

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2018

DELIVERED ON : 12.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.216 of 2015

1.Ponnu Mariyammal
2.R.Maheswari
3.V.Rajeswari
4.V.Baby Rani
5.V.Saravanakumar

... Appellants/Petitioners

Vs.

1.U.Durai
2.The National Insurance Company Limited,
Branch Office,
Niresh Complex,
Indian Bank Backside,
Near Attur Bus Stands,
Attur, Salem District.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2014 made in M.C.O.P.No.307 of 2013 on the file of MACT/Sub Court, Gobichettipalayam.

For Appellants : Mr.Ma.Pa.Thanagavel,

For Respondents : M/s.N.B.Surekha (for R2)
No Appearance (for R1)

JUDGMENT

Aggrieved by the dismissal of entire claim petition in its decree and judgment dated 30.10.2014 made in M.C.O.P. No. 307 of 2013 on the file of MACT/Sub Court, Gobichettipalayam, the appellants/Claimants has filed the present appeal.

2.For convenience, the parties are referred to as per their array in the claim petition.

3.The facts in nutshell are as under:

On 07.12.2012 at about 06.30 P.M, the deceased Viswanathan was Standing on the Mud Road on the Western Side of Mammuty to Veerakanur National Highway Road near Nagalakshmi Malaigai Store, at that time the 1st respondent owner cum rider of two wheeler was bearing registration No.TN-54-Z-7455, drive-in rash

and negligent manner and hit against the deceased, due to which he stumbled grievous injuries in head, leg, chest and all over the body. Immediately, he was taken to the Government Hospital Attur, where from he was shifted to Salem Government Hospital, and he was taken treatment from 07.12.2012 to 09.12.2012 and unfortunately he died on 09.12.2012 in the hospital.

4.It is further stated that regarding the accident, the EX.P1 FIR was initially register against the un known Two wheeler by the Thalaivasal Police Station, in Crime No. 383 of 2012 Under Section 279 and 304(A) of IPC and the after due investigation the Police officials, find out that the 1st respondent involved in the accident and send it to Motor Vehicle Inspection and report has been marked as Ex-P3. Hence the Appellants/Claimants have filed the claim petition claiming compensation of Rs.6,00,000/- from the respondents as jointly and severally.

5.Resisting the claim petition, the 2nd respondent has filed the counter, and disputing the involvement of vehicle in the accident, In the counter, the respondent also, further denied the age, occupation and monthly earning of the deceased and prayed for dismissal of the claim petition.

6.Before the Tribunal, on the side of the appellants PWs.1 and 2 were examined and Exs.P-1 to P-4 were marked. On the side of the 2nd respondent, the insurance official was examined as R.W.1 and marked Ex.R-1 policy copy.

7.Upon consideration of oral and documentary evidence, the Tribunal dismissed the entire claim petition directing the appellants/claimants to approach appropriate forum in case of hit and run cases.

8.Aggrieved by the order of dismissal, the appellants has filed the present appeal to set aside the award of the tribunal and sought for enhancement of compensation. The main arguments advanced by the appellants is that the deceased was standing on the Mud Road, the 1st respondent owner cum rider of two wheeler alone drive the vehicle in rash and negligent manner and hit against the deceased, due to which only he stumbled grievous which lead to death on 09.12.2012 in the hospital. Moreover after due investigation the Police officials, find out that the 1st respondent vehicle involved in the accident and send it to Motor Vehicle Inspection and report marked as Ex.P-3. Moreover the owner/1st respondent remains ex-parte before the tribunal as well as before this court. The best witness to speak about involvement of vehicle is 1st respondent/owner, he has not chosen to contest case, moreover no independent investigation has been done to dispute involvement of vehicle, hence the adverse inference very well can be taken against the respondents.

Moreover he also submits that in the Motor Accident Claims are summary proceedings so as to adjudicate the adequate amount of compensation in case of an accident and that a claim under the Act has to be decided on the touchstone of preponderance of probability rather than on the standard of proof beyond reasonable doubt which applies in criminal matters. He also relied some ruling of the Hon'ble Apex Court in the aspects. 1). Kusum Lata and Ors. -Vs- Satbir reported in (2011) 3 SCC 646 2). Bimla Devi and Ors. -Vs- Himachal Road Transport Corporation and Ors. reported in (2009) 13 SCC 530 and prays to set aside the order of dismissal and seeking of compensation.

