



C.M.A.No.558 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2021
Pronounced on : 08.04.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

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- 1.Vahida Banu
- 2.Fathima Bowsama (minor)
- 3.Mohamed Irfan (minor)
- 4.Reesma (minor)
- 5.Bowsiya

(Minors are represented by their
mother and next friend Vahida Banu,
first appellant herein)

.. Appellants

Versus

- 1.M/s.Parveen Travels (P) Ltd.,
No.115/6, Santha Vellore Village,
Sunguvarchathiram, Sriperumbudur Taluk,
Kancheepuram District.

- 2.The New India Assurance Co.Ltd.,
No.45, Moore Street, 5th Floor,
Chennai – 1.

.. Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2017 in M.C.O.P.No.270 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mrs.M.Porkodi
For Mr.N.M.Muthurajan



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For R1

: Ex-parte

For R2

: M/s.A.Salomi
for Mr.C.Ramesh Babu

JUDGMENT

The appellants are the legal heirs of the deceased Hidayath Ali, who died in a road accident that had taken place on 19.12.2010. The claim petition in M.C.O.P.No.270 of 2011 filed by the appellants herein, seeking compensation for the death of Hidayathi Ali, was dismissed by the Tribunal which has given rise to the filing of the present Civil Miscellaneous Appeal.

2. According to the appellants, the deceased Hidayath Ali was employed as a Cook and was earning a sum of Rs.500/- per day. On the fateful day, on 19.12.2010, at about 01.10 hours, the deceased was walking on the 100 Feet Road, near Oorandi Amman Street, Velacherry after finishing his work. The deceased was accompanied by his friend Amjathkan and while they were walking together, the deceased crossed the road to purchase cigarette. As the deceased did not turn-up even after a considerable length of time, the said Amjathkan searched for the deceased and saw him lying in a pool of blood in the road. On enquiry, he came to know that an unidentified private bus had hit the deceased and ran off. Therefore, a complaint was given by Amjathkan



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based on which a case in Crime No.488 of 2010 came to be registered against an unknown person. In the First Information Report, the name of the driver of the private bus or the description of the bus were not given.

3. While so, one Saravanan, S/o.Kannan surrendered himself before the Guindy Police Station and voluntarily gave a statement stating that it was he who drove the vehicle belonging to M/s.Parveen Travels (P) Ltd., and caused the accident in which the deceased died. On the basis of such statement Saravanan, the driver of the private bus was arrested and remanded to judicial custody. Based on the above developments, the claim petition was filed by the claimants against the owner of the bus namely M/s.Parveen Travels (P) Ltd., and it's insurer, claiming a sum of Rs.14,00,000/- as compensation for the death of the deceased.

4. Before the Tribunal, the 1st respondent M/s.Parveen Travels (P) Ltd., remained absent and therefore set ex-parte. The claim petition was contested by the 2nd respondent.

5. The 2nd respondent has stated that the bus bearing Registration No.TN-21-AB-9258 did not involve in the accident. In the First Information



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Report, it was merely stated that a private bus had hit the deceased. However, one Saravanan voluntarily surrendered before the Guindy Police Station, based on which, the claim petition was filed as against the respondents. The Insurance Company denied that there was no negligence on the part of the driver of the private bus bearing Registration No.TN-21-AB-9258. If at all, the accident would have occurred due to the negligence of the deceased while attempting to cross the busy 100 feet road at wee hours. Even assuming that there is any negligence on the part of the driver of the bus, the deceased had contributed to the accident and therefore also no fault could be attributable as against the driver of the bus. The Insurance Company also denied the age, avocation and income of the deceased and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st claimant examined herself as P.W.1. P.W.2 was examined as an eye-witness to the accident. One Segunaina was examined as P.W.3. P.W.4 is the Sub-Inspector of Police who registered the case in Crime No.488 of 2010. Exs.P1 to P7 were marked on the side of the appellants. The respondents before the Tribunal did not examine any witness or filed any documents. Exs.X1 and X2 being the Court documents viz., remand report of the accused Saravanan and the Mother Vehicles Inspector Report



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were taken on record.

