



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.1824 of 2018
and

C.M.P.No.14098 of 2018

M/s TATA AIG General Insurance Company Limited
May Flower Apartments
Dr.Balasundaram Road
ATT Colony, Coimbatore-18.

...Appellant/3rd Respondent

Vs.

1.Vijayalakshmi
2.Guru Deepa (Minor)
3.Ajay (Minor)
(2nd and 3rd respondents are represented by the mother & next
friend, the 1st respondent)
4.Raman
5.Pappammal
6.Rajaram
7.Gopalakrishnan

...Respondents 1 to 5/Petitioners 1 to 5
Respondents 6 & 7/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree made in M.C.O.P.No.1272 of 2014 dated 20.09.2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant :Mr.M.B.Raghavan
For Respondents :Mr.MA.P.Thangavel for RR1 to 5
RR 6 & 7 - Notice served - NA

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This Civil Miscellaneous Appeal arises out of the order passed by the Motor Accidents Claims Tribunal, II Additional



District Court, Tiruppur, in M.C.O.P.No.1272 of 2014 dated 20.09.2017.

2.For the sake of convenience, parties are referred to as per their ranking in the claim petition.

3.It is the case of the claimants that on 10.08.2014, at about 10.40 pm., Semalai was riding the two wheeler bearing Registration No.TN 39 S 3188 towards Pongalur near Kovai to Trichy Road, near Jai Vishnu Spintex Mill, at the extreme left side of the road. At that time, all of a sudden, a two wheeler bearing Registration No.TN 38 BK 2693 came on the same direction in a rash and negligent manner dashed the said Semalai and due to the accident he sustained grievous injuries and died in the Government Hospital, Tiruppur. Alleging that the accident had taken place due to the rash and negligent driving of the 1st respondent, the claimants laid a claim petition for compensation of Rs.30,00,000/- before the Tribunal.

4.Resisting the claim made by the claimants, the 3rd respondent filed counter statement inter alia contending that the accident had not occurred in the manner as projected by the claimants. They also denied the age, occupation and income of the deceased.

5.To substantiate the claim, on the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P6 were marked. On the side of the Insurance Company, RW1 to RW3 were examined and Ex.R1 to Ex.R6 were marked.

6.On appreciation of evidence, the Tribunal has come to the conclusion that the said accident occurred due to the rash and negligent driving of the 1st respondent/driver. Therefore, an amount of Rs.23,00,000/- has been awarded under various heads to the claimants, along with interest at the rate of 7.5% from the date of claim petition till the date of realization.

7.Assailing the above award passed by the Tribunal, the appellant/Insurance Company has filed the present appeal.

8.The learned counsel for the appellant/Insurance Company contends that in this case, the vehicle which caused the accident was not identified. The police personnel, after conducting enquiry, closed the case as 'undetected'. Further, there is no evidence to connect the insured motorcycle with the accident. The Tribunal relied upon the evidence of P.W.2-Marimuthu, came to the conclusion that the 1st respondent is the



offender. He would further submit that for the following two reasons, the evidence of P.W.2-Marimuthu cannot be admitted, firstly, during the cross examination, he deposed that he had intimated about the accident to the 1st claimant at 12 'O' Clock. But the complaint before the Police Station was given only on 12.08.2014. The alleged accident happened on 10.08.2014, if the witness, P.W.2 witnessed the accident and intimated the fact to the 1st claimant on the same day at 12.00 pm., the complaint in FIR No.259 of 2014 need not be given after a period of two days, besides, there is no whisper about the involvement of the 1st respondent/driver of the vehicle in the accident. In the complaint it is mentioned that an unknown vehicle hit the two wheeler of the deceased. Secondly, he deposed that the 1st respondent came in the motorcycle with his wife and caused the accident, thereby they also sustained some minor injuries and immediately they rushed from the place of occurrence. On verification of the Motor Vehicles Inspector Report-Ex.P.5, it is found that the vehicle driven by the deceased was irretrievably damaged and the Inspector of Motor Vehicles recorded that due to the accident, the vehicle which caused the accident could not be in a good condition to drive it. If it is so, the evidence of P.W.2 that after the accident, the 1st respondent and his wife went away from the place of occurrence by driving his motorcycle could not be believable. For the above said two reasons, the evidence of P.W.2 could not be reliable, as it is untrue. He could not be an eye witness for the alleged accident and he was planted by the claimants for the purpose of the claim petition. The Tribunal failed to consider the same and placed reliance on the evidence of P.W.2, without any valid reasons. The 1st respondent vehicle was collusively implicated for the purpose of the claim and there is no complaint against the 1st respondent. Apart from the liability, the learned counsel challenged the quantum of compensation awarded by the Tribunal as excessive. The Tribunal erred in allowing 50% towards future prospectus for each of the claimants, which they are not entitled and thus pleaded to allow this appeal.

