



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 04.03.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.625 of 2009

Esakkiammal

.. Appellant

vs.

1.Sunil Laxman Jamdhade

2.New India Insurance Co., Ltd.,
Mumbai.

(R1 exparte in the Trial Court,
hence, dispensed with)

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP No.1317 of 2006 on the file of the Motor Accident Claims Tribunal (2nd Additional District Judge), Tirunelveli, dated 06.08.2007.

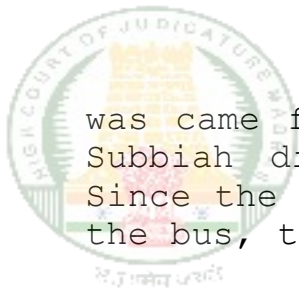
For Appellant : Mr.T.Selvakumaran

For Respondents : Mr.D.Sivaraman (for R2)
Dispensed with (for R1)

J U D G M E N T

The appellant is the claimant in MCOP No.1317 of 2006 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Tirunelveli, wherein the Tribunal held that she is not entitled for compensation. Challenging the same, the present appeal has been filed.

2.The brief facts of the case are that the son of the claimant, namely, Subbiah was working as 'Conductor' in Panikkar Travels. While so, on 16.03.2000, the deceased was travelling in a bus bearing registration No.MH-01-H-5622 belonging to the first respondent insured with the second respondent from Nasik to Bombay. When the bus was reaching a point near Kolambha River Bridge, the driver of the bus drove it in a high speed and dashed against a Maruthi Car bearing registration No.MH-04-X-5809, which



was came from the opposite direction. In the accident, the said Subbiah died and other passengers sustained grievous injuries. Since the accident occurred due to the negligence of the driver of the bus, the owner and insurer are liable to pay compensation.

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3.The claim petition was resisted by the respondent Insurance Company stating that there is no proof to prove that the deceased was travelling in the bus at the relevant point of time and he died in the accident. The age, avocation of the deceased have also been disputed. The name of the deceased was not mentioned in FIR and it was filed belatedly and hence, the claim petition should be dismissed.

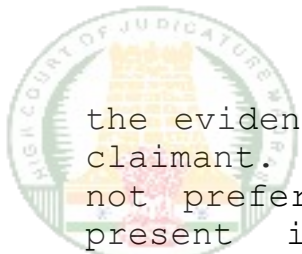
4.Before the Tribunal, on behalf of the claimant two witnesses were examined and 7 documents were marked. On the side of the respondent Insurance Company, no oral and documentary evidence was adduced.

5.P.W.1, the claimant has stated that the deceased Subbiah was 18 years old at the time of accident and was earning Rs.3.000/- per month and he by working as 'Cleaner' in the Panikkar Travels and he died in an accident, when he was travelling in a bus on 16.03.2000. It is true that P.W.1 is not an eyewitness. She examined P.W.2, who has spoken about the accident in his evidence. The translated copy of the FIR was produced as Ex.P.1. Ex.P.2 is the charge sheet. Ex.P.6 is the postmortem certificate. To show that the deceased was working in Mumbai, P.W.1 has produced a letter as Ex.P.7. The Tribunal having found some discrepancies in the claim petition and the evidence, rejected the same.

6.Mr.T.Selvakumar, learned counsel for the appellant would urge that the claimant is a widow and also an illiterate and she took some time to procure the documents and hence, delay has occurred in filing the claim petition. He further added that the claimant's son died on the spot and FIR was registered based on the complaint given by one of the injured passengers. So, the contention of the learned counsel for the respondent that in the FIR, name of the deceased is not mentioned cannot be a ground to reject the claim petition.

7.According to the learned counsel, even though there were some discrepancies in the document produced by the claimant, but the claimant has proved that her son died in the accident that took place on 16.03.2020 and when there is no contra evidence, the claim petition can be allowed.

8.Per contra, Mr.D.Sivaraman, learned counsel for the 2nd respondent would argue that there are material discrepancies in

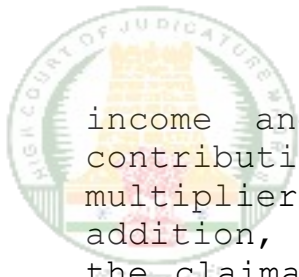


the evidence of P.W.1 and P.W.2 and the documents produced by the claimant. P.W.2 who is said to have witnessed the occurrence, did not prefer the complaint, which shows that he was not at all present in the scene of occurrence. In the postmortem certificate, the name of the deceased has been inserted and the age has been shown as 45 years, whereas P.W.1 says that her son was 18 years old. Likewise, in the Motor Vehicle Inspector's report also, bus number differs. So, the appeal has to be dismissed.

9. In the matter on hand, it is the case of the claimant that her son Subbiah, 18 year old, died in the accident on 16.03.2000. P.W.2 is a driver of the lorry and he spoken about the accident in his evidence. He has categorically stated that after both the vehicles dashed against each other, both the vehicles had fallen down from the bridge and they got fire. FIR came to be registered after obtaining a statement from one of the injured passengers. Therefore, as rightly pointed out by the learned counsel for the appellant, we cannot expect either the complainant or P.W.2 to say that the claimant's son died in the accident. In the charge sheet, it has been stated that the appellant's son and the driver of the car died on the spot. Therefore, the discrepancies pointed out by the learned counsel for the 2nd respondent in the postmortem certificate and the motor vehicle inspector's report cannot be taken into consideration to reject the claim of the appellant.

10. It is relevant to note that P.W.2 is a driver of a lorry and he was proceeding from Tamil Nadu to Mumbai and on the way, the lorry got some mechanical problems, so, he went to bring a Mechanic. In such a situation, his evidence cannot be discarded for not preferring a complaint. Further, the FIR shows that the criminal case was registered against the driver of the bus and immediately after the accident, he ran away from the scene of occurrence. It is true that the appellant could have examined his employer to prove that he was working in the bus at the time of accident. It is relevant to note that the accident had taken place near Mumbai in the State of Maharashtra, but the claim petition was filed before the Motor Accident Claims Tribunal, Tirunelveli. As stated supra that the claimant is an rustic woman, so, it is not easy for her to examine the employer of the deceased in this case.

11. In the light of the above facts, I am of the view that the Tribunal without considering the above materials rejected the claim petition. Insofar as the quantum is concerned, the claimant stated that the deceased was working as 'Conductor' and he was paid Rs.3,000/- per month, but no evidence was produced by her to substantiate the same. Since the accident had taken place in the year 2000, it would be appropriate to fix Rs.1000/- per month as



income and after deducting 1/3rd for his personal expense, contribution to the family comes to Rs.750/- and by applying multiplier '17', loss of income arrived at Rs.1,53,000/-. In addition, Rs.7000/- is awarded for loss of Estate. Therefore, the claimant is entitled Rs.1,60,000/- along with interest at the rate of 6% per annum from the date of claim petition till the date of realization.

12.In the result, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the above award amount with accrued interest and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount together with proportionate interest and costs. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The II Additional District Judge,
Motor Accidents Claims Tribunal
Tirunelveli.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-9052[F] dated 05/03/2021)

+1 CC to Mr.T.SELVAKUMARAN, Advocate (SR-9380[F] dated 08/03/2021)

JUDGMENT MADE IN
C.M.A(MD)No.625 of 2009
04.03.2021

KM(24.05.2021) 4P 6C