



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.03.2021

Pronounced on :12.03.2021

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Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.176 of 2017

Branch Manager,
Oriental Insurance Co.Ltd.,
New No.377, Old No.272, Anna Salai,
3rd Floor, Teynampet,
Chennai.

.. Appellant/2nd Respondent

/versus/

1.Marappan
2.Balamani
3.Raj

.. Respondents/Petitioners & 1st Respondent

Prayer:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 04.01.2016 made in M.C.O.P.No.651 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge, Tiruppur.

For Appellant :Mr.S.Arunkumar

For Respondents :Mr.M.Lokesh for R1 and R2
R3-not ready notice

J U D G M E N T

(This case has been heard through Video Conferencing)

This appeal is filed by the Insurance Company, being aggrieved by the quantum of compensation as well as the liability fixed on it to pay the compensation.

2.Brief facts of the case is that, on 22.12.2009, at about 11.45 p.m., Subramaniam along with one Prakash on the pillion, while riding his motorcycle bearing Registration No.TN 33 U 4000 from south to north along the Tirupur to Anivashi Main Road, nearby MSM Banian Company, Avinashilingampalayam, he dashed behind the parked van bearing Reg.No.TN 09 AJ 6112 and sustained severe injuries. He was taken to the KMC Hospital, Kovai for



treatment and the shifted to Government Hospital, Tiruppur, where he succumbed to the injuries.

3. Police complaint regarding the accident was given by the pillion rider. In the complaint, he attributed negligence on the deceased Subramaniam, who without noticing the parked van and ignoring the warning, dashed behind the van and sustained injury. The said complaint was closed as abated. However, claim petition was filed alleging that the van driver, without any signal and not adhering the traffic regulation, parked the van on the middle of the road and his negligence was the cause for the accident. A sum of Rs.15,00,000/- was claimed by the parents of the deceased for the loss of life and income of the deceased was about 24 years at the time of the accident and earning Rs.8,000/- as Banian Company Worker.

4. The Insurance Company filed counter stating that the claim petition filed after five years of the accident with fabricated documents. Knowing fully well that the deceased was a tort-feasor and no compensation can be claimed against the two wheeler's insurer, claim petition filed against the parked van owner and its insurer. Therefore, a false case has been narrated as if the accident occurred due to the negligence of the van driver which is contrary to the complaint lodged by the eye witness, the pillion rider of the motorcycle. In the First Information Report, the eye witness has clearly stated that the deceased drove the motorcycle in a rash and negligent manner and hit behind the parked van bearing Reg.No.TN 09 AJ 6112 which was stationed in the extreme left side of the road and the same is confirmed through the report of the Motor Vehicle Inspector and from the damages found in the parked van. If at all the claimants have any right to get compensation, they can claim only from the insurer of the two wheeler. The delay for filing the petition after lapse of 5 years is not explained. The driving licence of the deceased not produced. The insurance policy of the motorcycle in which the deceased travelling has not been produced. Therefore, the claim petition has to be dismissed.

5. Before the Tribunal, three witnesses were examined in support of the claimants. 9 exhibits were marked. On the side of the respondents, two witnesses were examined. 3 exhibits were marked.

6. The Tribunal, relying upon the evidence of PW-2 Palanisamy, who claims to be the witness to the accident, held that the accident took place due to the negligence of the van driver. The Tribunal disbelieved the evidence of the van driver RW-1 and awarded a sum of Rs.12,85,000/- as compensation.

7. In the appeal, the Insurance Company has contended that



the finding of the Tribunal attributing the negligence on the part of the van driver, who parked the vehicle on the road margin is contrary to the First Information Report and the evidence of RW-2. The Tribunal erred in relying upon the evidence of PW-2 whose presence not been found in any of the contemporaneous document. Further, the claim petition filed after five years of the accident is intentional and should be discouraged. Without impleading the Insurance company of the two wheeler and without producing the driving licence of the victim, the Tribunal ought not to have awarded Rs.2,85,000/- rounded off Rs.2,50,000/- as compensation under Section 166 of the Motor Vehicles Act. At the most, the claimants are entitled only for a sum of Rs.50,000/- under 'no fault liability' as per the judgment in K.Nandakumar v. Managing Director, Thanthai Periyar Transport Corporation Limited reported in (1996) ACJ 555.

