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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1354 of 2017

The Branch Manager,
M/s.Iffco Tokio General Insurance Company Limited,
No.5, College Road,
2nd Cross, Tiruppur.

...Appellant/3rd Respondent

Vs

1.Sarasumani	
2.Sureshkumar (Minor)	
3.Santhosh Kumar (Minor)	
(Minor respondents 2 and 3 rep. by mother	
and NF 1 st respondent)	..Respondents 1 to 3/Claimants 1 to 3
4.Rangasamy	..4 th Respondent/1 st Respondent
5.S.Saravanakumar	...5 th Respondent/2 nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2016 made in M.C.O.P.No.1479 of 2010 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Mr.E.Rajadurai for
M/s.M.B.Gobalan Associates

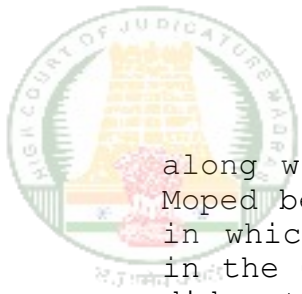
For Respondents : Mr.Karann Damani for R1 to R3
for Mr.Ma.P.Thangavel
No Appearance for R4 and R5

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3.

2.The appeal is filed by the Insurance Company challenging the award passed by the Tribunal granting compensation of Rs.9,41,200/- to the dependents of the deceased Durairaj.

3.The background facts of the case is that on 29.09.2010, at about 08.30 p.m., when the deceased Durairaj on the pillion



along with rider Rangasamy while travelling in the TVS XL Super Moped bearing Registration No.TN28 AP 7149 met with an accident, in which the said Durairaj was badly injured. He was admitted in the Coimbatore Medical College Hospital for his treatment but did not survive and died on 05.10.2010. The accident occurred due to the negligence of the rider of the two wheeler. A claim petition was filed by the dependents of the deceased Durairaj. A sum of Rs.10,00,000/- was sought as compensation by them on the premise that the deceased was earning Rs.400/- per day as Mason and he was 49 years old at the time of death. Due to the death of Durairaj, as dependents they have lost his income and company.

4.The claim petition was resisted by the Insurance Company on the ground that the accident did not occur in the manner stated in the claim petition. It is false to allege that the accident caused due to the negligence of the two wheeler rider. In fact, the First Information Report was given against the unknown hit and run vehicle. The Insurance Company which has insured the two wheeler is not liable to pay any compensation to the claimants, since there is no fault on the part of the two wheeler rider.

5.The trial court relying upon the ocular evidence as P.W.2 deposed before this Court the accident occurred due to the negligence of the two wheeler rider, overlooked the content of the F.I.R. which has attributed the negligence on the unknown hit and run vehicle. Based on the other evidence, award of Rs.9,41,200/- was granted for the claimants.

6.In this appeal, the Insurance Company has assailed the award of the Tribunal on the ground that the Tribunal failed to take note of the F.I.R. which attributes negligence on an unknown vehicle. While so, the claim petition ought to have filed either under Section 140 under no fault liability or under Section 163A of the M.V. Act, the special provision as to payment of compensation on structured formula without proving the negligence whereas the petition filed under Section 166 of the Motor Vehicles Act, the claimants are supposed to prove the negligence of the offending vehicle. While the fact and evidence attributes negligence on an unknown vehicle, the Tribunal ought not to have fastened the liability to compensate the claimants.

7.Learned counsel for the respondents submitted that the content of the F.I.R. is not sacrosanct or conclusive proof. It only sets criminal law into motion and in case of motor accident claim, it should be taken only for ascertaining whether any motor accident occurred or not and not beyond that. Relying upon the judgment of the Supreme Court rendered in Ravi vs BadriNarayanan, 2011(4) SCC 693, learned counsel for the

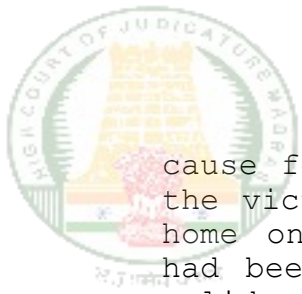


respondents submitted that neither the delay in F.I.R. nor the content of the F.I.R shall deprive the claimant from seeking fair and just compensation for the loss of Durairaj. Learned counsel submitted that it is a proven case of motor accident involving two motor vehicle. Even if the offending vehicle is an unknown vehicle, the Insurance Company, which has insured the two wheeler cannot escape liability, when the claimant is a third party. The case of composite negligence as held by the Supreme Court in Pawankumar and another vs Harikrishan Dass Mohanlal and another reported in 2014(3) SCC 590, the injured claimant or the dependent of the deceased victim are entitled to seek compensation jointly or severally against both the offending vehicle driver or either of them.

