Mumbai Highway, the deceased Jesu Arulappan was riding his Yamaha motorcycle registration No.MH-03-P-376 and at that time, a Fiat Car bearing registration No.B.L.B.2897 belonging to the 1st respondent driven by its driver in a rash and negligent manner, was plying on the parallel track called Mumbai-Thane Highway 37 feet road, not giving way to the motor truck which was following it, as a result of which, the Fiat Car was slightly hit by the motor truck on its backside. Due to the impact, the Fiat Car jumped into the parallel road where the vehicles were running in the opposite direction and directly collided with Yamaha motorcycle bearing registration No.MH-03-P-376 driven by the deceased and pulled it down on the road, in which, the deceased Jesu Arulappan was thrown away and died on the spot. The mother of the deceased filed



MCOP.No.520 of 2002 on the file of the Motor Accidents Claims Tribunal, IIIrd Additional District and Sessions Judge, Tirunelveli, claiming compensation of Rs.7,00,000/-. The 2nd respondent insurance company resisted the claim petition by filing counter affidavit. Considering the oral and documentary evidence on either side, the Tribunal holding that the driver of the 1st respondent vehicle was not responsible for the accident, awarded compensation of Rs.50,000/- under the head 'No fault liability'. Aggrieved by the said award, the appellant/claimant has filed this appeal.

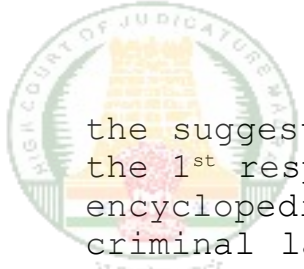
3.Learned counsel for the appellant would submit that when the accident had occurred due to the fault on the part of the drivers of motor truck and Fiat Car, the claimant can choose any one of the vehicles and therefore, the Tribunal ought to have fixed entire liability on the 2nd respondent who is the insurer of the Fiat Car belonged to the 1st respondent, and accordingly awarded compensation.

4.Heard the learned counsels for the appellant, 2nd respondent and perused the materials available on record.

5.Perusal of record shows that mother of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. As regards the manner of accident, PW2, a witness to the occurrence was examined. PW2 has deposed that the driver of the Truck driven the same in a rash and negligent manner and hit the Fiat Car belonged to the 1st respondent from behind, due to the impact, the driver of the Fiat Car lost control and dashed against the deceased who was coming in the opposite direction resulting in instantaneous death of the deceased. PW2 has further deposed that he did not know the registration number of the motor truck.

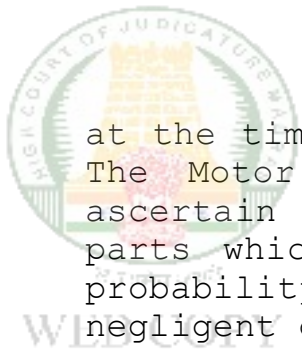
6.Perusal of record further shows that PW2 has filed Ex.P1-FIR which is in Hindi version and English version of the same has been produced as Ex.P2. Upon perusal of Ex.P2 and the evidence of PW2, the Tribunal found that an unknown motor truck hit the Fiat Car, due to which, the driver of the Fiat Car lost control and dashed against the deceased and therefore, the accident did not occur due to the negligence of the driver of the Fiat Car. Since the death of the deceased was caused due to the accident as evident from Ex.P1-Hindi version of FIR, Ex.P2-English version of FIR, and P5-postmortem report, the Tribunal awarded compensation of Rs.50,000/- under 'No fault liability'.

7.Though PW2 deposed that due to the rash driving of the driver of the motortruck, the motortruck hit the Fiat Car, due to which, the driver of the Fiat Car belonged to the 1st respondent lost control and dashed against the deceased who was coming in the opposite direction, during his cross examination, he has denied



the suggestion that the accident did not occur due to the fault of the 1st respondent. Further, it is well settled that FIR is not an encyclopedia. It can be relied on, for the purpose of setting the criminal law in motion, and all that is stated in the FIR, cannot be said to be the facts admitted, and if there is any omission in the FIR to state any fact, it does not mean that evidence cannot be adduced, either at the time of investigation, by the Police, for laying a charge against the accused or pleaded in the claim petitions, when compensation is claimed.

