

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1363 of 2007

1. Lakshmi
 2. Mallika
 3. Rajendran
 4. Kuberan
 5. Selvi
 6. Manoharan
 7. Murugan
 8. Sivasakthi
- ... Appellants /Petitioners

Vs.

1. Ramesh
 2. The Branch Manager,
The Oriental Insurance Co., Ltd.,
Krishnan Street,
Tiruvannamalai Taluk,
Tiruvannamalai District.
- ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.01.2007 made in M.C.O.P.No.737 of 2006, on the file of the Motor Accidents Claims Tribunal, District Court, Tiruvannamalai.

For Appellant : Mr.G.Rajan
For R1 : No appearance
For R2 : Mrs.R.Sreevidhya

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 31.01.2007 passed by the Motor Accidents Claims Tribunal, District Court, Tiruvannamalai, in M.C.O.P.No.737 of 2006.

2.The case in brief, is as follows:

On the fateful day, i.e., on 08.05.2006, at about 4.00 pm, one Nataraja Chettiar was riding his bicycle in Thiruvannamalai - Villupuram Road. When he was nearing Kattu Nallan Pillai Petran Cross Road, the Hero Honda vehicle bearing registration No.TN25 F 4320 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and hit the bicycle from behind. As a result of the same, the cyclist sustained fatal injuries and he later on, died in the hospital. Stating so, his two wives, sons and daughters, being the surviving legal heirs, filed a claim petition seeking compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal dismissed the said claim petition. Aggrieved over the same, the claimants have preferred this appeal before this Court.

3.Assailing the judgment impugned herein, the learned counsel for the appellants/claimants made the following submissions:

(i) Immediately after the accident, the deceased got admitted in the hospital and died subsequently for the injuries sustained by him and thereafter, the appellants/claimants lodged the complaint, which resulted in the registration of the FIR and hence, the delay of 9 days in registering the FIR is neither willful nor wanton and the same cannot be a valid reason for dismissal of the claim petition seeking compensation. In support of the said submission, he placed reliance on the decision of the Supreme Court in Ravi v. Badrinarayan and others [(2011) 4 SCC 693].

(ii) When Ex.A3 Motor Vehicles Inspector's report would clearly prove that the vehicle bearing Regn.No.TN25 F 4320 was involved in the accident, the Tribunal has erred in rejecting the claim petition on the ground that the registration number of the vehicle was altered in the First Information Report.

(iii) Considering the fact that the deceased was 67 years old and was earning Rs.4,000/- per month by doing salt business at the time of accident and having a big family consisting of 8 members, the Tribunal ought to have directed the insurance company to pay the entire compensation as claimed by the claimants.

4.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal, after examining the oral and documentary evidence adduced before it, rightly dismissed the claim petition, which does not call for any interference in the hands of this Court.

5.Heard both sides and perused the records.

6.The claimants claimed a compensation of Rs.10,00,000/- for the death of the deceased in the accident that took place on 08.05.2006, due to the rash and negligent riding of the motorcycle belonging to the first respondent and insured with the second respondent-Insurance Company. However, the Tribunal dismissed the said claim on the ground that there was a delay of 9 days in registering the complaint and that in the FIR, the registration number of the motorcycle bearing Regn.No.TN25 F 4023 was changed into TN25 F 4320.

7.This Court is not inclined to accept the grounds on which the claim petition was dismissed. In the decision of the Hon'ble Supreme Court in the case of Ravi Vs. Badrinarayan and others [(2011) 4 SCC 693], it has been held as follows:-

" Held:

(a) it is well settled that delay in lodging the 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.

(b) There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless Kith and kin of the victim are able to regain a certain level of tranquillity 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.

(c) Lodging of FIR certainly proves the 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.

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 scrutinised more carefully. If the 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. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences."

8.It is not in dispute that the deceased was admitted in the hospital immediately after the accident and took treatment. Despite best treatment, he died in the hospital and hence, there was a delay of 9 days in filing the First Information Report. In the absence of any contra evidence and in view of the aforesaid decision of the Hon'ble Supreme Court, this Court is of the opinion that the delay in lodging the complaint is not fatal to the case on hand and on such ground, the claim petition cannot be rejected.

9.With regard to the issue relating to registration number of the vehicle, Ex.A3 accident register would clearly establish that the vehicle involved in the accident is motorcycle bearing Regn.No.TN 25 F 4320. However, in the First Information Report, it was corrected from TN 25 F 4023 to TN 25 F 4320, during the course of investigation of the case by the police officer and hence, the same cannot be treated as material alteration, to deny the claim made by the claimants. In such view of the matter, this Court holds that the accident had occurred due to the rash and negligent riding of the rider of the motorcycle, in which, the deceased succumbed to the injuries and the second respondent being the insurer of the vehicle, is liable to pay compensation to the claimants.

10. As regards the quantum of compensation, this Court, considering the fact that the accident took place on 08.05.2006; the claim petition was filed in the year 2006 and the same was dismissed by the Tribunal on 31.01.2007 and the appeal was filed in the year 2007 and having regard to the fact that there is no documentary evidence with respect to avocation and income of the deceased, this Court deems it fit to award a consolidated sum of Rs.1,00,000/- with interest at 7.5%p.a from the date of claim petition and the same is accordingly awarded. There is no dispute with regard to the relationship among the claimants with the deceased and the compensation now awarded by this Court shall be shared by them in equal proportion.

11. Hence, the second respondent-Insurance Company is directed to deposit the aforesaid compensation amount along with interest within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

12. This appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
District Court, Tiruvannamalai.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.G.Rajan, Advocate Sr.62811

+1cc to Mrs.R.Sreevidhya, Advocate Sr.62846

C.M.A.No.1363 of 2007

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