9.Per contra, the learned counsel for the 2nd respondent insurance company submitted that the tribunal after appreciating the oral and documentary evidence has rightly dismiss the entire claim petition, moreover the claimants have remedy in other forum in the case of hit and run as stated by tribunal, hence the order of tribunal need not be interfere by this court and prays for dismissal of appeal.

10.I have heard Mr.Ma.Pa.Thangavel, learned counsel for the Appellants and since 1st Respondent , who is owner cum rider of offending vehicle remain exparte before this court and Mrs. N.B.Surekha, learned counsel for the respondent insurance company and also perused the materials available on record.

11.It shows that though the FIR was initially registered against the un-known vehicle as per Ex.P-1, subsequently the police officials after due investigation find out the involvement of 1st respondent vehicle and seized the vehicle sent it for Motor Vehicle inspection and marked the report as Ex.P-3, moreover as rightly argued by the appellants counsel the best witness to speak about involvement of vehicle is 1st respondent/owner, he failed to chosen contest and remained exparte before tribunal as well as before this High court, moreover the insurance officials also not let any independent evidence except official witness, much less any independent investigation to ascertain involvement of vehicle to disprove the same, hence involvement of vehicle not challenged by owner cum rider; hence this court drawn adverse inference against the 1st respondent/owner. Moreover as per evidence of PW-2 eye witness he also clearly deposes in his cross examination that name of rider namely one Durai, who is first respondent alone rider the two wheeler at the time of accident. Apart from the judgments of the Hon'ble Apex Court in case of 1).Kusum Lata and Ors. -Vs- Satbir reported in (2011) 3 SCC 646 and 2).Bimla Devi and Ors. -Vs- Himachal Road Transport Corporation and Ors. reported in (2009) 13 SCC 530, submits that in the Motor Accident Claims are summary proceedings so as to adjudicate the adequate amount of compensation in case of an accident and that a claim under the Act has to be decided on the touchstone of

preponderance of probability rather than on the standard of proof beyond reasonable doubt which applies in criminal matters, which was again reiterated 2019(1)TNMAC 145 (SC) in case of Sunita & Ors Vs Rajasthan State Road Transport Corp & ano , held in Para 34 as follows:-

"34. Be it noted that the evidence of Witness -AD-2 (Bhagchand) unequivocally states that the respondents No: 2, Bus Driver was negligent in driving recklessly at a high speed on the wrong side of the road, thus resulting in the accident which caused the death of sitaram. It is not open to the high court to discard this evidence. Additionally , the tribunal had justly placed reliance on the contents of FIR 247/2011 (Exh.1) and charge sheet (Exh.2) which prima facie indicate the negligence of the Respondent No: 2 in driven the bus. We once again remind ourselves of the dictum in Dulcina Fernandes (supra) and thereafter in Mangla Ram (supra) and answer the factum of negligence of the driver of the offending vehicle against the respondents."

By considering evidence let by both parties and ruling of apex court this court safely hold that the appellants /claimants are proved the factum of accident and involvement of offending vehicle driven by the first respondent , who is owner of vehicle and having insurance with 2nd respondent and consequently set aside findings of the tribunal by dismissing claim petition. Hence the respondents are jointly and severally liable to pay compensation.

12.As far as quantum of compensation is concerned, according to the appellants at the time of accident, the deceased was aged 65 years and was earning Rs.12,000/- p.m. by doing Electrical works. But however no oral or documentary evidence were produced, in absence of any concrete evidence this court considering facts and circumstance and considering year of accident was 07.12.2012 , this Court deems to fix the monthly income of the deceased at Rs.8,000/- per month.

13.In so far as the age of the deceased is concerned, as per EX.P-2, Post Mortem Certificate the age of the deceased at the time of accident is 70, and proper multiplier is 5 as per Sarala Varma case and as per rulings of Pranay Sethi no addition towards future prospects and the number of dependents is 5. Therefore, 1/4 has to be deducted towards as personal and living expenses of the deceased and the loss of dependency would comes to {Rs. 8,000/- x 12 x 5 X 1/4 }= Rs. 3,60,000/-

14.In so far as funeral expenses and loss of estate are concerned this court awarded Rs.15,000/- each, and towards loss of consortium is concerned Rs.40,000/- awarded and towards transportation, a sum of Rs.10,000/- is awarded.