8.The learned counsel appearing for respondents 1 and 2 submitted that the Tribunal has rightly accepted the evidence of PW-2, who is the eye witness to the accident and rejected the evidence of RW-1, who is the interested witness. The fact that the van was parked on the middle of the road, without any signal is clearly proved through P.W-2. Therefore, for the said negligence the van owner and his insurer are liable to compensate the claimants.

9.In support of his submission, the learned counsel appearing for respondents 1 and 2 relied upon the following judgments:-

(1)In The New India Assurance Company Limited rep. by its Divisional Manager v. U.Karmegam and others reported in CD 2016 MHC 378, para 16 is extracted below:-

"16.Though on facts, it is found that, in that case, the truck was parked on the middle of the road and the deceased was trying to overtake the vehicle, the Tribunal has fixed contributory negligence. In the present case, the Tribunal did not come to the conclusion that there was contributory negligence on the part of the deceased. Furthermore, the evidence of P.W.2 and P.W.6, makes it clear that the accident had occurred due to the parking of vehicle on the highway and without blinking parking lights. The said issue was considered by one of us (R. Sudhakar, J.), in 2007(2) TN MAC 518 (United India Insurance Company Limited, Ranipettai Vs. Sundaram and others), wherein it has been held that when the vehicles were parked without parking lights and abstracting free flow of Traffic, negligence can be fastened on the driver of the vehicle."



(2) In Oriental Insurance Co. Ltd., Balaji Towers, 1st Floor No.1, Abdul Razak Street, Saidapet, Chennai 600 015 v. V.Bhuvaneswari and others reported in 2019(1)TN MAC 72 (B), paras 8 and 11 are extracted as below:-

"8. The question that arises for consideration is as to whether the rider/deceased has contributed to the accident and that the quantum of compensation awarded by the tribunal is excessive and warrants reduction.

10. Coming to the question of contributory negligence, there is no material to show that the parked van was having blinking / burning warning lights and admittedly, the accident took place on the late evening hours of 20.04.2010, and therefore, it cannot be said that the deceased has also contributed to the accident as a result of his negligence."

(3) In Archit Saini and another v. Oriental Insurance Co.Ltd., and others reported 2018(1) TN MAC 544 (SC), paras 5 and 6 reads as below:-

"5. The respondents had opposed the claim petition and denied their liability but did not lead any evidence on the relevant issue to dispel the relevant fact. The Tribunal after analysing the evidence, including the site map (Ext. P-45) produced on record along with charge-sheet filed against the driver of the Gas Tanker and the arguments of the respondents, answered Issue 1 against the respondents in the following words:

"21. Our own Hon'ble High Court in a case captioned Lakhu Singh v. Uday Singh [Lakhu Singh v. Uday Singh, 2007 SCC OnLine P&H 865 : PLR (2007) 4 P&H 507] held that while considering a claim petition, the Tribunal is required to hold an enquiry and act not as criminal court so as to find whether the claimants have established the occurrence beyond shadow of any reasonable doubt. In the enquiry, if there is prima facie evidence of the occurrence there is no reason to disbelieve such evidence. The statements coupled with the facts



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of registration of FIR and trial of the accused in a criminal court are sufficient to arrive at a conclusion that the accident has taken place. Likewise, in Kusum Lata v. Satbir [Kusum Lata v. Satbir, (2011) 3 SCC 646 : (2011) 2 SCC (Civ) 37 : (2011) 2 SCC (Cri) 18 : (2011) 2 RCR (Civil) 379] the Hon'ble Apex Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

22. After considering the submissions made by both the parties, I find that PW 7 Sohan Lal eyewitness to the occurrence has specifically stated in his affidavit Ext. PW 7/A tendered in his evidence that on 15-12-2011 at about 20.30 p.m. he along with PHG Ajit Singh was present near Sanjha Chulha Dhaba on the National Highway leading to Jammu. All the traffic of road was diverted on the eastern side of the road on account of closure of road on western side due to construction work. In the meantime a Maruti car bearing No. HR 02 K 0448 came from Jammu side and struck against the back of Gas Tanker as the driver of the car could not spot the parked tanker due to the flashlights of the oncoming traffic from front



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side. Then they rushed towards the spot of accident and noticed that the said tanker was standing parked in the middle of the road without any indicators or parking lights.