8.Per contra, the learned counsel appearing for the appellant relying upon the judgment of the Supreme Court in Surender Kumar Arora and another vs. Dr.Manoj Bisla and other reported in 2012 ACJ 1305, submitted that following the judgment of the Supreme Court in Meena Variyal case, (2007 ACJ 1284), the Supreme Court has held that when a petition filed by the claimants under Section 166 of the Act, it is the responsibility of the claimants to establish that the rider of the vehicle against whom claim is made to prove the rash and negligent driving of the said rider/driver. In this case, there is no evidence to show that the rider of the two wheeler was at fault for rash and negligent driving. The evidence of P.W.2 contrary to the content of the F.I.R is unbelievable, since his presence at the time of accident not corroborated by any other attendant circumstances. Therefore, the learned counsel for the appellant submitted that the Tribunal has grossly held in fixing the responsibility and liability on the Insurance Company when its driver was not at fault.

9.After considering the rival submission and the judgments relied by the learned counsels and on going through the provisions of law, this Court finds that the claim petition filed under Section 166 of the Motor Vehicles Act and the statute is very clear that whenever claim petition filed under Section 166 of the Act, it is the responsibility of the claimant to prove the negligence of the offending vehicle, contra to the provisions of Section 163A of the Act, where there is no responsibility on the part of the claimant to prove negligence. In this case, contra evidence placed before this Court regarding the offending vehicle and the offender. As per the F.I.R., the offending vehicle is an unknown vehicle whereas P.W.2, who alleged to have seen the occurrence, had deposed the offender is the two wheeler rider.

10.The F.I.R. relied by the claimants is dated 05.10.2010 for the accident alleged to have happened on 29.09.2010. The



cause for delay as found in the complaint itself indicates that the victim who sustained injury took first aid and came back to home only on the next day, after developing complications, he had been admitted in the hospital. But even then, there is no valid reason or explanation as to why there was an enormous delay of six days in lodging the complaint. Though delay in lodging the complaint is not fatal but possibility of embellishment cannot be ruled out. The evidence of P.W.2 relied by the claimants also bristles with suspicion, since his present at the scene of accident not been properly explained and why he did not lodge complaint to the police immediately also not explained. P.W.2 is not a stranger but a known person to the victim. In the said circumstances, it is hard to believe that the accident must have happened in the manner in which the claimants have stated in the claim. At the same time, this Court cannot be oblivious of the fact that the death of Durairaj is due to the motor accident. Unfortunately, the claim petition is filed under Section 166 of the Motor Vehicles Act where the burden of proving the negligence of the offending vehicle driver is on the claimant and also the claim petition is filed with the plea that the deceased was earning Rs.400/- per day at the time of accident, make the claimant ineligible to file petition under Section 163A.

11. With a view to provide compensation to the claimant who now deprived of the breadwinner, this Court convert the claim petition filed under section 166 as petition under Section 163A and award compensation as per the structured formula taking note of the contribution of the two wheeler rider for the accident caused.

12. Accordingly, applying the structured formula restricting the income of the deceased at Rs.40,000/- per annum, after deducting 1/3 for his personal expenditure and applying multiplier '13', the loss of income is computed at $(40,000 \times 13 \times 2/3)$. The award is modified as follows:

Compensation under Various Heads	Award passed by this Court
Loss of earning ($40,000 \times 13 \times 2/3$)	Rs.3,46,666/-
Funeral Expenses	Rs. 2,000/-
Loss of consortium	Rs. 5,000/-
Loss of Estate	Rs. 2,500/-
Total	Rs.3,69,500/-



13. Accordingly, the claimants are entitled for compensation of Rs.3,69,500/- with interest at 7.5% interest from the date of claim petition till the date of realisation. The said amount shall be apportioned by the claimants equally. The award amount shall be deposited by the appellant within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share with accrued interest on appropriate application.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

vri

To

Motor Accidents Claims Tribunal
II Additional District Judge,
Tiruppur.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 12720.

CMA NO.1354 of 2017

RSV(CO)
SP(16/09/2021)