



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2021

PRONOUNCED ON : 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1487 of 2015

G.Dhakshanamoorthy @ Dasanathan ... Appellant/Petitioner

Vs.

1. Venkatraman

2. Saroja

3. United India Insurance Company Limited,
represented by its Branch Manager,
No.235, Gandhi Market Road, Arni.

4. S.Dhanasekaran ... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Judgment and decree in MCOP.No.150 of 2001, dated 10.03.2015, on the file of the Motor Accident Claims Tribunal/Sub Court, Arni.

For Appellant : Mr.P.Satheesh Kumar

For R3 : Mr.R.Rathna Thara

For R1, R2 & R4 : No appearance

JUDGMENT

(This case has been heard through video conference)

The claimant is the appellant herein.

2.For the sake of convenience the parties are referred to as per their ranking before the Tribunal.

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

The case of the claim petitioner is that on 15.06.2000 at



WEB

about 10.30 a.m., when the deceased was walking on the left side of the road in Kannamangalam main Bazaar near Karpagam Super Market, a Ambassador car owned by the second respondent was driven by its driver rashly and negligently and the same was coming from the Thiruvannamalai to Vellore direction. Even though it is a main bazaar, the driver was coming at a rash speed and came on the mud road and dashed against the deceased. The deceased sustained multiple injuries all over the body and died on the same day. Hence, the claim petitioner, who is the son of the deceased has filed a petition in MCOP.No.150 of 2001 before the Motor Accident Claims Tribunal - Sub Court, Arni, seeking compensation for the death of his father in the road accident and the learned Judge had dismissed the said petition by a judgment dated 10.03.2015, holding that the vehicle of the second respondent is not involved in the accident. Hence, CMA.

4. Heard the learned counsels and perused the materials placed on record.

5. Before the Tribunal, on behalf of the petitioner, the son of the deceased was examined as PW1 and the occurrence witness was examined as PW2 and marked the documentary evidence viz., Exs.P1 to P6. On behalf of the respondents, the husband of the owner of the car [who is the Additional Superintendent of the neighbouring District at the relevant point of time] was examined as PW1, the Inspector, who has filed the referred charge sheet was examined as PW2 and the Assistant from the Insurance Company was examined as PW3 and marked the documentary evidence viz., Ex.R1/Copy of FIR, Ex.R2/Final report, Ex.R3/referred charge sheet entered in the Magistrate Court register, Ex.R4/Registration certificate of the vehicle, Ex.R5/driving license of the car driver at the relevant point of time and Ex.R6 is the copy of the Insurance certificate.

6. The learned counsel for the appellant herein/claim petitioner would contend that the Tribunal has committed an error in holding that the car owned by the second respondent has not involved in the accident and thereby, the learned judge has dismissed the said petition. Further, he would submit that the accident had happened due to rash and negligent driving of the driver of the car only and there was no negligence on the part of the deceased. Hence, the respondents are liable to pay compensation and he would draw my attention to the evidence of PW1, PW2 and Ex.R1/FIR.

7. Per contra, the learned counsel for the Insurance Company/third respondent herein would draw my attention to the evidence of RW1, who is the husband of the second respondent/owner of the vehicle would contend that the two wheeler hit against the deceased, the driver of the car obliged



to take the injured to the Government Hospital at Vellore. However, the car was falsely implicated in this case and relied upon the referred charge sheet marked as Ex.R6.

8.Per contra, the case of the owner of the vehicle/second respondent is that the car has not involved in the accident and further during the cross examination of PW1, PW2, it is suggested that two wheeler had hit against the deceased and not the four wheeler owned by the second respondent.

9.On the date of the accident, the vehicle was duly insured with the Insurance Company as could be seen from Ex.R6/Insurance Police Copy.

10.PW1 is the son of the deceased, who had accompanied his father on the fateful day, has narrated the manner of the accident. In the cross-examination an attempt was made on behalf of the owner of the vehicle that only two wheeler had hit against the deceased and not the four wheeler car. He would categorically and emphatically denied the same and further asserted that the car alone has dashed against his father and consequently, he died due to the injuries sustained in the accident. An independent occurrence witness viz., PW2 was examined and he could depose the manner of the accident as to how when PW1 along with his aged father (deceased) was trying to cross the road, when they were on the road a two wheeler was coming in front, that was followed by the second respondent car and the second respondent car alone has dashed against the deceased. He also denied the suggestion that has made similar to PW1 in the cross-examination.

11.On a perusal of Ex.R1/FIR, which has immediately lodged before the concerned police also goes to show that the manner of the accident as deposed by PW1 and PW2, is duly corroborated.

12.It remains to be stated that the husband of the owner of the vehicle viz., first respondent is direct P.A. to the District Superintendent of Police of the neighbouring District. No doubt it is true that the police have filed referred charge sheet. Merely because a referred charge sheet has been filed by the police that does not bar the claimant to narrate his case.

13.After perusing the oral evidence of PW1 and PW2 coupled with Ex.R1/FIR, which came into existence at the earlier point of time, I find that all is not well with the referred charge sheet filed by the police. Since, this is claim petition, this Court is not proposed to elaborate further except to say that evidence of PW1 and PW2, who are present at the scene of occurrence duly corroborated by the documentary evidence of Ex.R1/FIR, which came into existence immediately after accident,



inspire the confidence of this Court.