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7. The Tribunal on analyzing the oral and documentary evidence has concluded that the accident did not occur due to the negligent driving of Saravanan, the accused, who said to have driven the bus belonging to M/s.Parveen Travels (P) Ltd. The Tribunal concluded that it was a hit and run case and therefore, the claimants are not entitled for any compensation to be paid by the Insurance Company. It was further observed that the accused Saravanan was produced by his brother Subramanian five days after the accident on 24.12.2010 and he was remanded to judicial custody for five days. In the First Information Report the vehicle number was not mentioned. The production of Saravanan as an accused before the Guindy Police Station five days after the accident, according to the Tribunal, creates doubt in the credibility of the accused statement that he drove the vehicle belonged to M/s.Parveen Travels (P) Ltd., on the fateful day. The Tribunal also pointed out that the investigating agency did not file final report by stating that only to get compensation from the Insurance Company the accused was produced by his brother to create a record of remand. In effect, the Tribunal concluded that the deceased was hit by an unidentified vehicle, which resulted in his death. In the absence of any credible evidence to show that the deceased was hit by the



private bus driven by the accused Saravanan the Insurance Company cannot be directed to pay compensation. Accordingly, the Tribunal dismissed the claim petition. The Tribunal while dismissing the claim petition has rendered a finding as follows:

Hit and Run motor accident:

“Section 161 defines hit and run motor accidents to mean an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose.

A plain reading of rule 20 of Solatium Scheme 1989 makes it clear that an application seeking compensation under the scheme is to be filed in form I before the Claims Enquiry Officer of the sub division in which the accident has taken place. Thus under the scheme a particular Forum has been provided for claiming compensation in case of hit and run motor accidents. Hence, the Tribunal has no jurisdiction – *New India Assurance Co.Ltd., vs. Rajendra Prasad Bhati & Ors. 2002 ACJ 1762.*

15. Therefore, I find that this petition is not maintainable because this is being a case of hit and run. This Tribunal has no jurisdiction and this petition is liable to be dismissed. This point is answered accordingly.”

8. Assailing the award passed by the Tribunal, the appellants are before this Court with this appeal.



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9. The learned counsel for the appellants would contend that the Tribunal, harping on technicalities, has dismissed the claim petition filed by the appellants. The Tribunal did not take note of the fact that the accused Saravanan has claimed that he drove the vehicle belonging to Parveen Travels on the fateful day and hit the deceased. It is based on such version of the accused Saravanan the claim petition was filed in which Parveen Travels was impleaded as a party. However, Parveen Travels did not appear before the Tribunal and conveniently remained exparte. In effect, the claimants have proved that the vehicle belonged to the Parveen Travels had hit the deceased and caused his death and discharged their initial burden. When the first respondent-Parveen Travels did not turn up and disproved such a claim made by the claimants, the Tribunal ought to have taken an adverse inference and awarded compensation to the claimants. The fact remains that the deceased died due to a motor accident. Even though in the first information report, the name of the driver or the description of the bus was furnished, five days later, the accused, on his own, surrendered and admitted his guilt. While so, the first respondent ought to have contested the claim petition and disproved that Saravanan was never engaged by them as their driver or the registration number of the bus does not belong to them. When the first respondent failed



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to contest the claim petition, drawing an adverse inference is inevitable.

Therefore, the learned counsel prayed for allowing the appeal, by setting aside the order of dismissal passed by the Tribunal and to award appropriate amount as compensation.

10. Even before this Court, notice was served, but the first respondent did not choose to contest this appeal.

11. The learned counsel for the Insurance Company would contend that the first information report did not bear the registration number of the vehicle or the person who drove the vehicle. However, five days later, the accused Saravanan voluntarily surrendered and admitted his guilt. This cannot be *ipso facto* considered to show that Saravanan had driven the vehicle and caused the accident. The Tribunal rightly concluded that it is a case of 'hit and run' and the claimants, for the purpose of getting compensation, have implanted the said Saravanan. The Tribunal is therefore wholly justified in dismissing the claim petition and it does not call for any interference by this Court.

