



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE MRS. JUSTICE R.THARANI

C.M.A. (MD) No.396 of 2017

and

Cross Objection (MD).No.17 of 2017

and

C.M.P. (MD).No.4304 of 2017

in

C.M.A (MD).No.396 of 2017

C.M.A. (MD) .No.396 of 2017:

The Branch Manager,
Reliance General Insurance Company Limited,
628, 2nd Floor, Balmer Lawrie House
Annasalai,
Chennai.

.. Appellant/2nd respondent

Vs.

1.N.Manivannan

2.Muthusenthamarai

.. Respondents 1 & 2/Petitioners 1 & 2

3. Ramasamy,
Proprietor,
M/s.Bhagyan Constructions,
No.75-A, Sengam Naidu Street,
Mettukandigai, Gudapakam,
Thiruvallur District.

... 2nd respondent/1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, as against the judgment and decree dated 23.12.2016, passed in M.C.O.P.No.876 of 2012 on the file of the Motor Accidents Claims Tribunal/Sessions Judge, Communal Clash Cases Court, Madurai.

For Appellant

: Mr.K.Gokul

For Respondents

: Mr.H.Arumugam

for RR-1 & 2

R-3-dismissed vide court order
dated 04.07.2018

Cross Objection (MD).No.17 of 2017

1.N.Manivannan

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2.Muthusenthamarai



3.Ramasamy,
Proprietor,
M/s.Bhagyam Constructions,
No.75-A, Sengam Naidu Street,
Mettukandigai, Gudapakam,
Thiruvallur District.

..Cross Appellants/Respondent

Vs.

The Branch Manager,
Reliance General Insurance Company Limited,
628, 2nd Floor, Balmer Lawrie House
Chennai.

.. Respondent / Appellant

Prayer : Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code as against the judgment and decree dated 23.12.2016, passed in M.C.O.P.No.876 of 2012 on the file of the Motor Accidents Claims Tribunal/Sessions Judge, Communal Clash Cases Court, Madurai.

For Appellants 1 & 2 : Mr.H.Arumugam
For Respondent : Mr.K.Gokul

C O M M O N J U D G M E N T

[Judgment of the Court was made by **K.KALYANASUNDARAM, J**]

The Insurance Company, aggrieved over the award of the Motor Accidents Claims Tribunal/Sub Court, Communal Clash Cases Court, Madurai, passed in M.C.O.P.No.876 of 2012, has filed this appeal.

2.Being dissatisfied with the quantum, the claimants have come up with Cross Objection (MD).No.17 of 2017, seeking additional compensation of Rs.11,00,000/-.

3.The facts in nutshell are as follows:

M.C.O.P.No.876 of 2012 was filed by the parents of the deceased namely M.Nallakumar, who died in an accident on 28.03.2011. According to the claimants, the deceased was riding his motorcycle along with one Raghuraman as pillion rider. While they were proceeding near Akkarai Check Post, a lorry bearing Regn.No.TN 20 BS 0181, driven by its driver in rash and negligent manner, which has also come in the same direction, hit against the motorcycle. In that process, the lorry ran over the rider of the motorcycle and the pillion rider sustained extensive multiple injuries. The deceased Nallakumar was taken to Global Hospital. In spite of providing best treatment, he succumbed to injuries on 20.04.2011. According to the driver of the lorry was negligent and hence, they are entitled for compensation of Rs.62,00,000/-.



4.The claim was resisted by the appellant by filing a detailed counter, disputing the manner of accident and their liability. It is the case of the appellant that the deceased was negligent and responsible for the incident and hence, the Insurance Company is not liable to pay compensation.

5.Before the Tribunal, in order to prove the negligence, the claimants examined the injured witness Raghuraman as P.W.2 and also marked Ex.P.1/First Information Report. P.W.2 deposed in tune with averments made in the claim petition. Ex.P.4, rough sketch shows that the accident had taken place on the extreme right side of the road.

6.The Trial Court, after considering the evidence, held that the accident happened due to rash and negligent driving of the driver of the lorry and also awarded compensation of Rs.38,90,024/-. Challenging the same, this appeal has been filed by the Insurance Company.

7.Mr.K.Gokul, learned counsel for the appellant would urge that this is a case of head on collision of two vehicles, but the same was not considered by the Tribunal. According to the learned counsel, the deceased has also contributed for the accident and that the award amount is excessive.

8.Per contra, Mr.H.Arumugam, learned counsel for the claimants would submit that the Tribunal, on proper appreciation of evidence, has rightly held that the driver of the lorry was responsible for the accident. It is further added that the deceased, who sustained injury on the date of accident i.e on 28.03.2011 was immediately admitted in Global Hospital and he lost his breath on 20.04.2011 i.e after a period of 23 days. The claimants have spent more than Rs.15,00,000/-, for medical expenses and also produced the medical bills as Exs.P.8 and P.9, but the Tribunal rejected them only on the sole ground that they were duplicate.

9.The learned counsel by relying on the decision of the Honourable Supreme Court in **2018 SCC Online 2736 (State Vs Manimaran)** would contend that the duplicate bill is a primary evidence under Section 63 of the Indian Evidence Act, 1872 and hence, the finding is liable to be set aside and the cross appeal may be allowed. He further added that insofar as the negligence is concerned, the pillion rider, who sustained injuries in the accident, has deposed before the Tribunal, that the accident had taken place, due to the negligence of the driver of the lorry and hence no interference is warranted on that issue.



