

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2454 of 2013

1. Sasikala

2.Minor Janani

3.Minor Nivetha

4.Minor Ragul

(Minors 2 to 4 are rep by their Next Friend, Guardian and Mother Sasikala)

5.Seerangayee

6.Raman

...Appellants/Petitioners

Vs

1.Senthilraja

2.National Insurance company Limited,

No.66, Perundurai Road, Erode.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous appeal is filed U/s 173 of Motor Vehicles Act of 1988 to set aside the order made in M.C.O.P.No.4 of 2009 on the file of the Motor Accident Claims Tribunal, Tiruchengode dated 19.02.2013 in respect of negligence and fixation of compensation.

For appellant :Mr. C. Kulanthaivel

For respondent-2 :Mr. J. Chandran

For R1 : No Appearance

J U D G M E N T

This appeal has been filed against the dismissal order passed in M.C.O.P.No.4 of 2009 on the file of the Motor Accident Claims Tribunal, Tiruchengode dated 19.02.2013.

2.The appellants are the legal heirs of the deceased who died in a road accident that took place on 04.12.2004 at about 8.00 p.m. The first respondent and the second respondents are the owner and insurer of the vehicle respectively.

3.The brief facts of the case is as follows:

On 04.12.2004 at about 8.00 p.m when the deceased (palanivelu) was riding his two wheeler bearing Registration No.TN-34-B-1062 near Vetneri Hospital, Manickampalayam in Tiruchengode at Namakkal Road, a lorry bearing Registration No.TN-34-B-0466 which was driven by the driver in a rash and negligent manner and applied sudden brake, consequently the deceased also hit against the lorry and the deceased palanivelu fell down on the ground and sustained fatal injuries and died. Hence the legal heirs of the deceased filed a claim petition before the claims tribunal in M.C.O.P.No.4 of 2009 on the file of the Motor Accident Claims Tribunal, Tiruchengode seeking Rs.5,00,000/- as compensation.

4.The accident was reported to the Velagoundampatti police Station and a case in Cr.No.417/2004 under Sections 279 and 338 of I.P.C. was filed against the driver of the lorry and it was altered to Section 304(1) IPC.

5.The Tribunal dismissed the claim petition on the ground that the deceased was under the influence of alcohol and he only hit his two wheeler against the lorry and the negligence exists on the part of the deceased.

6.Aggrieved against the dismissal order passed by the Claims Tribunal, the appellants are before this Court.

7.The learned counsel for the appellant contended that the Tribunal erred in dismissing the claim petition and not even considering the fact that the deceased is the sole bread winner of the family. He would further contend that negligence is on the part of the driver of the lorry and the dismissal order passed by the Tribunal is erroneous and liable to set aside. Hence, prays this Court to award a reasonable amount as compensation.

8.The learned counsel for the second respondent/Insurance Company contended that the Tribunal after considering each and every aspect and dismissed the claim petition and no interference is called for.

9.Despite serving notice on the first respondent and his name printed in the cause list, there is no appearance on behalf of the first respondent. Hence, the appeal itself is taken up for final disposal, since the disposal of this case will not affect the first respondent in any manner.

10. On a perusal of the impugned award it reveals that the deceased was admitted in Ticuchengode Government General Hospital and then he was taken to K.M.C.H Hospital, Erode. In both the Accident Registers nowhere it has been mentioned that the deceased was under the influence of alcohol. Since some quarrel arose between the relatives and hospital authorities after the death of the deceased regarding the payment of Hospital fees, the Doctors of K.M.C.H Hospital, Erode had belatedly and wantonly mentioned in the death summary as the deceased was under the influence of alcohol. But, the fact remains that the deceased was not all consumed alcohol and admittedly he was working as a supervisor at TASMAL wherein their main business is to sell the liquor.

11. This Court observes that even though assuming that the deceased was under the influence of alcohol at the time of accident, the Doctors who are examined as R.Ws. 1 and 3 would have established the same in the Accident Register copy or any other documents produced at the time of admission. Hence, it is crystal clear that the Doctors belatedly and wantonly mentioned the false statement, that the deceased was under the influence of alcohol. This Court also observed that the F.I.R. which was registered was also closed as mistake of fact.