12. Heard the counsel for both sides and perused the materials placed on record.



WEB COPY13. It is true that on the fateful day, when the deceased was accompanied by his friend Amjathkan, the deceased criss-crossed the road purportedly to buy cigarette. As the deceased did not turn-up even after lapse of time, his friend searched for him and found him in a pool of blood. On enquiry it came to light that the deceased was hit by a speeding vehicle, which has zipped fast after hitting him. A complaint was given by Hidayath Ali and in the complaint, the description of the bus or the registration number or owner of the vehicle have not been mentioned. However, five days after the accident, one Saravanan voluntarily surrendered before the Guindy Police Station and deposed that it is he who was on the wheels of the private bus belonging to M/s.Parveen Travels (P) Ltd., on 19.12.2010 and had hit the deceased. The statement was recorded under Section 161 of the Code of Criminal Procedure and he was remanded to judicial custody. Ex.P1 is the copy of the First Information Report.

14. P.W.2 was examined as an eye-witness. P.W.2 has categorically deposed before the Tribunal that the bus bearing Registration No.TN-21-AB-9258 was driven by a driver in a rash and negligent manner and hit the deceased, which resulted in his instantaneous death. Of course, this statement



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of PW2 is contrary to the complaint given by him based on which the first information report was registered. The fact remains that such a statement was given by PW2 based on the subsequent developments in this case relating to the alleged admission of Saravanan with respect to the driving of the bus and hitting the deceased.

15. It is true that in the First Information Report there was no mention about the description of the private bus or the registration number or any other particulars. However, on 24.12.2010, i.e., five days after the accident one Saravanan was produced by his brother Subramanian before the Guindy Police Station and admitted his guilt. According to the Insurance Company, the said Saravanan colluded with the claimants to get compensation and therefore, he voluntarily surrendered before the Guindy Police Station. If it is so, this Court is at a loss to understand as to why the Insurance Company did not examine the so called Saravanan in this case. When the Insurance Company comes forward with such a defense that the said Saravanan was implanted by the claimants, the burden is heavy on their shoulders to show that the bus in question did not involve in the accident which caused the death of the deceased or it was driven by the accused Saravanan in the place where the deceased died. To substantiate the defence raised by them, the Insurance Company



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ought to have examined Saravanan or the owner of the bus as a witness and they will be the best persons to say as to whether Saravanan was employed by Parveen Travels as a Driver, whether the bus proceeded on the place of accident in this case on 19.12.2010 or whether the bus is insured with the second respondent-Insurance Company. Further, this Court is of the view that for the sake of getting compensation for the claimants, no one would confess or accept his guilt, surrender before the police authorities and get incarcerated unmindful of the adverse impact such incarceration would befall on him in future. In any event, if Mr. Saravanan or some one from Parveen Treavels was examined before the Tribunal, it could have unfolded as to whether there was any collusion between Saravanan and the Claimants and their non-examination is fatal to the defence raised by the Insurance Company.

16. Another fallacy to be pointed out in this case is that the 1st respondent / M/s.Parveen Travels (P) Ltd., conveniently remained ex-parte before the Tribunal as well as before this Court. If somebody representing M/s.Parveen Travels (P) Ltd., was examined, much light could have been thrown and unfolded as to the veracity or the genuineness of the accident. There is nothing on record to show as to whether the description of bus said to have been insured with the appellant/Insurance Company belonged to



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M/s.Parveen Travels (P) Ltd., or not. This could have been cleared-off if

M/s.Parveen Travels (P) Ltd., was examined before the Tribunal. It could have also unfolded if Saravanan was at the relevant point of time employed by M/s.Parveen Travels (P) Ltd., as their driver. Thus, the initial burden on the part of the claimants have been proved. However, the Insurance Company failed to disprove the subsequent event that had taken place and which has given rise to the claimants to file the instant claim petition. It is also not known as to whether the bus said to have involved in the accident was insured with the 2nd respondent/Insurance Company are not. The protracted silence on the part of the Insurance Company to examine Saravanan the driver or somebody representing M/s.Parveen Travels (P) Ltd., is fatal to the defense of the Insurance Company. The Insurance Company cannot be expected to merely say that there was no accident or the manner in which the accident said to have occurred is not correct. If such a defense is taken, it is for the Insurance Company to show, by oral or documentary evidence, to the satisfaction of the Court that what was pleaded by the claimants before the Tribunal is false. In the present case, there was total inaction on the part of the Insurance Company to bring forth the material particulars or evidence before the Tribunal for consideration. The Tribunal in such a circumstances ought to have taken an adverse inference as against the 1st and 2nd respondents in the claim petition



