

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1220 of 2009

1.Kailasam

2.Malliga

... Appellants/Petitioners

Vs.

1.S.Sundaramurthy

2.The Divisional Manager,

The National Insurance Company Limited,

Nehru Street, Pondicherry,

(Opp: Indian Cafe)

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.08.2008 made in M.A.C.T.O.P.No.324 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gingee.

For Appellants : Mr.M.Santhanaraman

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the award dated 22.08.2008 made in M.A.C.T.O.P.No.324 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gingee.

2.The appellants are the claimants in M.A.C.T.O.P.No.324 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gingee. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Palani, who died in the accident that took place on 05.10.2002.

3.The case of the appellants is that on 05.10.2002 at about 11.30 P.M., the deceased Palani went by Motor Cycle bearing Regn.No.TN-09-Y-7915 near Nerkundram Pathai 100 feet road

Chennai. At that time, the vehicle bearing Regn.No.TN32 5306 came in a rash and negligent manner and dashed against the deceased. Due to the said incident, Palani sustained injuries and he was taken to Apollo Hospital. Then he was referred to Government Hospital, Madras. In the meanwhile, he died.

4.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition. Challenging the order of dismissal, the appellants/claimants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the order of the lower Court is contrary to the facts and proposition of law and deserves to be set aside. The Tribunal failed to appreciate the fact that the second respondent-Insurance Company has not produced any evidence to prove that the subject vehicle was not involved in the accident. The Court below erred in not appreciating the report of the Motor Vehicle Inspector in respect of the subject vehicle and the charge sheet, which were marked as documents Exs.P2 and P8 before the Lower Court. The Tribunal failed to appreciate the specific facts of this case and has relied on the authorities, which are exclusively different on its own facts from the facts of the case in hand. The Court below did not consider the hardships to the appellants, who are aged parents and sole dependents of the deceased. He has also placed reliance on the judgment of this Court in New India Assurance Co.Ltd., Chennai Vs. K.Kasthuri & others reported in 2010 (2) TNMAC 662 (mad). Without considering all these aspects, the Tribunal has erroneously dismissed the claim petition and hence, he prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the second respondent/Insurance company contended that before the Tribunal, the claimants failed to prove the identification of the vehicle and also failed to prove that accident took place due to negligence of the driver of the alleged vehicle and hence, the Tribunal has rightly rejected the claim of the appellant and dismissed the claim petition.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. It is seen that the FIR has been lodged by the third party, who has seen the accident, which had occurred in front of his house. In the FIR-Ex.P1, it has mentioned the lorry number as not known. The recitals of the FIR states that the lorry number could not be seen. Whereas, in Motor Vehicle Inspector's report under Ex.P2, it is mentioned as Mini lorry. The motor

vehicle Inspector inspected the vehicle involved in the accident on 08.04.2003, but, the accident took place on 05.10.2002. Ex.P8/charge sheet was laid against the driver of the vehicle bearing Regn.No.TN-32-5306, which is mentioned as mini lorry in the charge sheet. P.W.1, who is the father of the deceased, has not seen the occurrence. He has admitted that he known the vehicle owner through the investigation of the police. Further, he has admitted that R1 has handed over the vehicle and the driver. These admissions compared with the charge sheet. When investigated the same by the police, there is no question of handing over the vehicle. The police who investigated the occurrence viz., Udayakumar named in the charge sheet, was not examined. In the evidence of P.W.2, he has admitted that he cannot say anything about identification of lorry, which involved in the accident. It is clearly stated that P.W.1/father of the deceased has not seen the occurrence and the claimants failed to prove the identification of the vehicle and also failed to prove that the accident took place, due to negligence of the driver of the alleged vehicle. The appellants have admitted that they cannot say anything about the occurrence and hence, the Tribunal has rejected the claim of the appellants. The Tribunal has rejected the contention of the appellants on the ground that there is no identification proof of the alleged accident as per the decision rendered by a Single Judge of this court in New India Assurance Company Limited, Chennai. Vs. K.Kasthuri and others reported in 2010(2) TN MAC 662 (Mad). In the said decision, the learned Single Judge of this court referred the following:

