BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.08.2019
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
CMA(MD)No.1146 of 2013

1)Sinthu
2)Minor Vijayalakshmi
3)Minor Manikuttan
4)Savathiriyammal
(Minors 2 and 3 through their mother and next friend Sinthu, the 1st appellant herein)
... Appellants/Petitioners

vs.

1)Sathasivan
2)Raju

3)The Branch Manager,
United India Insurance Company Ltd.,
No.3/33-B, P.P.K. Building,
Main Road,
Marthandam.

4)The General Manager,
Tamil Nadu Transport Corporation Ltd.,
Bye-Pass Road,
Madurai. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.795 of 2011 dated 26.03.2012 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.2), Tirunelveli.

For Appellants	:	Mr.T.Selvakumaran
R1	:	Exparte
For R2	:	Mr.N.S.Ramakrishna Dass
For R3	:	Mr.A.S.Mathialagan
For R4	:	No appearance

JUDGMENT

This appeal has been filed by the claimants against the judgment and decree made in MCOP.No.795 of 2011 dated 26.03.2012 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.2), Tirunelveli.

2.It is the case of the appellants/claimants that on 18.06.2011 about 11.15 p.m while the husband of the 1st appellant, father of the appellants 2 and 3 and son of the 4th appellant namely, Vinu, was travelling as a Cleaner in a Lorry bearing registration No.TN-74-3137 belonging to the 1st respondent insured with the 3rd respondent insurance company, the driver of the Lorry drove the same in a rash and negligent manner and while attempting to overtake the 4th respondent transport corporation bus bearing registration No.TN-58-N-1839 in the right lane, the driver of the 4th respondent bus without any signal suddenly turned the bus into the right lane. In this process, the front side of the Lorry hit the right side middle portion of the bus and ran over the center median of the road and got capsized in the left side, as a result, the deceased who was sitting in the left side of the Lorry trapped inside the Lorry and died on the spot and the driver of the Lorry escaped with minor injuries and lodged a wrong complaint as if the deceased was the driver of the Lorry at the time of accident. Seeking compensation for the death of the deceased, the appellants filed a claim petition claiming compensation of Rs.10,00,000/-. The respondents 3 and 4 filed their counter resisting the claim. The Tribunal considering the oral and documentary evidence adduced on both sides, held that the deceased was responsible for causing the accident and directed the 3rd respondent insurance company to pay compensation of Rs.50,000/- under 'No fault liability', against which, the appellants have filed this appeal.

3.The grievance of the appellants is that without considering the evidence of PW2 that the deceased was a Cleaner in the Lorry, solely relying on the FIR lodged by the Lorry driver and the evidence of RW1, the Tribunal ought not to have held that the deceased was responsible for the accident. Therefore, the finding of the Tribunal should be set aside and compensation be awarded as sought for in the claim petition.

4.Before the Tribunal, wife of the deceased was examined as PW1 and eye witness was examined as PW2 and Exs.P1 to P4 were marked. On the side of the respondents, the driver of the 4th respondent bus was examined as RW1; RW2 is the Junior Assistant working in the office of the Regional Transport Officer; RW3 is the Administrative Officer of the 3rd respondent insurance company and Exs.R1 to R3 were marked.

5.Perusal of record shows that PW1 narrated the manner of accident as averred in the claim petition. The Tribunal found from the evidence of RW1-driver of the bus that upon hearing of an alarm, he had seen through the right mirror of the bus that a Lorry ran over the centre median and was coming in a rash and negligent manner and on seeing it, he turned the bus from the Thar road and stopped the same in the mud portion, even then, the back side of the Lorry grazed the right side body of the bus and also found from the cross examination of RW1, wherein, he denied the suggestion that the accident had occurred since he turned the bus to the right side without signal and further stated that there was a small scratch in the right side of the bus which was not caused since he turned the bus to the right side. The evidence of RW2 reads that the deceased was not possessing any driving licence at the time of accident and the evidence of RW3 is to the effect that the deceased who was a Cleaner without licence drove the Lorry and caused the accident.

6.The Tribunal also found from Exs.P2 and P3-motor vehicles inspector's reports that right and left side of the front portion of the Lorry and right side body of the bus upto 4^{th} window were damaged. The Tribunal summoned the records from the Inspector of Police, Sattur, and found that based on the FIR lodged by the Lorry driver, charge sheet has been filed and the criminal case has been ended holding that the deceased was responsible for the accident. Before the Tribunal, the appellants relied on a judgment in 2008 (2) TNMAC 137 for a proposition that FIR alone cannot be taken into account for finding out the negligence and also relied on a judgment in 2011 (2) TNMAC 688 for a proposition that mere registration of criminal case against the deceased itself is not a substantive evidence for the Tribunal to come to the conclusion that he was negligent in causing the accident. However, the Tribunal based on the FIR and the evidence of RWs.1 to 3 and Exs.P2 and P3, held that the deceased negligently drove the Lorry and caused the accident and accordingly awarded compensation of Rs.50,000/- under 'No fault liability'.

7.In my considered opinion, the said finding is erroneous. 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 in the claim petition when compensation is claimed. Therefore, it is the bounden duty of the Tribunal to independently assess the evidence to arrive at the conclusion regarding negligence.

