

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2771 of 2016
and
C.M.P.No. 20082 of 2016

M/s. Bajaj Allianz General
Insurance Company Limited,
GE PLAZA, Airport Road,
Yerwada, Pune - 411 006. ...Appellant/2nd Respondent

/versus/

1. Mr.Tamilarasan
2. Mrs.Jeyakodi ...Respondents 1 & 2/Petitioners
3. Mrs.S.Rajathy ...3rd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the Decree and Judgment dated 29.02.2016 passed in M.C.O.P.No.26 of 2012 on the file of Motor Accident Claims Tribunal, Principal District Judge at Ariyalur.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Ms.Revathy for

Mr.R.Nalliyappan for R1 & R2.
R3 - No appearance.

सत्यमेव जयते
J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the Insurance Company aggrieved by fixing the responsibility and liability on it to indemnify the insured, the loss and damage payable to the parents of the accident victim.

2. Heard the learned counsel for the appellant and the learned counsel for the respondents.

3. The claim petition has been filed by the parents of Thamayanthi, aged about 10 years, who died in the road accident on 11.01.2011 at about 16.45 hours while she was walking on the Trichy to Jayamkondam Main Road at Natchiyarpettai. According to the First Information Report given by the father of the deceased Thamayanthi and registered by the Udayarpalayam Police station at about 18.00 hours, a silver colour Tata Indica car hit her daughter and fled away. Necessary action against the offending vehicle driver was sought. The police investigated the complaint and fixed the 1st respondent vehicle as offending vehicle, which is a silver colour Maruthi Suzuki Ritz bearing registration No. TN 48 M 2904 insured under the 2nd respondent. The claim petition seeking a compensation of Rs.5,00,000/- was filed against the owner of the vehicle Maruthi Suzuki Ritz car and its insurer Bajaj Allianz General Insurance Co. Limited.

4. The owner of the vehicle remained absent and did not file any counter and was set ex-parte. Whereas the Insurance Company filed counter more specifically stating that the concerned vehicle was not involved in the accident and the FIR does not implicate the vehicle under their insurance. By fraud and collusion between the 1st respondent (owner of the Maruthi Suzuki Ritz) and the claimants /petitioners, the claim petition filed with false particulars.

5. The case of the insurer was that, the offending car which caused accident fled away from the accident spot. At that time, the 1st respondent vehicle crossed the accident spot. Since it was identical in colour to that of the offending car, the 1st respondent vehicle has been implicated. The Motor Vehicle Inspector has conducted the inspection of the 1st respondent vehicle after six months and four days and he has recorded the damage in front left side gear mudguard scratch. This cannot be co-related with the alleged accident. Hence it was contested by the 2nd respondent/Insurance Company that they are not liable to compensate or indemnify the 1st respondent, since the 1st respondent vehicle was not involved in the alleged accident.

6. Before the Tribunal, the claimants have examined two witnesses. The first witness is the father of the victim girl, who was also the first informant. The FIR marked as Ex.P-1. The second witness Mr.Karunanithi who claims to be the eye witness to the accident. 6 exhibits were marked in support of the claim petition. On the side of the respondents, 5 witnesses were examined. Out of which, RW.1 is a Special Sub Inspector attached to Udayarpalayam police station. RW.2 is the owner of the vehicle Maruthi Suzuki Ritz and RW.3 is the husband of the vehicle owner. RW.4 is the officer of the 2nd respondent/Insurance Company, who conducted investigation in

respect of this accident and RW.5-Senthil Kumar is the alleged driver of the 1st respondent vehicle on the date of accident.

7. The respondent side has marked a letter written by RW.5 addressing to the Insurance Company, which is dated 28.01.2014 as Ex.R1. The Tribunal has formulated four questions for consideration:

"1.Whether the first respondent's vehicle was involved in accident or not?

2.On whose rash and negligence this accident occurred?

3.Whether the petitioners are entitled for compensation? If so what is the quantum?

4.Whose is liable to pay compensation to the petitioner?"

8. After considering the evidence placed before it, the Tribunal has rejected the defence taken by the Insurance Company regarding the mistaken identity of the offending vehicle and has held that the evidence of RW.2, RW.3 and RW.5 and the letter purported to be given by RW.5 which is marked as Ex.R5 are not sufficient to wriggle out from the liability. Having held so, the Tribunal has awarded a compensation of Rs.2,35,000/- to the claimants.

