

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM:

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No. 1008 of 2009

1.Maruthambal
2.Minor.Rajeshkumar
3.Minor.Atchaya
4.Chinnammal

... Appellants/Claimants

Vs.

1.V.Kannan

2.M/s.Bajaj Alliance General Insurance Company Ltd.,
G.E.Plaza, Air Port Road,
Yerwada, Pune,
Maharashtra State.

.... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.11.2008 made in MCOP No.1003 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Perambalur.

For Appellants : Mr.S.Kamadevan

For Respondents : Mr.N.Somasundar for R-2
R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the order of dismissal dated 06.11.2008 made in MCOP No.1003 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Perambalur.

2.The appellants are the claimants in M.C.O.P.No.1003 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Perambalur. They filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Selladurai, who died in the accident that took place on 08.09.2004.

3.According to the appellants, on the date of accident,

while the deceased was proceeding in his TVS XL Super bearing Registration No.TN 46 C 3888 on the Perambalur to Athur Road, near Perambalur BSNL Godown, at that time, another motorcycle bearing Registration No. TN 30 W 2650 came on the opposite direction in a rash and negligent manner and dashed against the deceased Selladurai. Hence, the appellants have filed claim petition against the respondents.

4. The 1st respondent remained exparte.

5.The counter has been filed by the second respondent / Insurance Company denying all the allegations and submitted that the rider of the yamaha motor cycle was riding on the normal speed and TVS 50 was driven by the deceased in a high speed and in a negligent manner and dashed against one Murugesan, who was riding the said Yamaha motor cycle and he died on the spot and the deceased Selladurai died in the hospital. They submitted that purely out of the negligence of TVS 50 rider /Selladurai, the accident took place and further submitted that the legal heirs cannot file a claim petition and it is not maintainable and further the insurer of the TVS 50 has not been made as a party.

6.Before the Tribunal, on behalf of the appellants, 4 witnesses were examined as P.W.1 to P.W.4 and 21 documents were marked as Exs.P1 to P21. On behalf of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and two documents were marked as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence let in by the appellants as well as considering F.I.R. and charge sheet, dismissed the claim petition. Against the order of dismissal dated 06.11.2008 made in MCOP No.1003 of 2005, the appellants have come out with the present appeal.

8.The learned counsel appearing for the appellants submitted that the Court below had dismissed the claim petition without taking note of the peculiar circumstances and the manner in which the accident took place which resulted in the death of the deceased. The accident took place between two vehicles head on collusion. When the deceased was driving a TVS 50 which is a smaller vehicle, the opposite vehicle which is yamaha bike involved in the accident driven by its driver in a rash and negligent manner and dashed against the TVS 50, which was driven by the deceased. The police has failed to establish the facts of the accident without proper investigation and the Court below ought not to have relied on the same.

9. The learned counsel for the appellants further contended that when the accident has taken place between the two vehicles,

the Tribunal ought to have fixed the compensation in proportionate by applying principles of contributory negligence. One Manivel, P.W.5 who had lodged the complaint has deposed that he has signed the blank papers and is not an eye witness to the accident, which was not considered by the Tribunal and only the FIR has been taken note and dismissed the claim petition without impleading the insurer of the vehicle viz., TVS 50. Without even clarifying the facts, they have made the deceased, as accused by the Inspector of Police, Perambalur police Station. The learned counsel for the appellants further submitted that the deceased was working as agricultural coolie and was earning a sum of Rs.4,500/- per month and was aged 40 years at the time of the accident. There are two minor children aged 3 and 5 and old mother were the legal heirs of the deceased and they were not given proportionate amount even for having their life to go on and prayed for allowing this appeal.

10. Per contra, the learned counsel appearing for the second respondent-Insurance Company submitted that the deceased person Mr.Selladurai, being an accused, the claimants who are the legal heirs of accused cannot file a claim petition. The court below has considered the oral and documentary evidence and the fact that the Selladurai's family was not given a police complaint, there is no driving license produced by the parties and they were not in a position to state that who was at fault, further, the Court below has not accepted the sketch filed by the police and also, no Post mortem Report has been done, therefore, the Court below has come to a conclusion that only on the negligence on the part of the said Selladurai, the accident has occurred and dismissed the claim petition.