15. In so far as Loss of Love and affection is concerned the counsel for the appellants vehemently argued that a sum of Rs.40,000/- can be awarded. Since the claimants 2 to 4 are major persons, hence this court awarded a sum of Rs.25,000/- each towards loss of love and affection.

16. In the light of the above mentioned discussion, the total sum of Rs.5,40,000/- awarded by this court under following heads:

Heads	Rs.
Loss of dependency	Rs.3,60,000/-
Loss of Love and Affection (Appellants - 2 to 5 Rs.25,000/- x 4)	Rs.1,00,000/-
Loss of consortium (Appellant No.1)	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Transportation	Rs. 10,000/-
Total	Rs.5,40,000/-

17. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.5,40,000/- is awarded by this court in set aside the order of dismissal of claim petition in M.C.O.P.No.307 of 2013 on the file of MACT/Sub Court at Gobichettipalayam, dated 30.10.2014 with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent insurance company is directed to deposit the amount within 6 weeks from the date of receipt of copy of this order. Out of the total compensation of Rs. 5,40,000/- to the first appellant being the wife is entitled for a sum of Rs.4,00,000/- and appellants 2 to 5 being entitled for a sum of Rs.35,000/- each with interest and the appellants are at liberty to withdraw their respective share with interest and cost. Consequently, connected miscellaneous petition is closed. The appellants shall pay necessary Court fee in respect of the compensation awarded by this Court.

vs

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.

Copy to:-

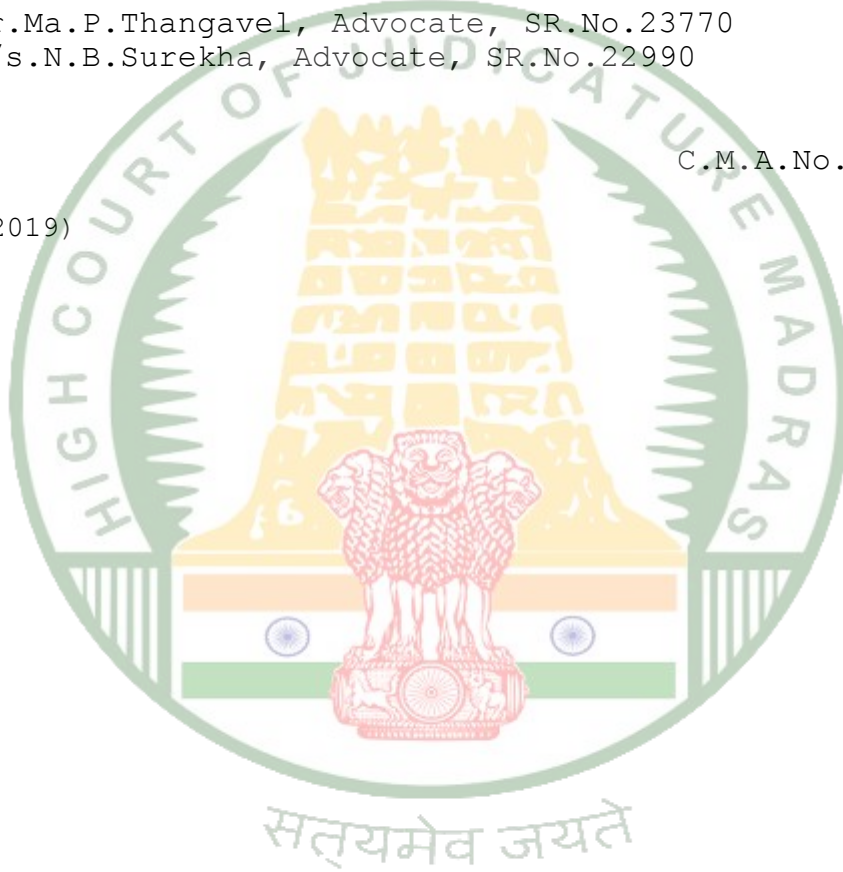
The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.23770

+1cc to M/s.N.B.Surekha, Advocate, SR.No.22990

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Kak(19/11/2019)



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