

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3160 of 2017

1.Padmavathy
2.K.Moorthy
3.K.Saravanan
4.K.Natraj
5.K.Jayaprakash

.. Appellants/Petitioners

Vs.

1.Ravi

2.United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.134, Greams Road,
Chennai - 6.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.06.2017 made in M.C.O.P.No.3208 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For R2 : Mr.J.Michael Visuvasam

For R1 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 15.06.2017 made in M.C.O.P.No.3208 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.3208 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death

of one Kandiban, who died in the accident that took place on 10.02.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence let in by the appellants, dismissed the claim petition.

4.Against the order of dismissal dated 15.06.2017 made in M.C.O.P.No.3208 of 2013, the appellants have come out the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition relying on FIR. The Tribunal failed to see that the author of FIR was not examined. The 1st respondent has given the complaint. In order to escape from his liability, he has stated that the motorcycle was hit by car and it did not stop and plied away. The appellants examined PW2/eyewitness who has deposed that the 1st respondent who was riding the motorcycle in front of him in a rash and negligent manner, dashed against the car and caused the accident. Due to the said impact, the deceased fell down from the motorcycle and suffered head injury. The Tribunal failed to consider the evidence of PW2 and erroneously relied on the evidence of RW1 who is not an eyewitness. The learned counsel further contended that RW1 is only hear say witness. The learned counsel for the appellants in support of his contention relied on the following judgment of this Court reported in "2011 (2) TN MAC 688" in the case of "Managing Director, Tamil Nadu State Transport Corporation, (Villupuram Division III) Ltd., Kancheepuram Vs. L.Chandramani":

"11.Ex.R1 - FIR, has been given by one Mr.S.Kumar, said to be a passenger in the bus, alleged to have involved in the accident on 11.05.1997. In his Complaint to the Police, he has stated that when he was travelling as a passenger in the bus, near Bracer Bridge, he heard a noise on the right side of the bus. When the along with other passengers raised an alarm, the bus was stopped by the driver. On the basis of the complaint, FIR has been registered against the motorcycle, who rode the vehicle, TVS-50, bearing Registration No.TN-01-D-1455. Though a Criminal case has been registered against the motorcyclist, the result is not known.

12.Registration of FIR is required to set the Criminal law in motion and even if the culpability of the accused is not proved or in other words, even if the driver, against whom, rash and negligence is alleged, is acquitted, it is the

bounden duty of the Tribunal to independently assess the evidence to arrive at the conclusion, regarding negligence.

13. In the case on hand, both the Appellant-Transport Corporation as well as the Respondent/Claimant have failed to mark the Motor Vehicles Inspector's Report of the respective vehicles. Whether the bus suffered any damages on the right side, has not been proved by the Appellant-Transport Corporation by marking the Motor Vehicles Inspector's Report, pertaining to the bus. The driver of the bus has not witnessed the accident, i.e., he did not see the Motorcyclist hitting the bus on the right side of the bus and only when he heard the alarm, he stopped the vehicle. The author of Ex.R1-FIR was also not examined to prove the contents. Therefore, at best, it can be taken on record to prove that there was an accident on 11.05.1997 and by registering a crime, the investigation was set in motion. Now, what remains to be considered is the oral testimony of the Respondent/Claimant against the driver of the State Transport Corporation. In such circumstances, this Court deems it fit to consider the judgments relied on by the learned Counsel for the Appellant.

16. As stated supra, in the case on hand, though Ex.P1-FIR, has been relied on by the Appellant-State Transport Corporation, the contents of the same have not been proved by any supportive evidence, either marking the Motor Vehicles Inspector's Report, pertaining to the bus or by letting in evidence through any independent witness examined on behalf of the Appellant-Transport Corporation. The version of the Respondent-Claimant regarding manner of accident, is different and does not bank on the FIR. Even perusal of the contents of Ex.P1-FIR, does not in clear terms attribute negligence on the part of the motorcyclist/Claimant and therefore, merely because, a Criminal case has been registered, against the motorcyclist by the police, that alone is not a substantive evidence before the Tribunal to hold him negligent.

20. It is well settled that evidence in the Criminal case is not ipso facto proof of negligence in claim cases under the Motor Vehicles Act, 1988. further, the best person to throw light

as to how the accident actually took place is the driver of the vehicle. The contents of FIR need not be wholly true. The object of lodging an FIR in the ordinary course, would be only to the limited extent of setting the Criminal law in motion. FIR and police papers are not substantive piece of evidence. They are only documents for the purpose of corroboration and/or contradictions and cannot take the place of substantive evidence recorded during trial in the claim cases.

21. Therefore, considering the object of the beneficial legislation, this Court is of the considered view that the approach of the Tribunal, in determining negligence, cannot be said to be manifestly illegal, warranting interference. Hence, the finding regarding negligence, is confirmed."