11.Heard the learned counsel appearing for the appellants as well as the learned counsel for the second respondent and perused the documents placed on record.

12.On going through the evidences of the persons who alleged to have been witnessed the said accident, has later on withdrawn their statements. Manivel/P.W.5, who has alleged in the FIR has deposed that when he was waiting at Athur road near BSNL telephone tower at about 4.45 p.m., a TVS 50 came and dashed against his friend and his relative viz., sekar's Yamaha motor cycle and due to the accident, both the vehicles damaged and Sekar died on the spot and other person Selladurai sustained grievous injuries and he also stated that he was waiting for his relative for attending the wedding in the village. On going through the evidence of the said Manivel, it is seen that he had submitted that at the time of the accident, he was in village. Then he has received a phone call from the police station and then he went to Government Hospital at Thodavur, salem. He saw the body of the sekar and informed by the police that they will get the body after Postmortem.

13. After such information, the said Manivel went to perambalur police station and informed to the police that he is the relative of the deceased sekar. In the said police station, the police have taken his signature in blank papers and then, he had also further submitted that the statement in the FIR was not known to him and further in the cross examination, he has submitted that he do not know, who has given the phone number of him to the police and he had also admitted that he is the relative to the deceased person and he has not given any written submission on his own and all the submissions have been written by the police in the blank papers and signed by him and he also admitted that only after coming to the court, he came to know about the contents of the FIR.

14. All the said statements in the FIR has been denied by the said persons. The Doctor who has been examined as P.W.3, has given treatment to the deceased, Selladurai and he also deposed that due to the accident, he had sustained injuries and he died on 28.12.2004. On 27.12.2004, his condition was deteriorated. Even in his cross objection, he has submitted that only based on the documents, he has given evidence and the other person called Manikam who was examined as P.W.2, who was the neighbour of Selladurai has also deposed that he is an eyewitness to the said accident and only due to the rash and negligent riding of the Yamaha driver, the said accident was taken place. Even in his cross examination, he has admitted that there was no shop or any house on the said road. It is a main road and he also denied the manner of the accident which has been put to him as suggestions and he has not given a police complaint as he was trying to be with the deceased person at hospital, who were seriously injured due to the accident and the same has not been considered by the Court below.

15. The Investigator viz., one Rajendran, P.W.4 who is the Inspector of police has given a statement. In his evidence, he has admitted that based on the complaint given by one Mani s/o sathasiva gounder, he has registered a case. When the accident has taken place in the evening around 4.45, the complaint was registered. But only on 09.09.2004 around 5.45 a.m., he went to the spot and prepared the sketch and mahazar. When he went and visited the deceased Selladurai in the hospital, he was not in a position to give any evidence and hence, he did not enquire him. On 13.09.2004, he was transferred from Perambalur to Trichy and hence he did not proceed the investigation further. The said Inspector has not stated any reason as to why the said Selladurai was not in a position to give any evidence, even till his transfer and also the then police has not taken any steps to further investigate the issue.

16. When the said Rajendran went to the spot, both the vehicles were parked in the road side and he was not in a position to say that whether any tyre was found in the said place. Though he had received the message at 8.30 P.M., the next day only he went to prepare the formalities and he also admitted that only based on the evidence of one Mani, he has prepared FIR. Further, he has also submitted that only after getting the Motor vehicle's Inspector Report, he had further investigated regarding the said accident. In his cross examination, he has admitted that based on the complaint of one Manivel, the FIR has been lodged. On the first investigation, he found that the deceased Selladurai was an accused and he is the person who had contributed to the said accident. However, no other materials has been filed before the Court to show that the deceased Selladurai was negligent and he was the cause for the said accident. No materials have been produced before this Court to show that the deceased Selladurai was the cause and nothing has been produced before this Court and to fix the liability on the side of the deceased Selladurai.