12. Before advertizing further, it will be appropriate to go into the findings and Judgments rendered by this Court and Hon'ble Apex Court in similar facts of the case, which is as follows:

The Judgment rendered by the Hon'ble Apex Court in G.S. Singhvi & S.J., Mukhopadhaya J.J which was reported in 2013 (4) TNMAC 44 (SC) in para No. 24 it has been held that:

"The mere position of the vehicles after accident, as shown in a scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of the one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc, depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc., From the scene of the accident, one may suggest presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct

or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

The above appeal was filed by the claimants and it was partly allowed.

In the Judgment rendered by this Court in the case of Muniyasamy Vs Managing Director, Tamil Nadu State Transport Corporation Ltd., in C.M.A.No.733 & 854 of 2010 reported in 2013(1) TNMAC 854, in para No.14 it has been stated as:

"Alcohol/arrack will emit smell. A drunkyard losing control of his mind and body, depends on various factors. By mere taking of alcohol and smell of alcohol, we cannot come to a conclusion that the person had lost control of his mind and he would have dashed against the moving bus."

In the above appeal which was filed by the claimants, the appeal was partly allowed and the matter was remitted back to the Court below.

In the Judgment rendered rendered in C.M.A.No.2701 of 2009 in the case of Baskar Vs. Superintended of Police Namakkal and others reported in 2015 ACJ 1395 in para No.7.2 and 7.3 it is been held that:

It is not the case of the respondents that they have complied with the instructions so issued. Instead, the respondents are satisfied with referring the case as "mistake of fact" whether this finding would bind the claims Tribunal?

Needless to point out that not even the Judgment of the Criminal Court is binding upon the Claims Tribunal. The Tribunal is expected to peruse the oral and documentary evidence that is adduced before it and come to an independent conclusion. The first respondent, having been the Superintendent of policy, anybody, who is investigating the Criminal case working under the same respondent, would not have the courage to file the charge sheet against the first respondent herein. Even assuming that the referral of the criminal case as mistake of fact is fact is factually correct, even then, the duty of the Claims Tribunal, as contemplated under Section 168

of the Motor Vehicles Act, is to hold an inquiry into the Section 168 of the Motor Vehicles Act, is to hold an inquiry into the claim. The Tribunal constituted under the Act, is not the regular Court. The Tribunal, constituted under the Act, is not the regular Court and the Tribunal is expected to adopt a proactive approach Court. It would be usefull to consider the scope of enquiry before the Claims Tribunal and it would be appropriate to quote the decision reported in the case of Mayur Arora V. Amit, 2011 (1) TAC 878:-

10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIT filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest state of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon MAC.APP.No.609/2009 Page 52 of 116 receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident: accident having been caused due to rash and negligent driving, age, occupation and income of the deceased: number of legal copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.

In the above petition, which is filed by the appellants/Claimants was partly allowed.

13. The Tribunal dismissed the claim petition on the ground that the deceased consumed alcohol, the complaint was closed as

mistake of fact and the negligence exists on the part of deceased, who hit the lorry. From the above Judgments it is clear that even presuming the above factors are true, the Tribunal ought not to have dismissed the claim petition.

14. Therefore, this Court is unable to accept the contentions raised by the Tribunal as well the learned counsel appearing for the Insurance Company with regard to the dismissal of the claim petition. It is needless to mention that it is the statutory duty of the Tribunal to award just and reasonable compensation to the road accident victims, depending upon the nature of injury, his age, occupation etc., These aspects have to be decided, on consideration of oral, documentary and Medical Evidence. In the circumstances, for quantifying the damages, the matter needs to be tried a fresh.

15. In the result, C.M.A.No.2454 is allowed. The Judgment of the Tribunal dated 19.02.2013 in M.C.O.P.No.4 of 2009 on the file of Motor Accident Claims Tribunal is set aside and the matter is remanded back to the the Court below for fresh disposal. The learned Judge of the Motor Accident Claims Tribunal, Tiruchengode is directed to give adequate opportunity to both side to let in further oral and documentary evidence, if any and quantify the compensation payable to the claimants and dispose the case, in accordance with law as expeditious as possible. No Costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Tiruchengode

2. The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to Mr.C. Kulanthaivel, Advocate sr 8705.

+1 CC to Mr.J. Chandran, Advocate sr 9141.

C.M.A.No.2454 of 2013

SJ(CO)

SP(14/12/2020)