It is well settled that the contents of FIR or Criminal proceedings, are not conclusive proof to fix the negligence by the Tribunal. The Tribunal has to appreciate the evidence let in before it to conclude and to fix the negligence and prayed for allowing this appeal and for granting compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the 1st respondent is brother-in-law of the deceased and he only gave complaint to the police based on which, FIR was registered. The complaint was given by the 1st respondent at the earliest point of time in which he has stated that an unidentified car driven in a rash and negligent manner, dashed against the motorcycle and did not stop after the accident. From the complaint given by the 1st respondent, it is clear that the accident has occurred only due to rash and negligent driving by the driver of the car. In the Accident Register, it has been stated that the deceased fell down from the motorcycle and sustained injuries. The motorcycle which was driven by the 1st respondent was not involved in the accident. RW1 has deposed based on investigation report and his evidence is valid, FIR is a valid document and its contents cannot be ignored completely. The appellants conveniently avoided examining the 1st respondent. It is not open to the appellants to rely on portion of the FIR alone. In support of their contention, the learned counsel appearing for the 2nd respondent relied on the following judgment of the Hon'ble Apex Court reported in "2007 (13) SCC 476" in the case of "Oriental Insurance Company Limited Vs. Premlata Shukla and Others":

"13. However, the factum of an accident could also be proved from the first information report. It is also to be noted that once a part

of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an exhibit as both the parties intended to rely upon them."

The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal properly appreciated the facts and dismissed the claim petition. There is no error in the said finding of the Tribunal and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellants that while the deceased was riding in pillion in the motorcycle belonging to the 1st respondent, driven by the 1st respondent, the 1st respondent drove the motorcycle in a rash and negligent manner, dashed against the car and caused the accident. To substantiate their claim, they examined PW2/eyewitness. PW2 has deposed that the accident has occurred only due to rash and negligent riding by the 1st respondent who hit the car and due to the said impact, the deceased fell down from the motorcycle and suffered head injury. In the Accident Register also, it was recorded that the deceased fell down from the motorcycle. On the other hand, it is the contention of the 2nd respondent that the accident did not happen due to rash and negligent riding by the 1st respondent. A car which was driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. They relied on the contents of the FIR. The complaint was given by the 1st respondent. In the FIR, it has been stated that the car dashed on the motorcycle, caused the accident and offending vehicle could not be identified. Considering the contents of FIR the contention of the learned counsel appearing for the appellants that the 1st respondent has given a complaint against the driver of the car alleging rash and negligent driving by the driver of the car with a view to escape from his liability, is acceptable in view of the evidence of PW2/eyewitness. The 2nd respondent examined RW1 / Senior Assistant of the Insurance Company, who has deposed based on the investigation report. The investigator was not examined and there is nothing on record to show as to when the investigation was conducted and whether the investigator has recorded any statement. The best way to prove the contention of the 2nd respondent is by examining eye-witness. The 2nd respondent failed to examine any eye-witness.

9.It is well settled that contents of FIR cannot be basis for fixing negligence. The Tribunal relied on FIR and held that the accident is hit and run case. The Tribunal has not even considered the evidence of PW2 and not given any reason for not accepting the said evidence. The appellants examined the eye-witness and proved that the accident occurred due to rash and negligent driving by the 1st respondent. The judgment referred to above relied on by the learned counsel for the 2nd respondent/Insurance Company does not support the case of the 2nd respondent. For the above reason, the award of the Tribunal dismissing the claim petition is liable to be set aside and it is hereby set aside.

10.As far as quantum of compensation is concerned, the appellants have claimed that the deceased was working as a mason and was earning a sum of Rs.600/- per day. As per Ex.P2/postmortem certificate, the deceased was aged 53 years at the time of accident. The appellants have not produced any document to prove the avocation and income of the deceased. The amount claimed by the appellants is excessive. In the absence of any material evidence to prove the income of the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The deceased was aged 53 years. The appellants are entitled to 10% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable for the age group between 51 and 55 is '11'. There are five dependants of the deceased, after deducting 1/4th towards personal expenses, the loss of dependency is arrived at Rs.10,89,000/- {(Rs.10,000/- + 1,000 (Rs.10,000/- x 10%) x 12 x 11 x 3/4)}. The 1st appellant is the wife of the deceased and she lost her husband at the age of 45 years. Hence, a sum of Rs.40,000/- is awarded towards loss of consortium. The appellants 2 to 5 are sons of the deceased and a sum of Rs.20,000/- each is awarded towards loss of love & affection. A sum of Rs.15,000/- each is awarded towards funeral expenses and loss of estate.

11.It is well settled that the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by this Court as follows:

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of dependency	10,89,000

2.	Loss of consortium to the 1 st appellant	40,000
3.	Loss of love and affection to the appellants 2 to 5 (Rs.20,000/- each)	80,000
4.	Funeral expenses	15,000
5.	Loss of estate	15,000
	Total	Rs.12,39,000/-

12. In the result, this Civil Miscellaneous Appeal is allowed and the 2nd respondent is liable to pay compensation awarded by this Court at Rs.12,39,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw 1/3rd and appellants 2 to 5 are permitted to withdraw balance 2/3rd of the award amount equally along with proportionate interest and costs. The appellants are directed to pay the necessary Court fee for the amounts awarded by this Court. No costs.

Sd/-

Asst. Registrar

//True Copy//

Sub Asst. Registrar

mtl

To

1. The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

Copy to

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

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+1 C.C.to MR.J.Michael Visuvasam, ADVOCATE, SR.NO.11698

+1 C.C.to MR. Mr.K.Varadhakamaraj ADVOCATE, SR.NO.12269

C.M.A.No.3160 of 2017

VC (22/01/2021)