IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.09.2020
Pronounced On	16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1560 of 2018

(Through Video Conferencing)

1.T. Maheswari

2.Minor. T. Malavika

3.Minor. T. Rajeswari

4.Minor. T. Thirukumaran

5.A.Pushpavalli. ... Appellants/Petitioner

(Appellants 2 to 4 are represented by their mother and Natural Guardian T.Maheswari, the 1st appellant herein)

Vs.

1.C.Venkatesan

2.Reliance General Insurance Company Ltd.,
Rep. by its Managing Director,
No.628, 2nd Floor, Balmer Lawrie House,
Anna Salai, Chennai - 600 018. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the Award and Decree dated 20.02.2018 made in M.C.O.P.No.3863 of 2013 passed by the learned Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, dismissing the claim petition and award compensation as prayed for.

For Appellants : Mr.S.Sathish Rajan
For 2nd Respondent : Mr.S.Arun kumar

J U D G M E N T

C.SARAVANAN, J.

The appellants are the unsuccessful claimants before the Motor Accident Claims Tribunal at Chennai presided over by the II Judge of the II Small Causes Court, Chennai. By the impugned Judgment and Decree dated 20.02.2018, the Tribunal has dismissed the claim petition filed by the appellants herein in M.C.O.P.No.3863 of 2013.

2. The appellants are the wife, three minor children and the mother of the deceased A.Thamaraichelvan who died along with another occupant of the Tata Ace Mini Van bearing registration No.TN-18-M-9579 on 13.12.2012.

3. The legal representatives of other deceased occupant Babu Raj were however able to get favourable award from the same Motor Accidents Claims Tribunal in M.C.O.P.No.2575 of 2013 vide Judgment and Decree dated 23.10.2019.

4. When M.C.O.P.No.2575 of 2013 was taken up for hearing later, it was presided over by a different Presiding Officer and thus these two cases came to be disposed at different point of time though both the cases pertained to the same accident .

5. The brief facts of the case according to the appellants in their claim petition are that on 13.12.2012, the deceased A.Thamaraichelvan was travelling in his Tata Ace Mini Van bearing registration No.TN-18-M-9579 along with the another deceased Babu Raj for delivering paint items.

6. In the claim petition, it was stated that the deceased A.Thamaraichelvan was the owner of the said Tata Ace Mini Van insured with Tata AIG Insurance Co. Ltd. and that the said Tata Ace Mini Van was being driven by the said Babu Raj the other occupant who also died in accident.

7. However, in M.C.O.P.No.2575 of 2013, the legal representatives of the said Babu Raj claimed that he travelled as an agent of the goods carried in the said Tata Ace Mini Van at the time of the accident. In the said claim petition, the legal representatives of the said Babu Raj have alleged that the Tata Ace Mini Van was driven by the deceased A.Thamaraichelvan in a rash and negligent manner and therefore caused the accident which resulted in fatal accident killing both of the occupants.

8. On the other hand, in their claim statement before the Tribunal, the appellants who were claimants stated that the accident took place when the said Babu Raj was driving the Tata Ace Mini Van and collided it against the insured lorry belonging

to the 1st respondent bearing registration No.TN-20-S-4446 insured with the 2nd respondent Insurance Company herein.

9. On behalf of the appellants, the 1st appellant deposed evidence as P.W.1, one Dakshinamoorthy deposed evidence as P.W.2. Exhibits P1 to 12 were marked on their.

10. On behalf of the 2nd respondent Insurance Company, Exhibit R1 to Exhibit R3 were marked through R.W.1, the Legal Manager of the 2nd respondent Insurance Company. The documents that were marked on behalf of the 2nd respondent Insurance Company are copy of the FIR, MV Report of both the vehicles and the Final Report of the Police bringing a closure of the FIR as the said A.Thamaraichelvan died in the accident.

11. In this appeal, it is stated that the Tribunal has come to an erroneous conclusion based on the Exhibit P1/R1- FIR and Exhibit R3 Final Report. It is stated that Exhibit P1/R1- FIR was lodged by the driver of the insured lorry who wrongly stated that the Tata Ace Mini Van was driven in a rash and negligent manner by the deceased A.Thamaraichelvan and caused the accident.

