

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.10.2018

Delivered on : 07.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2791 of 2016

1.Parvathy
2.Ramamurthy
3.Shanthi
4.Indira
5.Chandra
6.Saravanan
7.Kumar
8.Vijayalakshmi

...

Appellants/Claimants

Vs

1.K.Shyamrajan

2.United India Insurance Co. Ltd.,
No.45, Arcot Road, Saligramam,
Chennai-93.
R1 Exparte Before Tribunal

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Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 08.06.2016 made in MCOP.No.396 of 2012 on the file of Motor Accident Claims Tribunal, (II Additional District Court), Poonamallee.

For Appellants : Mr.P.Selvaraj

For Respondents : Mr.S.Arunkumar (for R2)

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JUDGMENT

Calling in question the judgment and decree dated 8.6.2016 passed in M.C.O.P.No.396 of 2012 by the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee, the present appeal is filed by the claimants.

2. The first appellant is the wife of the deceased and appellants 2 to 8 are children of the deceased. It is the case

of the appellants, who are the claimants, that on 6.3.2012 at about 8.15 AM, when the deceased was waiting on the Mount-Poonamallee Road at Kattupakkam, near Maruthi Showroom, in order to cross the road, a motorcycle bearing registration No.TN 10 AB 8555, driven in a rash and negligent manner, came from east to west direction and hit the deceased causing fatal injuries. The first respondent is the owner of the vehicle which caused the accident and the second respondent is the insurance company which insured the said vehicle. In this backdrop, the appellants claimed compensation to the tune of Rs.5 lakhs.

3. The second respondent/insurance company refuted the contents of the claim petition by filing a counter statement. It was alleged that the motorcycle was nowhere involved in the accident and that a lorry, which could not be identified by the appellants, hit against the deceased and caused the accident.

4. The learned Tribunal, by judgment and decree dated 8.6.2016 passed in M.C.O.P.No.396 of 2012, dismissed the claim petition.

5. Aggrieved by the said judgment and decree dated 8.6.2016 passed in M.C.O.P.No.396 of 2012, the present appeal is filed by the claimants.

6. It is the contention of the learned counsel appearing on behalf of the appellants that the Tribunal erred in relying on Ex.R1 (AR Copy) and Ex.R2 (Investigation Report) to jump to the conclusion that the deceased was hit by lorry, by ignoring the evidence of P.W.1 and the contents of Ex.P1 (FIR), more so, when there is no contra evidence by the insured. He further submitted that the author of A.R. copy was not examined and the evidence of R.W.1 (Investigator) is only hearsay. To fortify the said submissions, the learned counsel for the appellants relied on the following decisions: (i) Maya Azhagar and another v. Thangiah and others, reported in 2011 (2) TN MAC 391; and (ii) V.Thanikachalam v. C.Premalatha and another, reported in 2002 4 LW 495.

7. Per contra, the learned counsel appearing for the second respondent insurance company reiterated the reasons that weighed with the Tribunal in dismissing the claim petition and prayed for dismissal of the appeal.

8. I heard Mr.P.Selvaraj, learned counsel for the appellants and Mr.S.Arunkumar, learned counsel for the 2nd respondent and also perused the materials available on record.

9. According to the appellants, on 6.3.2012 at about 8.15 A.M., the deceased was waiting in Mount-Poonamallee Road at

Kattupakkam near Maruti showroom in order to cross the road. At that time, the motorcycle bearing registration No.TN-10 AB 8555 driven by its rider in a rash and negligent manner hit the deceased and caused fatal injuries. Immediately, the deceased was taken to Sri Ramachandra Hospital, Porur, wherefrom he was taken to the Government General Hospital, Chennai and succumbed to injuries on the next date. Regarding the accident, the second appellant Ramamoorthy lodged a complaint before the Inspector of Police, Poonamallee Traffic Investigation Police Station and the police has registered the case in Crime No.341 of 2012 under Section 279 and 304A IPC against the rider of the motorcycle Shyamrajan. Stating that the accident occurred due to rash and negligent driving of the rider of the motorcycle, the appellants, who are wife and children of the deceased have filed the claim petition.