23. The statement of this witness clearly establishes that this was the sole negligence on the part of the driver of the Gas Tanker especially when the accident was caused on 15-12-2011 that too at about 10.30 p.m. which is generally time of pitch darkness. In this way, the driver of the car cannot be held in any way negligent in this accident. Moreover, as per Rule 15 of the Road Regulations, 1989 no vehicle is to be parked on busy road.

24. The arguments of the learned counsel for the respondent that PW 7 Sohan Lal has stated in his cross-examination that there was no fog at that time and there were lights on the Dhaba and the truck was visible to him due to light of Dhaba and he was standing at the distance of 70 ft from the truck being road between him and the truck and he noticed at the car when he heard voice/sound caused by the accident so Respondent 1 is not at all negligent in this accident but these submissions will not make the car driver to be in any way negligent and cannot give clean chit to the driver of the Gas Tanker because there is a difference between the visibility of a standing vehicle from a place where the person is standing and by a person who is coming driving the vehicle because due to flashlights of vehicles coming from front side the vehicle coming from opposite side cannot generally spot the



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standing vehicle in the road that too in night-time when there is neither any indicator or parking lights nor blinking lights nor any other indication given on the back of the stationed vehicle, therefore, the driver of the car cannot be held to be in any way negligent rather it is the sole negligence on the part of the driver of the offending Gas Tanker as held in Ginni Devi case [Ginni Devi v. Union of India, 2007 SCC OnLine P&H 126 : 2008 ACJ 1572] , Mohan Lal case [New India Assurance Co. Ltd. v. Mohan Lal, 2006 SCC OnLine All 459 : (2007) 1 ACC 785 (All)] . It is not the case of the respondent that the parking lights of the standing truck were on or there were any other indication on the backside of the vehicle standing on the road to enable the coming vehicle to see the standing truck. The other arguments of the learned counsel for Respondent 3 that the road was sufficient wide road and that the car driver could have avoided the accident, so the driver of the car was himself negligent in causing the accident cannot be accepted when it has already been held that the accident has been caused due to sole negligence of the driver of the offending stationed truck in the busy road. The proposition of law laid down in Harbans Kaur case [New India Assurance Co. Ltd. v. Harbans Kaur, 2010 SCC OnLine P&H 7441 : (2010) 4 PLR 422 (P&H)] and T.M. Chayapathi case [New India Assurance Co. Ltd. v. T.M. Chayapathi, 2004 SCC OnLine AP 484 : (2005) 4 ACC 61] is not disputed at all but these authorities are not helpful to the respondents being not applicable on the facts and



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circumstances of the present case. Likewise, non-examination of minor children of the age of 14 and 9 years who lost their father and mother in the accident cannot be held to be in any way detrimental to the case of the claimants when eyewitness to the occurrence has proved the accident having been caused by the negligence of Respondent 1 driver of the offending vehicle.

25. Moreover, in *Girdhari Lal v. Radhey Shyam* [Girdhari Lal v. Radhey Shyam, 1993 SCC OnLine P&H 194 : PLR (1993) 104 P&H 109], *Sudama Devi v. Kewal Ram* [Sudama Devi v. Kewal Ram, 2007 SCC OnLine P&H 1208 : PLR (2008) 149 P&H 444] and *Pazhaniammal case* [New India Assurance Co. Ltd. v. Pazhaniammal, 2011 SCC OnLine Ker 1881 : 2012 ACJ 1370] our own Hon'ble High Court has held that 'it is, prima facie safe to conclude in claim cases that the accident has occurred on account of rash or negligent driving of the driver, if the driver is facing the criminal trial on account of rash or negligent driving.'

26. Moreover, Respondent 1 driver of the offending vehicle has not appeared in the witness box to deny the accident having been caused by him, therefore, I am inclined to draw an adverse inference against Respondent 1. In this context, I draw support from a judgment of the Hon'ble Punjab & Haryana High Court reported as *Bhagwani Devi v. Krishan Kumar Saini* [Bhagwani Devi v. Krishan Kumar Saini, 1986 SCC OnLine P&H 274 : 1986 ACJ 331] Moreover, Respondent 1 has also not filed any complaint to higher



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authorities about his false implication in the criminal case so it cannot be accepted that Respondent 1 has been falsely implicated in this case.