12. It is submitted that FIR was registered based on the wrong particulars furnished by the driver of the insured lorry and that the police failed to alter the same even though the some of the villagers who had witnessed the accident claimed that the accident was due to rash and negligent driving of the insured lorry.

13. It is further submitted that P.W.2 was an eyewitness who had witnessed the accident and therefore the Tribunal erred in exonerating the respondents herein from their liability for the accident.

14. During the course of the hearing, the learned counsel for the 2nd respondent Insurance Company filed a copy of the sketch prepared by the police station pursuant to which Exhibit P1/R1 FIR was issued.

15. On behalf of the 2nd respondent Insurance Company, it is submitted that the Tribunal has come to a fair conclusion on facts that the appellants have failed to discharge the burden of proof satisfactorily before it. It was further submitted that the Tribunal had correctly doubted the credibility of the evidence of P.W.2 in as much as he had clearly admitted during the cross-examination that he visited the accident site only after the accident and that he could not conclusively state as to who was responsible for the accident and he could not also

confirm as to who was driving the Tata Ace Mini Van at the time of accident.

16. It is further submitted that P.W.1 was not an eyewitness and has also clearly admitted in her deposition during cross-examination that she had not witnessed by accident and could not clearly state as to who was negligent and caused the accident.

17. It was further submitted that the Hon'ble Supreme Court in Nishan Singh and Others Vs. Oriental Insurance Co. Ltd., (2018) 6 SCC 765, under similar circumstances held that it was the duty of the vehicle which was following the vehicle going in front of it, to leave sufficient gap as required under Motor Vehicle Rules.

18. It was also submitted that the said rule is required to be followed strictly only to avoid such accident. It was therefore submitted that as per Nishan Singh's case referred to supra appellants were not entitled to compensation as the deceased was a tort-feasor in the instant case.

19. It was submitted that the appellants were at best entitled to a compensation not more than Rs.50,000/- under "No Fault Liability" as held by the Hon'ble Supreme Court in K.Nandakumar Vs. M.D., Thanthai Periyar Transport Corporation Limited, (1996) 2 SCC 736.

20. The learned counsel for the 2nd respondent Insurance Company therefore prayed for dismissal of this appeal.

21. On behalf of the appellants, the learned counsel for the appellants placed reliance on the following decisions:-

i. Bimla Devi and Others Vs. Himachal Road Transport Corpn. and Others, (2009) 13 SCC 530.
ii. Shivaji and Another Vs. Divisional Manager, United India Insurance Co. Ltd. and Another, (2019) 12 SCC 395.
iii. Rani and Others Vs. Sivanathan and Another, 2016 SCC OnLine Mad 18285.

22. On behalf of the 2nd respondent, the learned counsel for the 2nd respondent placed reliance on the following decisions also over above those cited in the previous paragraphs:-

i. Deepal GirishbhaiSoni and Others Vs. United India Insurance Co. Ltd, Baroda, (2004) 5 SCC 385.
ii. Reshma Kumari and Others Vs. Madan Mohan and Another, (2013) 9 SCC 65.

23. We have perused the evidence on record including the deposition of P.W.1, P.W.2 and R.W.1. We have also perused the

Judgment and Decree dated 23.10.2019 passed in M.C.O.P.No.2575 of 2013 filed by the legal representatives of Babu Raj the other deceased -occupant of the said Tata Ace Mini Van.

24. There apart from the 1st claimant therein, ie. the wife of the deceased Babu Raj, two other witnesses were examined as PW.1 to PW.3. Mr.Paramasivan was examined as PW.2 while Mr.Nageshwara Rao, the Branch Manager of PNX Logistics Transport Company and was examined as PW.3. The deceased Babu Raj is said to have worked as an Operation Manager in the said company.