8.Though the FIR has been lodged by the driver of the Lorry against the deceased as if he drove the Lorry in a reckless manner and caused the accident, since the author of FIR has not been examined, at best, it can be taken on record to prove that there was an accident on the particular date and though the criminal case has been ended holding that the deceased was responsible for the accident, still the claims Tribunal has to assess the evidence on record independently to find out the negligence, as the standard of proof in claims cases is only preponderance of probability. The evidence of RW3 is based on the report of the investigating officer appointed by the 3rd respondent insurance company and the report of the private investigating agency cannot be given credence. As per Ex.P3, right side body of the bus upto 4th window were damaged and therefore, the evidence of RW1 that he stopped the bus in the mud portion, even then, the back side of the Lorry grazed the right side body of the bus, by which, there was only a small scratch, cannot be accepted and his evidence is only to save the transport corporation from its liability.

9.As regards the manner of accident, the direct evidence is PW2 who is a co-passenger in the Lorry. PW2 has stated that he took the Lorry on hire for his business purpose and was travelling along with the deceased Vinu who was the Cleaner and the Lorry was driven by one Justin @ Bight Yesudass on Sattur-Virudhunagar four-ways road. He has further deposed that about 11.15 pm., while the driver of the Lorry attempted to overtake the 4th respondent bus, the driver of the bus suddenly turned the bus into the right lane thereby, the Lorry hit the right middle body of the bus and consequently hit the centre median and got capsized in the left side of the road, in which, the deceased fell down and succumb to injuries. PW2 and driver of the Lorry sustained minor injuries. According to PW2, the accident was due to the rash and negligent driving of the Lorry driver and negligent turning of the bus driver without any signal. During cross examination, PW2 has categorically denied the suggestion that the deceased was driving the Lorry at the time of accident. However, the Tribunal rejected the evidence of PW2 on the filmsy reason that he did not take any steps to file a complaint stating that the deceased did not drive the Lorry at the time of accident and only some other person drove the same. In my considered opinion, the said approach is completely erroneous. Merely because PW2 did not lodge any complaint, that will not stand in the way of disbelieving his version as he is a direct and third party eye-witness to the accident. Therefore, the Tribunal ought not to have held that the deceased by his negligent driving, caused the accident. The said finding regarding negligence is liable to be set aside and accordingly set aside and from the above discussion, I hold that the accident had occurred due to the rash and negligent driving of the driver of the Lorry as well as the driver of the transport corporation bus. Consequently, the liability is fixed in the ratio of 50:50 on the 3rd respondent insurance company who is the insurer of Lorry and the 4th respondent transport corporation.

10.On the quantum of compensation, it is the case of the appellants/claimants that the deceased was aged 35 years and by working as a Cleaner, he earned Rs.7,500/- per month. However, no proof has been produced. Even for a vegetable vendor, the Apex Court in **Syed Sadiq vs. United India Insurance Co.Ltd.**, reported in **2014 (1) TN MAC 459(SC)**, has fixed Rs.6,500/- as monthly income, where there was no proof of income. Therefore, as per the above judgment, the monthly income of the deceased is fixed at Rs.6,500/- and as per the judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017)**, 40% of income is added towards future prospects. If the monthly income of the deceased is fixed at Rs.6,500/- and 40% future prospects is added, the monthly income would be Rs.9,100/-. After deducting 1/4th towards the personal expenses and applying 16 multiplier, the loss of income is calculated at Rs.13,10,400/-. But, the appellants in the memorandum of appeal have restricted their claim to Rs.9,50,000/-. Therefore, the appellants are entitled to compensation of Rs.9,50,000/- in addition to Rs.50,000/- awarded by the Tribunal with 8% interest from the date of petition till the date of deposit.

11.In view of the contributory negligence fixed, the respondents 3 and 4 are directed to deposit the total award amount of Rs.10,00,000/- in the ratio of 50 : 50 with proportionate accrued interest and costs. Learned counsel for the 3rd respondent has stated that the award of Rs.50,000/- under 'No fault liability' has already been deposited by the 3rd respondent to the credit of the claim petition. Therefore, the 3rd respondent while depositing their share, shall deduct the above amount of Rs.50,000/- and shall deposit the balance amount with interest as stated above. On such deposit, the 1st appellant/wife is entitled to Rs.2,00,000/- with proportionate interest and costs and the 4th respondent/mother is entitled to Rs.1,00,000/- with proportionate interest. The appellants 2 and 3/minor children are entitled to Rs.3,50,000/- with proportionate interest. The appellants 1 and 4/major claimants are permitted to withdraw their respective shares with interest without filing formal permission petition before the Tribunal. The shares of the appellants 2 and 3/minor claimants shall be deposited in a Nationalised Bank in Fixed Deposit in the name of minors until they attain majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st appellant/mother of minors once in three months directly from the bank.

With the above direction, this Civil Miscellaneous Appeal is allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1)The Judge,
Motor Accidents Claims Tribunal,
(Fast Track Court No.2),
Tirunelveli.

Copy to
The Section Officer,-2 copies
V.R. Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.S.MATHIALAGAN, Advocate (SR-81602[F] dated 14/08/2019)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-81846[F] dated 16/08/2019)

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