



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) .No.460 of 2020
and C.M.P. (MD) No.5222 of 2020

WEB COPY

Branch Manager
Reliance General Insurance Company Limited
Meenakshi Plaza 1st Floor
Plot No.HIG 55, Anna Nagar
Madurai

.. Appellant / 3rd Respondent

Vs.

1.Banumathi
2.Minor Mohanraj
3.Minor Preethi
4.Minor Vasanthraya
(Minor 2 to 4 petitioners rep.by,
their mother and guardian by
1st petitioner pathmavathi).

5.Rasu

6.ChinnammalRespondents 1 to 6/Petitioners

7 V.Suresh

8 Ramesh ... Respondents 7 & 8/Respondents 1 & 2

Prayer:-This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 27.11.2019 in MCOP.No.04 of 2017 on the file of Sessions Judge (Full Additional Charge)/Mahila Court, Pudukkottai and allow this Civil Miscellaneous Appeal.

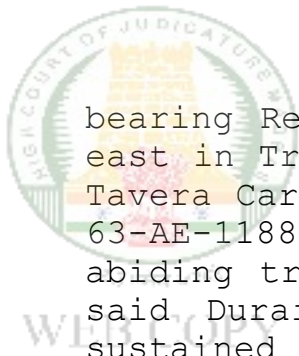
For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.D.Rameshkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order dated 27.11.2019 in MCOP.No.04 of 2017 on the file of Sessions Judge (Full Additional Charge)/Mahila Court, Pudukkottai and allow this Civil Miscellaneous Appeal.

2.The case of the claimants is that on 11.09.2016, the deceased, D. Suresh, went to Town in his two wheeler Super Splendor



bearing Registration No.TN-55-AF-3673. While he went from west to east in Trichy to Pudukkottai road near Omsakthi stone workshop, a Tavera Car belong to the 7th respondent bearing registration No.TN-63-AE-1188 came in a opposite direction in a high speed without abiding traffic rules, dashed against the two wheeler rode by the said Duraisamy, in which, he fallen from the two wheeler and sustained injuries in his head and body and was taken to hospital for treatment. After undergoing a surgery, he died on 12.09.2016. Hence, the legal heir of the deceased filed a petition before the Tribunal claiming compensation for a sum of Rs.1,00,00,000/-

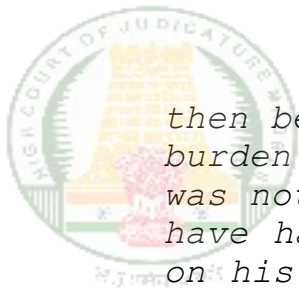
3.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the 8th respondent herein and the vehicle was insured with the Insurance Company at the time of accident. Therefore, the 7th respondent who is the owner of the offending vehicle and the appellant/Insurance Company are jointly and severally liable to pay a sum of Rs.16,72,500/- along with interest at the rate of 7.5% per annum to the claimants. The appellant/Insurance Company has to indemnify the liability of the 7th respondent and has to pay the entire compensation amount to the claimants, against which, the present appeal has been filed.

4.Heard the learned counsel for the appellant as well as the respondents and perused the materials available on record.

5.Perusal of order shows that the Tribunal has elaborately discussed the case at paragraph Nos.10 and 11 of the Judgment in MCOP.No.4 of 2017 and the same reads as follows:

"10.Now, in the judgment of the Hon'ble Apex Court in a case, Purushotam Udeshi vs. Ranjit Ginning and Pressing Co., reported in 1977 ACJ 343 (SC), referred in the judgment relied on by the petitioners in the Malathi Case it is observed as follows:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will



then be for the negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not cannot negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in the ordinary course of things does not happen if those who had the management used proper care".