25. The deceased A.Thamaraichelvan was the owner of the Tata Ace Mini Van and therefore it is unlikely that as an agent of the goods being transported, the other deceased Babu Raj would have driven the said van at the time of the accident though such a possibility cannot be ruled out considering the fact that the accident took place during the wee hours of the night and these persons may have swapped their position to give respite to the other. However, we cannot speculate on the same in absence of any direct or indirect evidence.

26. We will therefore conclude that the deceased A.Thamaraichelvan was on the wheels of the Tata Ace Mini Van at the time of the accident and the other occupant Babu Raj travelled as an agent of the goods in the said Tata Ace Mini Van.

27. Though as per Exhibits P1/R1 the FIR and R3 Final Report the negligence has been fastened on the driver of the Tata Ace Mini Van namely deceased A.Thamaraichelvan there is no direct evidence to come to a conclusion one way or the other in absence of the evidence of the driver of the lorry himself.

28. The deposition of PW.2 Dakshinamoorthy, the alleged eyewitness who appeared on behalf of the appellants appears to be unreliable and was perhaps introduced with a view to secure relief infavour of the appellants underestimating the powers of the Tribunal to come to a fair conclusion on facts in its quest to award a just compensation to the appellants.

29. In our view, evidence of the PW.2 has been rightly ignored by the Tribunal. At the same time, even in absence of the evidence of PW.2 Dakshinamoorthy, the Tribunal and also this Court has to determine the claim petition based on preponderance of probability.

30. This we say so particularly in absence of any independent evidence of a lorry driver or other eye witnesses who could have given correct evidence regarding the manner of the accident.

31. The sole person who was alive who could have given a statement regarding the accident and who is said to have filed Exhibit P1/R1FIR has not been examined. Further, a goods lorry normally also has a cleaner who accompanies the driver. However, there is no evidence to suggest whether the lorry driver alone was present at the time of the accident or whether there was a cleaner.

32. The accident is said to have taken place at about 3.00 a.m. on the highway between Chennai and Tindivanam. Certainly, the statement of the paramedicals who would have come to take the bodies of the deceased could have been produced. The Police Patrol and the Toll gate manning the highways falling within their jurisdiction would have noted the accident and generated independent records. These records have not been produced.

33.The accident sketch filed by the learned counsel for the 2nd respondent Insurance Company indicates that the lorry and the Tata Ace Mini Van were on the extreme left hand side of the highway. Therefore, it cannot be straightaway inferred that the deceased A.Thamaraichelvan was negligent considering the purported time of the accident as the FIR is 3.00 a.m. on 13.12.2012. Exhibit P1/R1FIR merely indicates that criminal proceedings were on account of unnatural death due to the accident. Barring that there is nothing else to be inferred. Further, Exhibit R3 Final Report merely brings a closure of the Exhibit P1/R1 FIR. They do not in any manner establish the truth regarding the negligence or other wise of the lorry driver or the deceased A.Thamaraichelvan.

34. The claimants who are the legal representatives of the deceased also cannot be expected to produce the driver of the lorry. It would have been more apposite if both M.C.O.P.No.2575 of 2013 filed by the legal representatives of the deceased Babu Raj and M.C.O.P.No.3863 of 2013 filed by the appellants herein were taken up together and decided by the same Presiding Officer of the Tribunal as both the claims arise out of the same accident.

35. We are at a loss to understand why such an exercise was not done. If such an exercise was made, perhaps the Tribunal may have viewed the case differently and come to a slightly different conclusion on facts. Further, it remains unexplained as to why M.C.O.P No. 3863 of 2013 was decided earlier while M.C.O.P.No.2575 of 2013 was decided later even though respondents are common in both cases except that in M.C.O.P.No.2575 of 2013, deceased A.Thamaraichelvan and the insurer of the Tata Ace Mini Van were also named as respondents along with respondents herein. There are also few incongruity in

the amounts awarded by the Tribunal in the said case based on the averments. However, we are refraining from making further comments.

36. In our view, the learned Presiding Officer of the Tribunal has erred while passing the impugned Judgment and Decree by entirely shifting the burden of proof on the appellants/claimants ignoring the fact that as claimants staying in their house hundreds of miles away for the spot of the accident, they are not expected to prove their case in the same manner as a plaintiff in a Civil Suit.