27. In view of above discussion, it is held that the claimants have proved that the accident has been caused by Respondent 1 by parking the offending vehicle bearing No. HR 02 AF 8590 in the middle of the road in a negligent manner wherein Vinod Saini and Smt Mamta Saini have died and claimants Archit Saini and Gauri Saini have received injuries on their person. Shri Vinod Saini, deceased who was driving ill-fated car on that day cannot be held to be negligent in any way. Accordingly, this issue is decided in favour of claimants." (emphasis supplied)

6. When the matter travelled to the High Court by way of appeal for enhancement of compensation, while accepting the claim of the claimants injured for giving additional compensation, the High Court overturned the finding of fact recorded by the Tribunal in relation to Issue 1 and opined that it was a case of contributory negligence of the driver of the Maruti car which met with the accident. The High Court answered the said issue in its judgment as can be discerned from paras 15 and 16, which read thus: (Oriental Insurance Co. Ltd. [Oriental Insurance Co. Ltd. v. Archit Saini, 2016 SCC OnLine P&H 5373] , SCC OnLine P&H)

"15. So far as the issue of contributory negligence is concerned, it has come in the testimony of Sohan Lal, PW 7, that the tanker/offending vehicle was parked without indicator but the same was visible from a distance of 70 ft. Moreover, a perusal of site plan Ext. P-45 reveals that the offending vehicle was not parked in the middle of the road.

16. In view of the statement of PW 7 and site plan Ext. P-45, it is proved that



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the tanker/offending vehicle was visible from a distance of 70 ft and not parked in the middle of the road. Therefore, in the opinion concerned of this Court, it is a case of contributory negligence."

(4) In *Jumani Begam v. Ram Narayan and others* reported in (2020) 5 SCC 807, para 9 is extracted below:

"9 The MACT then discussed the evidence of the driver of the truck trailer, NAW 1. After analysing the evidence of the driver, the MACT held that his evidence did not inspire confidence, when he stated that indicators on the truck trailer had been lit. On the contrary, the eye-witness, AW 2, in the course of his cross-examination, denied the existence of reflectors at the spot. The MACT noted that it did not appear that the truck trailer had been parked outside the area of the pakka road. In spite of its analysis in the above terms, the MACT surmised that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident. This part of the reasoning of the MACT is purely a matter of surmise. Once the substantive evidence before the MACT established that the truck trailer had been parked on the road at night without any reflectors, we are of the view that there was no reason or justification for the MACT to proceed on the basis of conjecture in arriving at a finding of contributory negligence. We find from the judgment of the High Court that this aspect has not been discussed at all and the High Court simply proceeded to confirm the finding of contributory negligence. Consequently, on the first limb of the submission, learned counsel appearing on behalf of the appellant is correct and the submission requires to be accepted."

10. In the cases cited above, there is evidence to show that the vehicle was parked on the middle of the road, without blinking the parking light. Whereas, in this case, the evidence available indicates that the vehicle was parked on the road margin. Even according to the evidence of PW-2, the vehicle was parked for more than ½ hour. There is no evidence to show that



there was hindrance to the traffic flow due to the parking of the said van. More particularly, in this case, the pillion rider, who gave the complaint, had categorically stated that, he forewarned the rider about the vehicle parked ahead but the deceased rider ignored his warning and rashly dashed behind the van. This statement, which was recorded immediately after the accident, cannot be over looked and give way to the ocular evidence of the person, whose presence at the scene of the occurrence is doubtful. This evidence is given for the first time, after five years of the accident. In the absence of prove that the vehicle parked in the middle of the road, it cannot be presumed that the van driver is negligent.