9. In this appeal, preferred by the Insurance Company, it is stated that the Tribunal has miserably failed to properly identify the offending vehicle and has erroneously asserted that the Maruthi Suzuki Ritz is the vehicle, which was cause for the alleged road accident.

10. The learned counsel for the Insurance Company referring the information given in the FIR and the evidence let in by the witnesses and submitted that the Insurance Company has established through these witnesses and evidence that the Maruthi Suzuki Ritz car insured under them was not the offending vehicle. The owner of the vehicle RW.2 and her husband RW.3 have specifically deposed that their vehicle was not involved in the accident and they were wrongly fixed by the police subsequently due to the complaint given by the father of the victim to the Deputy Superintendent of Police for the alleged inaction against the police. They have made a random enquiry at the Taxi stand and has fixed RW.5 as the driver of the vehicle and the Maruthi Suzuki Ritz car of the R.2 as the offending vehicle taking advantage of the colour similarity without ascertaining the true facts.

11. The learned counsel for the appellant would further submit that the deposition of the witnesses examined on the side

of the respondents were not properly appreciated and the evidence of PW.2, who claims to be an eye witness to the accident, reveals that his evidence was implanted only for the purpose of fixing the liability on the Insurance Company.

12. Per contra, the learned counsel appearing for the respondent would submit that the owner of the vehicle who has been arrayed as 1st respondent in the claim petition has not chosen to file any counter but has obliged the Insurance Company to mount on the witness box and to support the Insurance Company to get rid of the responsibility fixed on it. Whereas, the 2nd respondent who has contested the matter has specifically admitted the fact that the vehicle under their insurance was present at the time of accident. Having admitted the presence of the vehicle, the witnesses for the respondent R3 and R5 had spoken quite contrary on the fact and also contrary on their own evidence regarding their presence at the scene of occurrence and the presence of their vehicle at the scene of accident at the time of occurrence.

13. The learned counsel for the claimant/respondent/s would submit that, RW.2 and RW.3 would admit that the vehicle was driven by the Acting Driver. The police in the course of their investigation had fixed RW.5 as the acting driver who was on wheels at the the time of accident. However to get rid of the liability RW.2 and RW.3 have falsely deposed that they don't remember the name of the acting driver engaged by them on the date of accident.

14. After considering the rival submissions made by the learned counsels on either side and on perusal of the records, this Court finds that at the time of accident the victim girl who was aged about 10 years and studying 5th standard. While she was walking along the road, hit by silver colour car which fled away from the place of accident. The father of the victim girl has gone to the police station within 1 hour 15 minutes and has reported the accident in which he has mentioned the colour of the car as silver and make of the car as TATA Indica. Later on investigation, the police has identified the silver colour Maruthi Suzuki Ritz is the offending vehicle. In this regard it is pertinent to note and record the defence taken by the 2nd respondent in the counter regarding the presence of the vehicle at the spot of accident. Hence the same is extracted below:

"Further it is humbly submitted that the vehicle which caused the said accident has sped away from the accident spot immediately. At that time this respondent vehicle was crossing the accident spot which is also in same colour and same type of car (similar vehicle) slowly moving from the accident

spot capitalizing the situation they have implicated this respondent vehicle to gain unrich enrichment from this respondent."

15. From the evidence we find that after informing the police about the accident, the police has not taken any action against the hit and run vehicle. Therefore, the aggrieved father has gone to the higher police officials, thereafter the investigation has taken momentum. The police has zero down RW.5 Senthil Kumar and he was interrogated by the police. The evidence of RW.5 who appeared before the Court only after issuance of arrest warrant reveals that one week after the accident Udayarpalayam limit police came to the taxi stand at Jayamkondam, Samayapuram koil and enquired the drivers whether there is any one by name Senthilkumar. Since there are three persons namely Senthilkumar including RW.5, they all were enquired and thereafter police filed charge sheet against him (RW.5) in Cr.No.9 of 2011 for rash and negligent driven causing death of Thamayanthi. Thereafter, the officials from the Bajaj Alliance Insurance enquired him and obtained Ex.R1 on 28.01.2014, about 3 years after the filing of the final report.