37. They have to merely establish the fact of accident involving motor vehicle. Strict rules of evidence cannot be applied while deciding a claim petition under the provisions of the Motor Vehicles Act, 1988. In our view, it was for the insurance company to establish their defence by letting in positive evidence if it had to really distance itself from the liability cast on it under the provisions of the Motor Vehicles Act, 1988.

38. Further, the Insurance Companies are well organised and have the wherewithal to investigate and ensure witnesses are summoned to prove their case or disprove the claim of the claimants. It is no part of their duty to deny legitimate compensation that is to be paid to dependents for statutory duty is cast on them to pay compensation.

39. They cannot merely rely on Exhibit P1/R1- FIR and Exhibit R3 Final Report. These documents by themselves do not establish as to who was negligent and/or was responsible for the accident. At best, they establish the occurrence of the accident and the death due to the accident.

40. Considering the fact that the accident is of the year 2013 and considering the fact that the driver of the lorry was not produced as a witness by the 2nd respondent Insurance Company to establish negligence on the part of deceased A.Thamaraichelvan, the driver of the Tata Ace Mini Van, we are of the view that the benefit of doubt should go to the appellants who are legal representatives of the deceased A.Thamaraichelvan who died in the accident along with Babu Raj. Mere production of Exhibit P1/R1FIR and Exhibit R3 Final Report was not sufficient to establish the negligence on the part of the deceased A.Thamaraichelvan. These are documents which are subsequent to the accident and are based on the statement of the lorry driver who was perhaps the sole witness whose statement has not been tested.

41. Under the circumstances, we are inclined to hold that

the appellants were entitled to compensation under Section 166 read with Section 168 of the Motor Vehicles Act, 1988. We therefore hold that the Tribunal erred in rejecting the claim petition filed by the appellants before it.

42. Though it was vehemently contended on behalf of the 2nd respondent Insurance Company that contributory negligence should be inferred as sketch vide Ex.P3 clearly indicated that the Tata Ace Mini Van driven by the deceased A.Thamaraichelvan came from behind of the insured lorry insured with the 2nd respondent Insurance company and hit the lorry and therefore there should be reduction in the compensation payable to the appellants/claimants on account of contributory negligence.

43. We are unable to countenance the same for reducing the compensation to the appellants as there is no evidence to substantiate the contributory negligence on the part of the deceased A.Thamaraichelvan The accident is said to have taken place at about 3.00 a.m. on 13.12.2012. There are no eye witnesses who had witnessed the accident. Neither the driver of the insured lorry nor the owner of the insured lorry were examined to substantiate the allegation in the FIR. In our view, the FIR had a limited role. It was intended to record the death of two persons on account of the unnatural cause and to initiate and bring the closure to a case on account of the unnatural death. In the proceedings before the Motor Accident Claims Tribunal, it was incumbent on the part of the Insurance Companies to have the driver of the insured lorry summoned to give evidence so that his statement could have been tested to confirm as to whether the statement that the accident was on account of the rash and negligent driving of the driver of Tata Ace Mini Van, i.e. deceased A.Thamaraichelvan or there was negligence on his part. We are therefore unable to infer any case of contributory negligence in absence of any other evidences to the contrary.

44. We now proceed to determine the just compensation payable to the appellants herein.

45. The deceased A.Thamaraichelvan was the owner of the Tata Ace Mini Van. He was aged about 35 years. As per the claim statement, he was earning a sum of Rs.15,000/- per month. The accident is of the year 2012. Considering the fact that the deceased was the owner of the accident Van and supporting a family consisting of himself, his wife, three minor children and an aged mother, we are inclined to conclude that the net income of the deceased would have been not less than Rs.13,500/- per month.

46. Since the deceased was aged about 35 years, the correct

multiplier to be applied would be 16 as per the decision Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121.