"37. In the above legal background and on the facts of the present case, a duty is cast on this Court to find out as to whether the claimants, irrespective of the charge sheet have proved the involvement of the vehicle and the negligence of Bajaj M80 Motorcycle bearing Registration No. TN 07 W 3402. Admittedly, in Exhibit P-1-FIR, Exhibit P-3-Accident Register and Exhibit P-4-Rough Sketch of the place of occurrence, the registration number of the vehicle was not given by the complainant or the person, who took the injured to the hospital. However, unlike in the reported case, relied on by the learned counsel for the appellant-Insurance Company, there is no inordinate delay in lodging the FIR, as it is evident from Exhibit P-1-FIR that the accident had occurred at 11.55 Hours, and on the same day around 17.00 Hrs., a complaint had been lodged with the Police, Traffic Investigation Wing. Therefore, at this juncture, neither the informant to the

Police or Mr. G. Rajaiyyan, motorcyclist and the pillion rider, Sabapathy, who admitted the injured in the hospital, were not in a position to furnish the registration number to the claimants or to the Police. However, the police, on investigation, has laid Exhibit P-3-Charge sheet against one Mr. Balaji, rider of Bajaj M80.

42. An accident could have been witnessed by many people, but it cannot be expected that all of them would go to the Police Station to lodge complaint. In the case on hand, one Mr. Rajaiyyan, had already lodged a complaint with the Police. During the course of investigation, it is for the Police to collect materials, statement from the concerned and prepare a final report, involving the offending vehicle and its driver.

43. Again, it is not necessary that all those, who had witnessed the accident. Should be examined as witnesses before the Criminal Court. It is for the Police to collect the best evidence for recording conviction against the offender, as strict proof of evidence is required only before the Criminal Court. In such view of the matter. If the Police had chosen not to examine P.W.2, as one of their witnesses before the Criminal Court, that cannot be put against the claimants as one of the reasons to discard his evidence let in before the Claims Tribunal. It is not also necessary that those, who are included as witnesses by the Police before the Criminal Court should also be examined before the Claims Tribunal for arriving at the conclusion of negligence. Needless to say that the standard of proof required is entirely different from the Criminal Court.

44. At this juncture, it is useful to extract the observations of the Division Bench of this Court in Oriental Insurance Co. Ltd. V. K. Balasubramanian (supra), wherein, this Court held as follows:

"It is a well settled proposition of law that the judgment of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal no relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act,

except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

45. As per the above said Division Bench judgment, admissions made before the Criminal Court are not conclusive proof of what is admitted therein, unless and until, they are proved to be incorrect or false on the person against whom, the admissions are sought to be used as evidence. Conversely, if the admission or conviction based on pleading guilty is not proved to be incorrect or false, then the same shall be the best piece of evidence. In the case on hand, there is no doubt regarding the accident for the reason that Exhibit P-1-FIR, Exhibit P-3-Accident Register and Exhibit P-4-Sketch, were prepared immediately after the accident. A charge sheet has also been laid against one Mr. Balaji, rider of Bajaj M80 motorcycle insured with the appellant-Insurance Company. The appellant-Insurance Company has not let in any oral or documentary evidence, rebutting the manner of accident.

46. In the normal course, if there was any doubt regarding the involvement of the vehicle in an accident, the Insurance Company would engage an Investigator to find out the manner of accident which apparently has not been done in the present case. If there was any suspicion, a request could have been made to the Police or some other Investigating Agency to re-do the investigation properly. In the case on hand, apparently, no such exercise has been done by the appellant-Insurance Company. Had the

Insurance Company taken any steps to examine the owner of Bajaj M80 or the Inspector of Police, who laid charge against the rider of the above said vehicle and proved that the laying of charge sheet, as per Exhibit P-4, is incorrect or false, then the said document can be said to be not conclusive proof of the facts contained therein.

9. In view of the above, the Civil Miscellaneous Appeal is allowed and the judgment of the Court below is hereby set aside with a direction to the Court below to consider the claim of the appellants. Accordingly, the matter is remanded back to the Tribunal for fresh consideration to decide the case in accordance with law, within a period of six months from the date of receipt of a copy of this judgment. It is open to the appellants as well as the respondents to let in any further evidence to prove their case. No costs.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

sbn
To

The Additional District Judge,
Motor Accident Claims Tribunal,
Subordinate Court, Gingee.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.M.R.Sivakumar, Advocate Sr.14274
+1cc to M/s.S.Arunkumar, Advocate Sr.14389

C.M.A.No.1220 of 2009

vsn II[co]
srg 02/02/2021