14. It remains to be stated that the first respondent is the husband of the second respondent. Initially the first respondent was shown as owner of the vehicle and based upon counter statement filed by him, his wife who is registered owner of the vehicle was added as a second respondent. Based upon the counter statement filed by R2, the Insurance Company was impleaded as R3.

15(a).The first respondent being the husband of the second respondent/owner of the vehicle, deposed his version as to the manner of the accident. Admittedly, the first respondent is not the occurrence witness, he is only a hearsay witness and hence, his version regarding the manner of the accident cannot be accepted as the same falls under the category "hearsay witness", which is inadmissible in evidence.

15(b).Furthermore, the first respondent had admitted in his cross-examination that at the relevant point of time, he was working as a direct P.A. to the District Superintendent of Police in Vellore District. He has also admitted that the vehicle belongs to the second respondent has been mentioned as offending vehicle in Ex.R1/FIR. In order to substantiate his version, the first respondent had examined his car driver namely, K.S.Murali as RW2, who could depose that he had parked the vehicle on seeing PW1 and the deceased crossing the road and a two wheeler which came from behind the car, over took the car, went in front of the car and touched the deceased and went and he has not narrated further.

16.At this juncture, it remains to be stated that in the cross-examination of PW1, it is clearly suggested to PW1 that the two wheeler going in front of the car had touched the deceased. However, both PW1 and PW2 have categorically stated that the two wheeler came closer to them as if they are touching but the case of PW1 and PW2 denied that the car alone dashed against them. RW2 also admitted that in the FIR, he has been shown as an accused for causing death by negligence.

17.Taking note of the fact that Ex.R1/FIR came into existence on the earlier point of time and the evidence of PW1 and PW2 is clear and co-gent, duly corroborated by Ex.R1/FIR as to the manner of the accident. Had the car been parked in front of the deceased?, the car could not have been dashed against the person, who is about to cross the road and hence, I find that the version of RW2 (driver of the car) is a self serving statement to save his skin.

18.Merely because the referred charge sheet has been filed



before the Criminal Court in connection with the FIR that does not a bar for the Tribunal Constituted under the Motor Vehicles Act, to consider the question of determination of the manner of the accident. As I find that the evidence of PW1 and PW2 is natural and is very probable and the version of RW2 is self serving in nature and hence, I hold that the evidence of PW1 and PW2 inspire the confidence of this Court and come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the second respondent vehicle, which is duly insured with the third respondent/Insurance Company and thus, the claim petitioner/appellant has successfully demonstrated his case by preponderance of probability as to the involvement of the vehicle of the second respondent and hence, respondents 2 and 3 are jointly and severally liable to pay the compensation to the claimant. In this view of the matter, the finding recorded by the Tribunal is hereby vacated.

19.On the point of quantum, on the date of the accident as per Ex.P2, the deceased aged about 65 years and was a agricultural Cooli and hence, multiplier 7 can be adopted as per the Judgment reported in 2009 (2) TN MAC 1 (SC) : 2009 - [Sarla Verma & Ors Vs. Delhi Transport Corp. & Another] and since, the accident is of the year 2000, notional income is fixed at Rs.3,000/- per month. Accordingly, loss of income is calculated as under:

$$3,000 \times 12 \times 7 \times 1/3 = 84,000/-$$

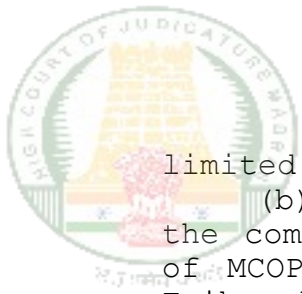
20.The petitioner being the son of the deceased, he is entitled to get a sum of Rs.50,000/- under the head of loss of love and affection, Rs.15,000/- under the head of funeral expenses, Rs.15,000/- under the head of transportation and the same are shown as under:

Sl. No.	Head	Amount granted by this Court (in Rs.)
1.	loss of income	84,000/-
2.	Funeral Expenses	15,000/-
3.	Transportation Charges	15,000/-
4.	Loss of love and affection	50,000/-
	Total	1,64,000/-

Hence, this Court awards a sum of Rs.1,64,000/-(Rupees One Lakh Sixty Four Thousand Only) as compensation.

21.In the result,

(a)This Civil Miscellaneous Appeal is partly allowed to the



limited extent indicated as indicated above.

(b) The 2nd & 3rd respondent herein are directed to deposit the compensation amount as awarded by this court to the credit of MCOP.No.150 of 2001, on the file of Motor Accidents Claims Tribunal, Sub Court, Arni, within a period of eight weeks from the date of receipt of a copy of this judgment.

(c) The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the claim petitioner/ appellant herein is entitled to take award amount.

(e) The claim petitioner is entitled to pay necessary Court fee, if any, on the awarded compensation.

(f) No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

dua

To

The Motor Accident Claims Tribunal,
Sub Judge, Arni.

+1cc to M/s.P.Satheesh Kumar, Advocate, S.R.No.28624

C.M.A.No.1487 of 2015

VSN-II (CO)
SU (13/05/2022)