11.The document before the Court is the First Information Report marked as Ex.P1. This First Information Report is given by pillion rider, who accompanied the deceased. In this complaint, the informant has clearly stated that inspite of warning the deceased about the parked van ahead, he recklessly ramped behind the van. To contradict to this version, the claimants have examined PW-2, who has not given any reason for his presence at the scene of accident at the late night. Whereas the First Information Report is the document contemporaneous to the accident. The pillion rider Prakash is the friend of the deceased Subramaniam, but he was not summoned to give witness. Contrary to Ex.P1 First Information Report, one Palanisamy has deposed before the Court on 31.10.2014 that he witnessed the accident and the accident was due to the negligence of the van driver Ranjithkumar, who parked the vehicle without proper signal. It is a fact admitted by all witnesses that the accident occurred near a Banian Company and there is no evidence to prove that the accident spot was illuminated. PW-2, in the cross examination admits that he did not give complaint to the police. When he went to KMC Hospital, the Police enquired him. On scrutinizing the final report Ex.R3, this Court finds that no statement from Palanisamy, S/o Ramasamy recorded. He does not say, why he went to the hospital. In the cross examination, he admits that the deceased had driving licence and he saw the offending van parked for more than half an hour. At the same time, he has deposed that the deceased was not a known person to him. The inherent conflicting version of PW-2 has not been noticed by the Tribunal and overlooked. Whereas the evidence of RW-2, who is the driver of the van and no doubt about his presence at the scene of the occurrence, has been ignored by the Tribunal.

12.It is the clear case that the evidence of PW-2 is fully packed with contradiction and falsehood. A person, who never been at the scene of occurrence, had deposed that he was present at the scene of occurrence for more than ½ hour and saw the offending vehicle parked for ½ hour and the accident took place due to the negligence of the van driver. But, he has not



explained why he was there for more than ½ hour and why did not give any complaint to the police regarding the accident.

13. The final report filed by the police, after investigation is marked as Ex.R3. The Police has enquired seven witnesses and recorded their statements. PW-2 is not one among them. The statements of the witnesses recorded by the Police indicates that the deceased was the tortfeasor and therefore, the Police, after investigation, has closed the case as abated. There is no reason to disbelieve the First Information Report Ex.P1, Final Report Ex.R3 and the oral evidence of RW-1. Therefore, this Court is of the view that the Tribunal had erred in rejecting these overwhelming evidence and relying upon the evidence of PW-2, whose presence at the scene of occurrence, is highly doubtful.

14. In the said circumstances, the award of the Tribunal holding the Insurance Company/appellant responsible to pay the compensation is contrary to the law and facts and Hence, the award of the Tribunal is liable to be set aside. Though the petition has been filed under Section 166 of the Motor Vehicles Act, 1988 and fault is on the deceased, the claimants, who are the parents of the deceased, should not be left, without any compensation. Hence, this Court treats the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 as petition under Section 163(A) of the Motor Vehicles Act, 1988. The deceased being a third party though the tort-feasor, following the judgment of the Hon'ble Supreme Court (i) United India Insurance Company v. Sunil Kumar and another :[AIR 2017 SC 5710]; (ii) Shivaji and another v. Divisional Manager, United India Insurance Co.Ltd., [CDJ 2018 SC 817]; and (iii) Chandrakanta Tiwari v. New India Assurance Company Ltd, and another[CDJ 2020 SC 821], this Court awards a sum of Rs.3,64,500/- with interest at the rate of 7.5% p.a., from the date of petition, till the date of realisation.

15. The said compensation is fixed as per the following Tabulation. The said annual income of the deceased taken as Rs.40,000/-. He died as bachelor at the age of 24 years. Hence, while applying the multiplier, as per the Schedule, 50% of his income is taken for his personal expenses. The Structured Formula as provided under the Schedule of the Act, for the age group between 20 to 25 years, the award for fatal accident is Rs.7,20,000/-. After deducting 50% of it, the contribution to the family will be Rs.3,60,000/-; For funeral expenses Rs.2,000/- and loss of estate Rs.2,500/- are awarded.

16. The appellant/Insurance Company is directed to deposit a sum of Rs.3,64,500/- with interest at the rate of 7.5% p.a., to the credit of M.C.O.P.No.651 of 2013 from the date of petition



till the date of realisation, after deducting the amount already deposited, if any. On such deposit, the claimants/respondents 1 and 2 are permitted to withdraw the award of this Court equally, less the amount already withdrawn by them if any, on filing appropriate application before the Tribunal.

17.As a result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Deputy Registrar(Lok Adalat)

//True copy//

Sub Assistant Registrar

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To:

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

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.16059

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.16016

C.M.A.No.176 of 2017

KK(CO)
GMY(22/09/2021)