10. The involvement of the motorcycle bearing registration No.TN-10 AB 8555 has been questioned by the second respondent insurance company. Only on this ground, the claim petition has been dismissed by the Tribunal. The specific finding of the Tribunal is that in Ex.R1-Accident Register, it has been stated that the accident was caused by a lorry, whereas in Ex.P1-FIR, it has been stated that the accident was caused by a motorcycle. Thus, there is contradiction in the vehicle involved in the accident.

11. The second respondent insurance company mainly relied upon Ex.R1-Accident Register and contended that the motorcycle in question was not involved in the accident. This Court examined Ex.R1-Accident Register issued by Sri Ramachandra Hospital, Porur, Chennai, wherein, admittedly, the author has stated that "accidental injury sustained while walking on road (hit by a lorry) at around 8.15 A.M. near Kattupakkam "Maruthi showroom" on 06.3.2012". Ex.R1-Accident Register has been recorded at 9.00 A.M. based on the information given by one Kumar, son of the deceased. Ex.P1-FIR has been registered by the police at 10.00 A.M. on 06.03.2012, wherein another son of the deceased viz., Ramamoorthy stated that while his father was waiting near Maruthi showroom, the motorcycle driven by its rider in a rash and negligent manner dashed against him and caused the fatal accident. Based on Ex.P1-FIR, the police investigated the case and filed charge sheet before the Judicial Magistrate, Poonamallee against the rider of the motorcycle bearing registration No.TN-10 AB 8555. On a perusal of the additional typed set of papers produced by the appellants, it is seen that on 6.3.3012, the police inspected the occurrence place and prepared the rough sketch, wherein the police had clearly marked the presence of motorcycle bearing registration No.TN-10 AB 8555 at the occurrence place.

12. As rightly argued by the learned counsel for the appellants that the Tribunal ought to have disbelieved the content mentioned in Ex.R1-Accident Register due to the fact that the deceased was unconscious at the time of accident and the person (son of the deceased) who brought the deceased had not seen the occurrence. However, after hearing the occurrence and sustaining of injuries by his father, he rushed to the spot and taken him to the hospital for treatment. The Doctor, who recorded the Accident Register, herself has recorded that "hit by a lorry". On a perusal of the injuries noted in Ex.R1-Accident Register, if really, the lorry was hitting the deceased, the injuries might be severe. In fact, in Ex.R1-Accident Register, the Doctor has noted the following injuries:

- (i) Abrasion over the left knee joint.
- (ii) Laceration 4x2cm over the parieto occipital region.
- (iii) Abrasion abdomen with tenderness
- (iv) Right leg deformity bone exposed, laceration right leg.

13. From the above injuries, it is seen that the accident could not have been occurred due to hitting of a lorry, but only due to hitting of a small vehicle like motorcycle. Moreover, on 6.3.2012, after registering the case, the police rushed to the spot and prepared the rough sketch, wherein they have clearly marked the presence of motorcycle.

14. The Tribunal had treated the present case on par with a criminal case as if in the nature of a heinous crime. In motor accident claim petitions, the Tribunal need not deeply gone into the evidences to explore the proof beyond all reasonable doubts and the standard of proof beyond reasonable doubt could not be applied in such cases. The documents produced by the appellants alone are sufficient to hold that the motorcycle bearing registration No.TN-10 AB 8555 belonging to the first respondent insured with the second respondent was involved in the occurrence.

15. In the case on hand, Ex.P1-FIR and the charge sheet filed by the police against the rider of the motorcycle would play an important role that the motorcycle bearing registration No.TN-10 AB 8555 was involved in the accident in question.