16. In the said circumstances and scenario, it is also relevant to consider the evidence of RW.2 and RW.3 who have spoken about the conduct of the police. The owner of the vehicle Rajathi RW.2 shoutly denies the involvement of her car in the accident occurred on 11.01.2011. She admits that the car was driven by the acting driver, but she does not know his name. Her husband travelled in the car on that particular day. So her evidence denying the involvement of her vehicle in the accident is not reliable, since she was not travelling in the car on that day. Now analysing the evidence of her husband RW.3 Natesan who admits that he was travelling in the car on that day driven by the acting driver. He also conveniently says that he does not know the name of the driver. He admits that on 11.01.2011, he passed through the accident site when he was travelling in the car from Trichy to vangudi via Kallathur at 16.45 hours, his vehicle was not involved in any accident and Thamayanthi was not hit by his car. He came to know about the incident only when the Inspector enquired about the incident. On compulsion statements were recorded. In the cross examination, he has reiterated that on that day he crossed the accident site at Nathiyar palayam in his car and reaffirmed that the car was driven by the driver whose name he has not known.

17. With these evidence, the learned counsel for the Insurance Company tried to impress upon this Court that the Tribunal ought to have exonerated the Insurance Company since the claimant has failed to prove beyond doubt that the vehicle insured under them was the cause for the accident and contrarily

based on the contradiction in the claimant case, they have probabilise that the Maruthi Suzuki Ritz vehicle could not have caused the accident.

18. At this juncture, it is pertinent to analyse the evidence of PW.2 Karunanithi, a resident of Nachiyarpalayam village, who claims to be the eye witness to the occurrence, and deposed that he witnessed the accident and he noticed the offending car number and its colour. On seeing the accident he rushed to rescue Thamayanthi, but he found that Thamayanthi has lost her breath.

19. In the cross examination, this witness admits that he has not given the complaint to the police regarding the accident. The police enquired him, but so far he was not called to give evidence before any other Court regarding the accident. He reiterated that the offending car is the Maruthi Suzuki Ritz, but he is not aware of the make, model and its registration number, but it is a silver colour car.

20. Now the point before this Court for consideration is that with these information whether the conclusion of the Tribunal fixing the identity of the offending vehicle as 1st respondent vehicle Maruthi Suzuki Ritz is probable or not.

21. In the case of Motor Accidents Claims, strict proof of evidence is not required, but, at the same time, there must be evidence which should probabilise the case of the claimant. Being a welfare legislation, fair compensation has to be given to the claimant fixing the responsibility on the right person. From the evidence discussed above, we find that the accident was caused by a silver colour car and at the time of the accident, the car of RW.2 has passed through the scene of accident and same was witnessed by PW.2. PW.2 passing through scene of accident is an admitted fact has deposed about the make, colour and also the registration number, but cannot recollect the same during the cross examination. RW.5 admits within a week from the date of accident, police enquired him.

22. In the said circumstances, it is pertinent to note that after the accident the police were lethargic, they have not acted upon, but taken their own time. Only after matter taken to the notice of the higher officials, they started investigation. They have gone to the taxi stand and enquired about the driver by name Senthilkumar and RW.5 Senthil Kumar was zero down as the driver of the offending vehicle. The RW.2 and RW.3 feign ignorance of all these facts and had deposed that they came to know about registration of criminal case belatedly. After three years, the Insurance Company has taken statements from them and

stick on that statements to same themselves and the insurer. When the owner of the vehicle admits that on the day of accident the vehicle was driven by the acting driver but his name he conveniently forgotten, it does not give clear impression to this Court that RW.5 Senthil Kumar was not the driver of the offending vehicle on that day. When the preponderance of probability of the circumstances of the evidence strongly against the vehicle of RW.2 and its driver RW.5, for the sake of fixing the responsibility to decide the liability under the Motor Accidents Claims, this Court is of the view that the Tribunal has rightly decided the cause against the Insurance Company which is the appellant before us. Hence this Court holds that the appeal has no merit and deserves to be dismissed.

23. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Tribunal order is upheld. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Principal District Court,
Ariyalur.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.33488

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C.M.A.No.2771 of 2016
and
C.M.P.No. 20082 of 2016

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srg 22/04/2021