17. On going through the sketch, it shows that the vehicles were colluded in the middle of the road and not on the road side. On the evidence of the wife of the deceased/1st appellant/claimant, it is seen that she was not in a position to produce the document viz., driving license as she has stated that the said document has been lost when shifting the person to the hospital and the court below has gone to the extent to say that they ought to have produced the same from appropriate authorities and as they have not produced any such materials, the court below has held that as he did not have any valid license, he is not entitled for any compensation. From the medical records, it is seen that continuously this person was admitted in the hospital and he has not recovered from the said injuries and died.

18. The learned Counsel for the Insurance Company has produced two citations viz., "2012 AAC 2451 : 2013 (3) AICJ 247 : 2012 (4) TAC 559: 2012 (13) R.C.R. (Civil) 328: 2012 91) T.N.M.A.C.687" and "2014 (1) CTC 893 : 2014 DNJ 125: 2014 (2) CivCC 361 : 2014 (2) AIR Jhar R. 458 : 2014 (2) PLR 633 : 2014 (2) W.L.N. 39 : 2014 (13) SCC 254 : 2014 (2) J.C.R.186 : 2014 (1) R.C.R. (Civil) 926 : 2014 (1) Recent Apex Judgments (R.A.J.) 655 : 2014 (1) Scale 765 : 2014 (1) TAC 724 : 2014 (1) TAC 724 : 2014 (1) Law Herald (SC) 775 : 2014 AAC 865 : 2014 (5) SCC (Cri) 638 : 2014 (104) ALR 225 : 2014 (2) Law Herald 1218 : 2014 (137) AIC 147 : 2014 AIR (SCW) 1081 : 2014 (4) BCR 525 : 2014 (3) Andh LD 146 : 2014 (1) AICJ 544 : 2015 (1) ALL MR 483 : 2014 (1) ACC 484 : 2014 (1) Apex Court Judgments (SC) 439 : 2014 (1) T.N.M.A.C. 254 : 2014 (2) All WC 1900" wherein in the first

cited Judgment in Paragraph No.18 it has been held as follows;

"18.In the light of the above discussions, this Court is not inclined to reverse the finding of negligence, which has to be decided on the basis of evidence in each case. In every case of head on collision, negligence cannot be fixed on both drivers. A sketch produced by either of the parties, in a claim petition can be taken as one of the evidence, to prove the manner of accident, but that alone is not the conclusive proof. The direction of the vehicle shown in the rough sketch alone cannot be a decisive factor to fix negligence."

In the case on hand, the facts are entirely different and this Court is not inclined to accept the said citations.

19.It is seen from the documents that the Court has not considered the evidences in an appropriate manner and wherein no contra evidence has been produced by the authority to show that the said Selladurai was the cause for the accident who was not able to even say anything about the accident. The Court below has not considered the evidence of one Manikam and also the other evidence which has been produced by the parties. One Manikam who was the eyewitness have submitted that on the head on collision, the negligence was on the part of the yamaha rider and the same has not been considered. When the person who was alleged to have given complaint has submitted that he has signed only in the blank papers, it seems that it is the cooked up story of the police to close the case. Hence, this Court is of the view that the dismissal of the claim petition by the Tribunal in MCOP No.1003 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Perambalur, is set aside and it is remanded back to the Tribunal. The Tribunal is directed to decide the matter afresh after affording due opportunity to the parties concerned, within a period of six months from the date of receipt of copy of this order.

20. In the result, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vkrr

To

1. The Motor Accident Claims Tribunal
cum District Judge,
Perambalur.
2. The Section Officer,
V.R. Section
High Court, Madras.

+1cc to Mr.N.Somasundar, Advocate, S.R.No. 715

+1cc to Mr.S.Kamadevan, Advocate, S.R.No. 764

C.M.A.No. 1008 of 2009

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