47. The appellants are also entitled for an enhanced compensation on account of future prospects as per the decision of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

48. Further, as per the latest decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130, compensation has to be awarded on account of loss of consortium to the 1^{st} appellant, towards loss of parental consortium to the 2^{nd}, 3^{rd} and 4^{th} appellants. The 5^{th} appellant being the mother is also entitled for loss of love and affection. That apart, the appellants are entitled to compensation under other conventional heads. Accordingly, we award the following compensation to the appellants:-

Heads and Calculation	Amount
Loss of dependency:- Monthly income of the deceased - 13,500/- Annual income (13,500 x 12) : Rs.1,62,000/- Add: Future Prospectus at 40% (1,62,000 x 40/100) : Rs. 64,800/- -------------------- : Rs.2,26,800/- Less: Personal Expenses at $1/4^{th}$ (2,26,800 x $1/4^{th}$) : Rs. 56,700/- -------------------- Annual contribution to the family : Rs.1,70,100/- -------------------- Multiplier - 16 (1,70,100 x 16) : Rs.27,21,600/-	Rs.27,21,600/-
Loss of consortium to the 1^{st} appellant (wife)	Rs. 40,000/-

Heads and Calculation	Amount
Loss of parental consortium to 2nd to 4th appellants (children) - 40,000 x 3	Rs. 1,20,000/-
Loss of love and affection to the 5th appellant (mother)	Rs. 20,000/-
Loss of Estate	Rs. 75,000/-
Funeral Expenses	Rs. 10,000/-
Transportation	Rs. 10,000/-
Total	Rs.29,96,600/- rounded off to Rs.30,00,000/-

49. It is noticed that while filing this Civil Miscellaneous Appeal, the appellants sought exemption from paying the court-fee of Rs.29,275.50/- vide C.M.P.No.11675 of 2018 in C.M.A.Sr.No.48621 of 2018. It was allowed by an order dated 13.07.2018 of this Court. The said order is reproduced below:-

> The above petition seeking exemption from paying the court-fee of Rs.29,275.50/- is ordered, subject to the condition that, in the event of any enhancement in the compensation amount, the petitioner(s)/appellant(s) will have to pay the requisite court-fee.

50. Therefore, the appellants are directed to pay the necessary court fee on the compensation now being awarded by this Court and file proof of payment of such court-fee before the Tribunal to withdraw the compensation to be deposited by the 2nd respondent Insurance Company.

51. The 2nd respondent Insurance Company is directed to deposit the compensation of Rs.30,00,000/- together with interest at 7.5% per annum from the date of claim till the date of deposit before the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

52. The compensation of Rs.30,00,000 is apportioned to the appellants as follows:-

Appellants	Out of loss of dependency of Rs.27,21,600/-	Loss of consortium or Loss of parental consortium or Loss of love and affection	Balance amount including Transportation and Funeral expenses	Total
1st appellant (wife)	Rs.6,21,600/-	Rs.40,000/-	Rs.98,400/-	Rs.7,60,000/-
2nd to 4th appellants (Children)	Rs.6,00,000/- (each)	Rs.40,000/- (each)	-	Rs.6,40,000/- (each)
5th appellant (mother)	Rs.3,00,000/-	Rs.20,000/-	-	Rs.3,20,000/-

53. The 1st and 5th appellants are permitted to withdraw their respective shares together with interest, by filing suitable application before the Tribunal.

54. Since the 2nd to 4th appellants are minor, the Tribunal is directed to deposit their shares in anyone of the Nationalised Bank under reinvestment scheme till they attain majority. The 1st appellant, who is the mother and the guardian of the 2nd to 4th appellants, is permitted to withdraw the accrued interest from the deposit shares of the 2nd to 4th appellants once in three months directly from the said Bank. On attaining majority, 2nd to 4th appellants may be permitted by the Tribunal to withdraw their shares together with interest, by filing suitable application before it.

55. Accordingly, this Civil Miscellaneous Appeal is allowed. No cost.

Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

To:
The Motor Accident Claims Tribunal,
IInd Judge Court of Small Causes, Chennai.

Copy to
The Section Officer
VR Section
High Court Madras

+1 cc to Mr.S.Sathish Rajan Advocate sr34642
+1 cc to Mr.S.Arunkumar Advocate sr34612

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