According to the maxim referred in the judgment, *res ipsa loquitur*, the accident itself speaks for itself or tells his own story. Hence is the case in hand, at the time of accident, according to the case of the contesting 3rd respondent, based on Ex.P1, deceased who came behind the car driven by the 2nd respondent slowly and behind a town bus which was stopped at that time, dashed against the car and invited the accident due to his rash and negligent act. Now, to prove the same, in contra to the case of the petitioners, the 2nd respondent is the sole person having knowledge about the occurrence. But, even he was added as a party either the driver, the 2nd respondent or the owner, the 1st respondent not even come forward to contest the case. The attempt taken by the contesting 3rd respondent to summon the driver to prove his case is also ended in futile. Now as per the decision arrived by the Hon'ble Madras High Court case in the Malathi case, after the burden shifts on the respondents, the non examination of the driver of the vehicle against which the claim is made drawn adverse interfere that he drove the vehicle in a rash and negligent manner as a result of which this accident was occurred.

11. Now, the weightage given to the evidence of the petitioner side witnesses are concerned, according to the judgment of the Hon'ble Madras High Court, in a case Jagatha @Jagathammal referred above,

" in Motor Accident Claims under Section 166 of the Motor Vehicles Act, the evidence in support of the claim is given more weightage, even though it may contradict the pleadings"

Here is the case in hand, there is no contradiction between the pleadings and the evidence given by P.W.1 and

2. Hence, more weightage should be given to them. In addition to that, to apply the maxim, *res ipsa loquitur*, the other circumstances of the accident are closely scrutinized by this Court. As per the MVI report of the car driven by the 2nd respondent, it had damage on its right side. According to the MVI report, Ex.P6, the damage sustained by the said vehicle are



1.Rear right side indicator glass broken

2.Right side running board bend.

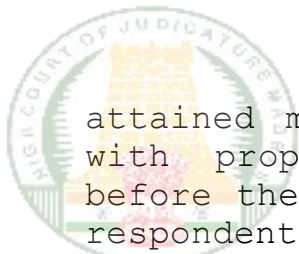
Both the damage are substantiate the case of the petitioners that the accident was happened while the 2nd respondent overtaking a vehicle when in front of him on its right side dashed against the two wheeler of the deceased and caused the accident. Hence, from the MVI report and the evidence given by the P.W.2, the petitioners probabilise their case. Now the contesting 3rd respondent who denied the same, not produced any direct evidence, except the police documents which are all not substantive evidences.

According to all the judgments referred on the side of the contesting 3rd respondent if it is proved that the deceased is tort feaster and the accident was happened only due to his rash and negligent driving, the legal heirs of the wrong doer in the accident is not entitled to get compensation u/s 166 of MV Act. But, in this case in hand, as decided earlier, it is proved on the side of the petitioners that the accident was happened due to rash and negligent driving of the 2nd respondent as alleged in the petition. To rebut the same there is no evidence available on the said of the contesting 3rd respondent.

Hence on the basis of available oral and documentary evidences, this Court come to a conclusion that the accident due to which the deceased was died, is caused only by the rash and negligent driving of the first respondent only".

6.Therefore, the learned Judge has rightly concluded that the accident did not occur due to the act of the deceased but it had occurred only by the rash and negligent driving of the 7th respondent herein where I do not find any infirmity. As far as the quantum of compensation is concerned, the compensation was not awarded as per judgment of *Pranay Sethi's* case. If the principles of the *Pranay Sethi's* case is applied, the other heads of compensation would be more. Therefore, this Court is not inclined to interfere with the same. Accordingly, the award of the Tribunal is confirmed.

7.In view of the above, the appellant / Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. The respondents 1, 5 and 6/ claimants are permitted to withdraw the entire award amount with interest and costs, as apportioned by the Tribunal, without filing any formal petition. The second respondent/ minor claimant is aged about 15 years, at the time of filing of the claim petition in 2017 and now he would have



attained majority. Hence, he is permitted to withdraw his share with proportionate interest, by making necessary application before the Tribunal by discharging guardianship. The shares of the respondents 3 and 4 /minor claimants with interest shall be deposited in a Nationalised Bank till they attain majority and the interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/mother of minors once in three months directly from the bank.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

msa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Sessions Judge
(Full Additional Charge)/Mahila Court,
Pudukkottai

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-4593[F] dated 11/02/2021)

C.M.A. (MD) .No.460 of 2020
and
C.M.P. (MD) No.5222 of 2020
11.02.2021

AC (CO)
TR(29.04.2021) 5P 5C