



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.12.2020

Delivered on : 20.01.2021

CORAM:

THE HONOURABLE **MR.JUSTICE G.ILANGO VAN**

C.M.A.(MD)No.604 of 2010

Chinnapillai (Died)

1.Kalimuthu

2.Rajappa

3.Backiyam

4.Rajendran

5.Srirangam ... Appellants / Petitioners 2 to 6

(Cause title accepted vide order dated 16.04.2010 made in M.P.
(MD).No.1 of 2010 in CMA(MD).No.srl4962 of 2010)

Vs.

1.Anthoniammal

2.The Branch Manager,

National Insurance Company Limited,

4132, East Main Street,

Pudukkottai Town - 622 001. ... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.186 of 2004, dated 30.09.2009 on the file of the Motor Accident Claims Tribunal / Sub Court, Pudukkottai, by allowing the Civil Miscellaneous Appeal.

For Appellants : Mr.R.P.Ramachanthiran

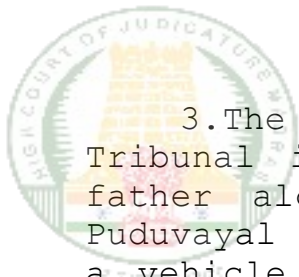
For R1 : No appearance

For R2 : Mr.A.K.Baskara Pandian

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 30.09.2009, passed in M.C.O.P.No.186 of 2004, by the Motor Accident Claims Tribunal / Sub Court, Pudukkottai.

2. The appellants / claimants 2 to 6 filed a claim petition in M.C.O.P.No.186 of 2004, before the Motor Accident Claims Tribunal / Sub Court, Pudukkottai, claiming a compensation of Rs.5,00,000/- (Rupees Five Lakhs only) for the death of their father. That petition was dismissed by the Tribunal. Against the order of dismissal, the appellants / claimants 2 to 6 filed this Civil Miscellaneous Appeal.



3.The case of the appellants / claimants 2 to 6 before the Tribunal is that on 11.11.2003, when the deceased /appellants' father along with one Rengasamy returned from hospital, near Pudurayal Branch Road on Pattukottai to Gandarvakottai Main Road, a vehicle bearing registration No.TN 55 H 9941 belonged to the first respondent, which was driven by its rider in rash and negligent manner, hit the appellants' father. As a result of which, he sustained multiple injuries and died on the spot. In respect of this occurrence, a case was registered on the file of Gandarvakottai Police Station. The first petitioner/first claimant is the wife and others are children of the deceased. Claiming compensation amount of Rs.5,00,000/-, they approached the Tribunal. Subsequently, the first petitioner/first claimant died during the pendency of the petition.

4.The first respondent remained ex-parte throughout the case. The case of the second respondent, who is the insurance company of the vehicle, is that the vehicle which belongs to the first respondent did not involve in the occurrence. The claim and liability are disputed by the second respondent.

5.In the enquiry, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and two documents were marked as Ex.P1 and Ex.P2 and on the side of the second respondent one witness examined D.W.1 and one document was marked as Ex.R1.

6.On completion of enquiry, the Tribunal came to the conclusion that the accident mentioned in the petition involving the first respondent's vehicle was not established and so the appellants / claimants are not entitled for any compensation from the second respondent and accordingly, dismissed the same, against which, the appellants / claimants 2 to 6 preferred this Civil Miscellaneous Appeal.

7.Heard Mr.R.P.Ramachanthiran, learned counsel for the appellants and Mr.A.K.Baskara Pandian, learned counsel appearing for the second respondent and perused the records available.

8.Since the involvement of the first respondent's vehicle is disputed, the documents available on record has to be analyzed, in the light of the evidence recorded by the Tribunal. Ex.P1 is the certified copy of the First Information Report filed on the basis of the information furnished by one Rengasamy, who was examined as P.W.2. According to the First Information Report, on 11.11.2003 at about 7.30 p.m. he was walking along with the deceased on the road, one by one, and when they were nearing the place of occurrence, a two wheeler which came from west to east, dashed against the deceased and then, the rider, without stopping the vehicle, fled away from the place of occurrence and due to the



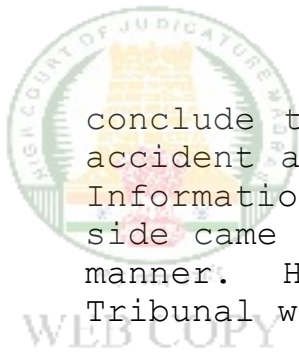
multiple injuries, the deceased died on the spot itself. The name of the rider of the two wheeler and the registration number of the vehicle are not mentioned in the First Information Report.