16. In Maya Azhagar and another v. Thangiah and others, supra, this Court held as under:

"11. In motor accident claim cases, the Tribunal need not delve deep the evidences to explore the proof beyond all reasonable doubts. It is well settled principle of law that standard of proof beyond reasonable doubt could not be applied in the cases of accident cases. The testimony of

the evidence of PW2 alone is sufficient to hold that the motorcycle viz., TVS Suzuki Max 100 R bearing registration No.TN-69 B 5437 belonging to the First Respondent was involved in the occurrence. In the First Information Report, the mother of the boy was not able to identify the motorcycle. She said that the kind of vehicle was Scooter and its colour was blue. But, the First Respondent has contended that his vehicle was red in colour. That may not be sufficient for the First and Second Respondents to wriggle out of the clutches of the liability. The Motor Accident Claims Tribunal has not justified the dismissal of the Claim Petition."

17. In the present case, as stated supra, the testimony of Ex.P1-FIR and the charge sheet laid against the rider of the motorcycle are sufficient to hold that the motorcycle bearing registration No.TN-10 AB 8555 was involved in the accident.

18. In Mangla Ram v. Oriental Insurance Company Limited and others, reported in (2018) 5 SCC 656, the Hon'ble Supreme Court restated the position as to the approach to be adopted in accident claim cases. In the said case, the Hon'ble Supreme Court dealt with a case of an accident between a motorcycle and a jeep, where the Tribunal had relied upon the FIR and charge sheet, as well as the accompanying statements of the complainant and witnesses, to opine that the police records confirmed the occurrence of an accident and also the identity of the offending jeep but the High Court had overturned that finding inter alia on the ground that the oral evidence supporting such a finding had been discarded by the Tribunal itself and that reliance solely on the document forming part of the police record was insufficient to arrive at such a finding. Disapproving that approach, the Hon'ble Supreme Court, after advertng to multitude of cases under the Act, noted as follows:

"16. The question is: whether this approach of the High Court can be sustained in law? While dealing with a similar situation, this Court in Bimla Devi (supra) noted the defence of the driver and conductor of the bus which inter alia was to cast a doubt on the police record indicating that the person standing at the rear side of the bus, suffered head injury when the bus was being reversed without blowing any horn. This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In

paragraphs 11-15, the Court observed thus:

"11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report *vis-a-vis* the averments made in a claim petition."

19. In a recent decision in Civil Appeal No.1665 of 2019, decided on 14.02.2019 (*Sunita v. Rajasthan State Road Transport*), the Hon'ble Supreme Court held:

"It is thus well settled that in motor accident claim cases, once the foundational fact, viz., the actual occurrence of the accident has been established, then the Tribunals role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motorcycle and, while doing so, the Tribunal would not strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

20. In the present case, this Court finds that the Tribunal had failed to follow a just approach in the matter of appreciation of the evidence/materials on record and it had adopted a strict standard of proof beyond reasonable doubt to record an adverse finding against the appellants. Ex.P1-FIR and the charge sheet coupled with the other evidence on record, clearly establishes the occurrence of the fatal accident and the point towards the involvement of the motorcycle in question and also the point towards the negligence of the rider of the first respondent in causing the said accident. Even if the final outcome of the criminal proceedings against the rider of the

motorcycle is unknown, the same would make no difference atleast for the purpose of deciding the claim petition under the Motor Vehicles Act.

21. The issue of non-examination of the complainant Ramamoorthy would not be fatal to the case of the appellants. It is settled that the approach in examining the evidence in accident claim cases is not to find fault with non-examination of the complainant and/or best eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability.

22. In a catena of decisions, the Hon'ble Supreme Court held that in motor accident claim cases, non-examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability.

23. In N.K.V. Bros (P) Ltd. v. M.Karumai Amma, reported in (1980) 3 SCC 457, the Hon'ble Supreme Court held:

"3. Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court/Tribunal should not succumb to niceties, technicalities and mystic maybes."

24. When the second respondent insurance company has not disputed registering of Ex.P1-FIR, rough sketch prepared by the police and the charge sheet laid against the rider of the motorcycle bearing registration No.TN-10 AB 8555, it is difficult to accept the theory of the second respondent that the motorcycle in question was not involved in the accident. The present case is a pathetic one, where the first appellant has lost her husband at the age of 72 and despite proving the involvement of the motorcycle in question, taking note of the discrepancy of the vehicle in Ex.R1-Accident Register, the Tribunal erred in dismissing the claim petition. This Court is of the firm view that the appellants have clearly proved the involvement of the motorcycle bearing registration No.TN-10 AB 8555 in the accident and also the negligence on the part of the rider of the said motorcycle, who drove the same in a rash and negligent manner and caused fatal injuries to the deceased.