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and proceeded to determine the compensation payable to the appellants. But, the Tribunal miserably failed to do so. The Tribunal did not take note of the fact that Saravanan, who is said to be on the wheels of the bus on the fateful day, was not examined before it. The Tribunal also did not consider that M/s.Parveen Travels (P) Ltd., conveniently absented itself from participating in the trial proceeding in the claim petition. Therefore, this Court is of the considered view that the claimants have discharged their initial burden but the respondents in the claim petition have failed to disprove the claim made by the claimants. Even otherwise, this Court would record that the deceased died due to a motor accident. This is explicit from Ex.P1-First Information Report as well as the post-mortem report. These factors have been neglected by the Tribunal while dismissing the claim petition as if it was a hit and run case.

17. In the background of the above conclusion arrived at, now this Court proceeds to determine the compensation payable to the claimants.

18. The deceased was 36 years old at the time of accident. He had left behind him the claimants who are his wife, three minor children and his aged mother. According to the claimants, the deceased was earning a sum of Rs.500/- per month as a cooking master. On the death of the deceased, the



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appellants have lost the only bread-winner in their family. Going by the above facts, this Court is of the considered view that a notional sum of Rs.7,500/- can be fixed towards the income of the deceased. As the deceased died at the age of 36 years, 25% as his income shall be fixed as future prospects. Thus, a sum of Rs.10,000/- shall be fixed as his notional income. There are 5 dependants of the deceased and this Court deducts 1/4th towards personal expenses of the deceased. After such deduction, the total monthly loss of income will be Rs.7,500/- per month. By applying multiplier '15', the total amount compensation payable to the claimants towards loss of dependency is Rs.13,50,000/-.

19. For love and affection a sum of Rs.40,000/- is hereby awarded to the claimants taking the total amount under this head to Rs.2,00,000/-.

20. For funeral expenses a sum of Rs.15,000/- is hereby awarded which will be the fair and reasonable compensation.

21. For loss of estate and for transportation Rs.15,000/- each is awarded which will be the fair and reasonable compensation payable.



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22. In all, a total sum of **Rs.15,95,000/-** is awarded compensation to the appellants/claimants. Accordingly, the award passed by the Tribunal is set aside and the compensation is awarded to the appellant as under:

Loss of income	Rs.13,50,000/-
Love and affection	Rs. 2,00,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Transportation	Rs. 15,000/-

Total	= Rs.15,95,000/-

23. In the result, the award and decree passed by the trial Court in M.C.O.P.No.270 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, is set aside and this Civil Miscellaneous Appeal is allowed. The amount of compensation now determined by this Court in this appeal is directed to be paid by the respondents 1 and 2, who are the owner and insurer of the bus, jointly and severally with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. On such deposit, the 1st claimant shall withdraw a sum



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of Rs.5,00,000/-, the minor claimants 2 to 4 are entitled to Rs.2,50,000/- each and the remaining amount is directed to be paid to the 5th appellant/mother of the deceased. The compensation amount payable to the minor claimants is directed to be deposited in a Nationalised Bank in an interest bearing account till the minors attain majority. However, the first claimant/first appellant herein is permitted to withdraw accrued interest thereof once in three months for the welfare and maintenance of the minor claimants. No costs.

08.04.2022

Index : Yes / No

Internet : Yes/ No

Speaking/Non-speaking order

gbi



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To

1.The Judge,
Motor Accident Claims Tribunal,
Chief Judge, Small Causes Court,
Chennai.

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



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S.KANNAMMAL, J.,

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Pre-delivery Judgment in
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