9.P.W.2, in his proof affidavit, has stated the registration number of the two wheeler as TN 55 H 9941 and in his cross examination, he has stated it was driven by its owner namely Wahab. The police also took up the investigation and collected the documents, which are enclosed along with Ex.R1, the investigation report, filed by the Investigator appointed by the Insurance Company, wherein, it finds that a rider was identified as one Abdul Wahab, S/o Beer Mohamed, South Street, Kallakottai, Gandarvakottai Taluk, Pudukkottai District. According to Ex.R1, when the Investigator went to the residence of Abdul Wahab, he was not available there. According to the information given by the wife, it is seen that he went abroad and the wife admitted the involvement of her husband and his vehicle in the accident. She has also given some information with regard to the brand of the vehicle involved in the accident.

10.The vehicle bearing registration number mentioned in the petition was sent for Motor Vehicle Inspector's inspection on 21.11.2003. The accident took place on 11.11.2003. It was found that no damage occurred to the vehicle. A driving licence of the rider namely O.M.P.Abdul Wahab and the Registration Certificate of the vehicle were also seized by the police and a copy were also marked along with this report. It is seen that vehicle belongs to the first respondent was identified to be involved in the occurrence and it was driven by one Abdul Wahab and he was having valid licence also.

11.The Tribunal, after considering some facts, came to the conclusion that since the FIR does not contain the particulars with regard to the rider and vehicle, the first respondent vehicle has been included in the petition with the connivance of the police. But, from the records collected by the Investigating Officer appointed by the Insurance Company, there is *prima facie* evidence to prove that the first respondent's vehicle was involved in the accident and it was driven by one Abdul Wahab. No reason to doubt those particulars, more particularly the wife of the rider herself admitted the involvement of her husband in the accident. So the finding of the Tribunal that the involvement of the first respondent vehicle bearing registration No.TN 55 H 9941 and the rider were not identified at the time of occurrence required to be set aside.

12.It is admitted by the parties that the accident took place at about 7.30 p.m. and there was no light facility available in the place of occurrence as it is a remote place. Therefore, I



conclude that the first respondent's vehicle was involved in the accident and the manner of the accident as mentioned in the First Information Report shows that the rider deviating from his left side came in the wrong direction and hit the deceased in negligent manner. Hence, this Court is of the view that the finding of the Tribunal warrants interference.

13.No document is available to prove the age of the deceased. In the postmortem certificate - Ex.P2, the age of the deceased was fixed as 60. Likewise, regarding the income also as mentioned earlier, there is no proof. By considering the age and family circumstances, he would earn atleast Rs.4,000/- per month. Therefore, the annual income can be fixed as Rs.48,000/-. After adding 10% towards future prospectus, the total annual income can be fixed as Rs.52,800/-. After deducting 1/3rd towards personal expenses, the loss of income is fixed as Rs.35,200/-. The age of the deceased at the time of accident is 60. The multiplier for the age group of 60 is '9'. So the loss of income is fixed as Rs.3,16,800/- (Rs.35,200 x 9 = Rs.3,16,800/-).

14.The wife of the deceased i.e., first petitioner/first claimant is dead. Hence, consortium is not applicable. The loss of estate is fixed as Rs.15,000/-. The funeral expenses is fixed as Rs.15,000/-. Hence, the total compensation is fixed as Rs.3,46,800/- and it is rounded off to Rs.3,46,000/- (Rupees Three Lakhs Forty Six Thousand only) and the petitioners are entitled to equal share in the compensation awarded by this Court.

15.In the result, this Civil Miscellaneous Appeal is allowed and the dismissal order passed by the Tribunal in M.C.O.P.No.186 of 2004 is set aside. The appellants/claimants are entitled for a sum of Rs.3,46,000/- (Rupees Three Lakhs and Forty Six thousand only). The second respondent/Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. and costs from the date of filing of the M.C.O.P. before the Tribunal till the date of realization. The above such deposit shall be made within a period of two months from the date of receipt of a copy of this order. On such deposit being made, the Tribunal may permit the appellants/claimants to withdraw their respective shares with interest and costs immediately. No costs. The claimants are directed to pay the deficit Court fee forthwith.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



TM

To

1.The Motor Accident Claims Tribunal Subordinate Judge,
Pudukkottai

2.The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.R.P.RAMACHANDRAN, Advocate (SR-1771[F] dated 22/01/2021)

+1 CC to M/s.A.K.BASKARA PANDIAN, Advocate (SR-1531[F] dated 21/01/2021)

order made in
C.M.A. (MD) No.604 of 2010
20.01.2021

TP (CO)

TR (16.02.2021) 5P 6C