9.The learned counsel for the claimants supported the award of the Tribunal and further contended that the Tribunal rightly relied upon the evidence of P.W.2-Marimuthu, came to the conclusion that the 1st respondent is responsible for the accident. In a cases related to motor accident compensation claims, claimants are not required to prove the case as it is required to be done in a criminal trial. The Tribunal accepting the evidence of P.W.2 fixed the liability on the 1st respondent/insured vehicle and awarded a just compensation. In support of his argument, he relied upon the decision of the



Hon'ble Supreme Court in the case of Kusum Lata and Others Vs. Satbir and Others reported in (2011) 3 SCC 646 and thus pleaded to dismiss the appeal.

10. This Court carefully considered the submissions of the learned counsel for the appellant Insurance Company; learned counsel for the claimants and perused the materials available on record.

11. In the instant case, it is not in dispute that the deceased Semalai met with an accident and died on 10.08.2014 and his legal heirs, viz., his wife, 2 minor children and parents, are the claimants. In the claim petition, it has been clearly stated that the deceased died at the age of 30 years. On perusal of the FIR would go to show that though the accident took place on 10.08.2014, the FIR came to be registered only on 12.08.2014, after a period of two days, which was not explained by the claimants. Further, in the complaint it is alleged that an unknown vehicle caused the accident and there is no specific allegation is made against the 1st respondent. Upon receiving the complaint, the police conducted investigation and finally come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of an unknown vehicle and closed the case as undetected in RCS.No.62 of 2014. Further, there is no direct eye witness is available on record to connect the 1st respondent with the accident, except the oral evidence of P.W.2-Marimuthu. Now, the only consideration is whether the evidence of P.W.2-Marimuthu can be reliable or not ?. If the P.W.2-Marimuthu really noticed that the 1st respondent hit the vehicle belongs to the deceased, he would have informed the same to the 1st claimant/Vijayalakshmi, ie., the wife of the deceased and there is no necessity for the complainant to give a complaint on the unknown vehicle. Interestingly, the police after conducting investigation closed the case as 'undetected', but, forwarded the 1st respondent's motorcycle for inspection on 22.08.2014, after a period of 12 days. It reveals that the 1st respondent's vehicle was planted for the purpose of claiming compensation before the Motor Accident Claims Tribunal. The Tribunal also without any valid reason and without any reliable evidence to connect the 1st respondent vehicle with the accident wrongly held that the 1st respondent was responsible for the accident. Therefore, the evidence of P.W.2 is unreliable and the finding of the Tribunal in fixing the negligence on the 1st respondent cannot be sustainable.

12. On the other hand, the decision relied on by the learned counsel for the claimants in the case of Kusum Lata and



Others (cited supra) the Hon'ble Supreme Court has held that both the Tribunal and the High Court have refused to accept the presence of the eye witness, as his name was not disclosed in the FIR. But, in this case, the FIR was registered as against the unknown person, no evidence to prove that the insured vehicle caused the accident. Therefore, the decision relied on by the learned counsel for the claimants is not helpful to this case.

13. In fine, involvement of the vehicle belongs to the 2nd respondent, which was driven by the 1st respondent/rider of the vehicle is not proved. Therefore, the 3rd respondent/Insurance Company need not pay any compensation to the claimants. Award passed by the Tribunal in M.C.O.P.No.1272 of 2014 dated 20.09.2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur, against the respondents is hereby set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jer

To

1. The Motor Accidents Claims Tribunal
II Additional District Court, Tiruppur.

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

+1 CC to Mr. Ma. P. Thangavel, Advocate sr 66886.

C.M.A.No.1824 of 2018
and
C.M.P.No.14098 of 2018

PA(CO)
SP(19/01/2022)