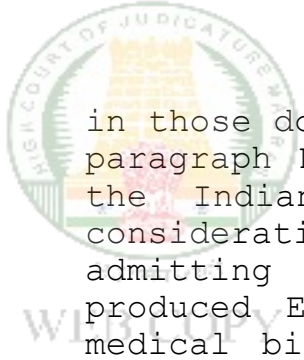
10. On perusal of Ex.P.1, it is seen that a criminal case was registered against the driver of the lorry. The Tribunal, based on the evidence of P.W.2, Exs.P.1 and P.4-rough sketch, in our view, has rightly held that the accident happened due to the negligence of the driver of the lorry. With regard to quantum, the father of the deceased gave evidence stating that his deceased son was working as Assistant System Engineer in Tata Consultancy Services at Siruseri, Chennai, and was drawing a salary of Rs.40,000/- per month. Ex.P.18 is the Gross Salary sheet and Ex.P.19 and 20 are the pay slips of the deceased for the relevant period. They show that the gross salary of the deceased is Rs.23,518/-. As per the recent decision of the Honourable Supreme Court reported in **2017 (2) TNMAC 609(SC) in the case of National Insurance Company Limited Vs. Pranay Sethi and others**, the claimants are entitled for 40% addition towards future prospects. Hence the salary of the deceased is fixed at Rs.32,922/- (rounded off to Rs.33,000/-)

11. Admittedly, the deceased is a bachelor and hence, 50% has to be deducted towards personal expenses and contribution to the family comes to Rs.16,500/-. Considering the age of the deceased by adopting multiplier 18, this Court awards Rs.35,64,000/- towards loss of income. The claimants are also entitled for Rs.70,000/- towards conventional heads. With regard to medical bills/Exs.P.8 and P.9, the Tribunal by one line, has rejected the documents on the ground that they are duplicate bills.

12. It is not in dispute that the deceased was admitted in Global Hospital, Chennai on the date of accident and he was continuously taking treatment till his death i.e 20th April 2011. The Honourable Apex Court, in **2018 SCC Online 2736 (State Vs Manimaran)**, while dealing with a criminal case registered under Section 27(b)(ii) and 28 of the Drugs and Cosmetics Act, held as follows:

"Learned counsel for the respondent has submitted that Exs.P.4 and P.7, that is, the statements of respondent were only carbon copies and that admission of such carbon copies raises serious doubt about the prosecution case. As pointed out by the trial court as well as by the first appellate court, under Section 62 of the Indian Evidence Act, carbon copies can be taken into consideration as primary evidence and we find no infirmity in admitting carbon copies of those documents."

The prosecution relied upon carbon copies of the bills, which were marked as Exs.P.4 to P.7 in that case. The Trial Court holding that they are primary evidence, as per Section 62 of the Indian Evidence Act, convicted the accused. It was also confirmed by the Appellate Court. However, the High Court reversed the conviction and acquitted the accused on the ground that signature was not obtained



in those documents i.e Exs.P.4 to P.7. The Honourable Apex Court in paragraph No.15 of the judgment has held that under Section 62 of the Indian Evidence Act, carbon copies could be taken into consideration as primary evidence and there is no infirmity in admitting carbon copies. In the case on hand, claimants have produced Exp.8 and P.9 and they are the printed copies of the medical bills. Section 62 of the Indian Evidence Act would run thus:

62.Primary Evidence:Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1- Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2- Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest, but where they are all copies of a common original, they are not primary evidence of the contents of the original."

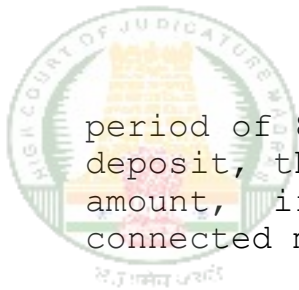
13.A plain reading of the above provision would make it clear that the documents made out of uniform process is a primary evidence. Keeping in view the decision of the Honourable Apex Court referred supra, the reasoning for rejection of the medical bills by the Tribunal is liable to be set aside and accordingly, it is set aside. The claimants seek Rs.11,00,000/- towards medical expenses and therefore, it is allowed.

14.In total, the claimants are entitled to a sum of Rs.47,34,000/- (Rupees forty seven lakhs thirty four thousand only) together with interest at 7.5% per annum. Out of this, the first claimant /father of the deceased is entitled for a sum of Rs.17,34,000/- and the second claimant/mother is entitled to a sum of Rs.30,00,000/-.

15.In view of the above finding, the appeal filed by the Insurance Company is dismissed and Cross Objection filed by the claimants is allowed.

16.It is represented that the Insurance Company has already deposited 50% of the award amount. The appellant Insurance Company is directed to deposit the balance modified award amount within a

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period of 8 weeks from the date of receipt of the judgment. On such deposit, the claimants are entitled to withdraw the amount, less the amount, if any already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

sd/

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Sessions Judge,

Motor Accidents Claims Tribunal/

Communal Clash Cases Court, Madurai.

Copy to:

The Section Officer,

VR Section, (2 Copies),

Madurai Bench of Madras High court, Madurai

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-59633[F] dated 08/04/2019)

C.M.A. (MD) No.396 of 2017

and

Cross Objection (MD).No.17 of 2017

04.04.2019

vs

_MK (07.06.2019) 7P 5C