25. The first respondent is the owner and the respondent is the insurer of the offending motorcycle. In their claim petition, the appellants have given the particulars of the policy number of the offending motorcycle as 012600/31/11/01/00025259, valid from 25.1.2012 to 24.1.2013. The accident occurred on 6.3.2012. Though the second respondent denied that the offending motorcycle was not insured with them, to establish the same, the second respondent has not produced any materials. Thus, it is clear that at the time of accident the offending motorcycle was insured with the second respondent. Therefore, being the insurer of the offending motorcycle, the second respondent is liable to pay the compensation to the appellants.

26. In their claim petition, the appellants have stated that the deceased was aged 72 years and was earning Rs.5,000/- per month by doing security work in M/s.High Tech Properties Limited, Chennai. Admittedly, the appellants have not produced any document to show that the deceased was doing security work in M/s.High Tech Properties Limited, Chennai. If a person was hale and healthy even at the age of 70 or 75 years, as the case may be, he can do security work. According to the appellants, at the time of accident, the deceased was hale and healthy and he was doing security work. In the absence of any rebuttal evidence, this Court holds that the deceased was working as security in M/s.High Tech Properties Limited, Chennai and was earning Rs.5,000/- per month.

27. As stated supra, at the time of accident, the deceased was aged 72 years. Normally, there shall be no addition above 60 years. Therefore, in the present case, question of considering future prospects does not arise.

28. This Court held that the deceased was earning Rs.5,000/- per month i.e., Rs.60,000/- per annum at the time of accident. Since the dependent family members are 8 in numbers, it would be appropriate to deduct one-fifth towards personal expenses. Deducting one-fifth, the contribution to the family is calculated at Rs.48,000/-.

29. Coming to the multiplier to be adopted in the present case is concerned, in a case of deceased person aged above 65 years, the proper multiplier to be adopted is "5". In the present case, the deceased was aged 72 years at the time of accident. Adopting multiplier "5", the loss of dependency is calculated at Rs.2,40,000/-.

30. As far as conventional damages are concerned, reasonable figures namely loss of estate, loss of consortium and funeral expenses to be considered in the present case. Though

the accident is of the year 2012, it would be appropriate to consider to award a sum of Rs.15,000/- towards loss of estate; Rs.40,000/- towards loss of consortium to the first appellant and Rs.15,000/- towards funeral expenses. In addition, it would be appropriate to award a sum of Rs.20,000/- each towards loss of love and affection to the appellants 2 to 8 i.e., Rs.1,40,000/-. Since the appellants themselves have claimed Rs.1,00,000/- towards loss of love and affection, this Court is inclined to award Rs.1,00,000/- towards loss of love and affection. Thus, the appellants are entitled to a total compensation of Rs.4,10,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

31. Out of the total compensation of Rs.4,10,000/-, the first appellant is entitled to get Rs.2,00,000/- and the appellants 2 to 8 are entitled to get Rs.30,000/- each.

32. In the result, the Civil Miscellaneous Appeal is allowed with costs. The second respondent insurance company is directed to deposit a sum of Rs.4,10,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment before the Tribunal. The first appellant is entitled to get Rs.2,00,000/- with accrued interest and the appellants 2 to 8 are entitled to get Rs.30,000/- each with accrued interest. On such deposit, the appellants are permitted to withdraw their respective share along with accrued interest on filing application before the Tribunal.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To
The II Additional District Judge,
The Motor Accident Claims Tribunal,
Poonamallee.

+lcc to Mr. S.Arun Kumar, Advocate, S.R.No. 21618
+lcc to Mr. S.P.Selvaraj, Advocate, S.R.No. 21332

C.M.A.No.2791 of 2016

VBA(CO)
GN(08/07/2019)