8. According to the 1st respondent, due to hit by unknown Truck, the Car jumped the divider, went to the opposite road and hit the motorcycle. The place of accident is Thane-Mumbai Highway about 23.40 hours. Needless to say, there would be sufficient space in Highways for free movement of vehicles. Generally, in Highways, left lane is for Trucks and other heavy vehicles and right lane is for overtaking. The rough sketch prepared by the Police also shows that the Car jumped from the right lane of the highway. Therefore, it could be seen that while overtaking in a rash manner, the Car driver lost control, in which, the Car jumped the divider and caused the accident. Further, just because the Truck driver hit the Car, the Car could not have jumped to the opposite road unless the driver of the Car drove the same in uncontrollable speed. Even assuming as per the version of the 1st respondent in Ex.P1-FIR, unknown Truck came in a rash and negligent manner and hit the Car from behind and hence, the accident occurred, the Spot Investigation Report dated 17.09.2000 signed by the Sub Inspector of Police, Mulund Police Station, Mumbai, shows that at the spot one Shri. Shailesh Shantilal Kimsaria/1st respondent aged about 20 years has shown the incident place. Therefore, the 1st respondent who had been conscious enough to show the incident accident place, could have very well called the Police to find out the unknown Truck which according to him hit his Fiat Car. Had really the unknown Truck hit the Fiat Car, the 1st respondent would have certainly taken steps to ascertain the registration number of the Truck. The accident place is a Thane-Mumbai Highway which is a busy road and there is a less chance for a Truck to hit a Car and fly away. There is no averment as to the steps taken for ascertainment of the registration of the unknown Truck. It appears that the 1st respondent to escape from the liability, has filed Ex.P1-FIR stating that unknown Truck hit the Fiat Car. The accident place being a National Highway, it would not be highly difficult for the Police to secure the registration number of the unknown Truck from the Toll Gate and other sources. Had it been done, truth would have come to light. Therefore, it is clear that the driver of the Fiat Car who drove the same in uncontrollable speed and caused the accident, has lodged Ex.P1-FIR as if an unknown Truck was responsible for the accident, only in order to escape from the liability. The 1st respondent stated to be aged 20 years at the time of accident and whether he was in drunken mood



at the time of accident was not ascertained through Alcohol test. The Motor Vehicle Inspector's Report also was not marked to ascertain whether there was any fault in the Car Engine and other parts which resulted in accident. There is a preponderance of probability that the accident occurred only due to the rash and negligent driving of the driver of the Fiat Car.

9.As regards the quantum of compensation, the appellant/claimant who is the mother of the deceased claimed that her son by working as a Supervisor in Guru Mehar Mechanical Works, K2, Sharad Industrial Estate, Lake Road, Bhandump(W), Mumbai, was earning a sum of Rs.5,000/- per month. In support of the same, Ex.P3-Salary Certificate has been marked. Hence, the monthly income of the deceased is fixed as Rs.5,000/-. As per the judgment of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), 50% of the monthly income is deducted from the personal expenses of the deceased since the deceased was a bachelor at the time of accident. After deducing 50% of monthly income and applying '16' multiplier as per Sarla Verma's case, the loss of income due to the death of the deceased is calculated as Rs.4,80,000/- (Rs.5000/2X12X16). Apart from the above Rs.15,000/- each is awarded for funeral expenses and loss of estate as per the recent judgment of the Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil) No.25590 of 2014 dated 31.10.2017)*. Altogether, a sum of Rs.5,10,000/- is awarded as compensation in addition to compensation of Rs.50,000/- awarded under 'No fault liability', totalling to Rs.5,60,000/-.

10.The 2nd respondent is directed to deposit the compensation of Rs.5,60,000/- with interest at 8% per annum from the date of petition till the date of deposit, to the credit of the claim petition within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same without filing any formal petition before the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //



To

The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

Copy to:

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

+ 1 CC TO MR.J.S.MURALI , ADVOCATE IN SR NO.86317

BALA

BU/PM/SAR-2 :20.11.2018 : 5P/5C

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