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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2022

DATED: 04.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 2787 of 2017

Bajaj Allianz General Insurance Company Limited.,
B.O., Kolaman Complex, First Floor,
Saradha College Main Road
Alagapuram, Salem - 636 016. ... Appellant/2nd Respondent

Vs

1.Munni ... 1st Respondent/1st Petitioner
2.Minor Noor Jahan ... 2nd Respondent/2nd Petitioner
3.Minor Ascina ... 3rd Respondent/3rd Petitioner
4.Asia Bee ... 4th Respondent/4th Petitioner
5.Minor Mohammad Hasip ... 5th Respondent/5th Petitioner

Minors 2,3 & 5 are rep.by their mother
and Natural Guardian Munni the 1st Respondent

6.Myil Ananth ... 6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the M.V. Act, 1988 against the decree and Judgment dated
9.03.2017 made in M.C.O.P.No. 1370 of 2013 on the file of the
Motor Accidents Claims Tribunal (Special District Court, Salem).

For Appellant : Mr. T.K.Prem Kumar

For RR 1 to 3 & 5 : Mr. S.P.Yuvaraj



J U D G M E N T

The second respondent in M.C.O.P.No. 1370 of 2013 on the file of the District Court at Salem / Motor Accident Claims Tribunal, Salem, is the appellant herein.

2. The second respondent is aggrieved by the Judgment and Decree dated 09.03.2017, granting compensation of Rs.10,44,000/- for the death of John Basha, the husband of the first claimant and father of the second, third and fifth respondents and son of the fourth respondent.

3. It had been stated in the petition seeking compensation for the death that on 14.08.2013 at around 9.45 p.m., in Dharmapuri to Salem Main Road at Omalur, the deceased was walking on the extreme left and was proceeding towards a Dall Mill, when a vehicle motor car bearing Registration No. TN-33-AR-6494 came from behind and hit him and as a matter of fact, the wheel of the car dragged him to a distance of nearly 100 ft. John Basha died on the spot.

4. It was claimed that the motor car was driven in a rash and negligent manner and did not also blow horn to warn John Basha. Claiming compensation for the said accident, the claim petition had been filed.

5. The second respondent joined issue before the Motor Accident Claims Tribunal and did not admit that the first respondent therein Myil Ananth, or the vehicle bearing No. TN-33-AR-6494 was responsible for the accident. It had been further stated that the Omalur Police Station, Salem District, had registered FIR No. 570 of 2013 under Sections 279 and 304(A) of IPC. After investigation, they had filed a final report stating that the vehicle of the first respondent was not involved in the accident. The second respondent/Insurance Company disclaimed their liability. They also claimed that the compensation sought was excessive and that the claim petition should be dismissed.

6. Even before proceeding further, it must be mentioned that in the nomenclature of the claim petition, it had been stated that it had been filed under Section 163-A and 166 of the Motor Vehicles Act, 1988 read with Rule 3 of the Motor Accident Claims Tribunal Rules.

7. The parties went to trial and during the course of trial, on the side of the claimants, PW-1 and PW-2 were examined. PW-1 was the first claimant / widow of John Basha. On the side



of the respondents, three witnesses were examined and RW-3 was actually the first respondent Myil Ananth. RW-1 was the Sub Inspector of Omalur Police Station. On the side of the claimants, Exs. P-1 to P-15 were marked. Ex.P-1 was the copy of the First Information Report, Ex.P-2 was the postmortem report and Ex.P-3 were the medical reports. On the side of the respondents, Exs. R-1 to R-3 were marked. Exs. X1 to X4 were also marked. Ex.X1 was the copy of the First Information Report, Ex.X2 was the copy of the RCS notice and Ex.X3 was the copy of the final report and Ex.X4 was the report of the Motor Vehicles Inspector.

8. In the course of the Judgment, the first issue which was framed for consideration was as to how the accident occurred.

9. The Tribunal referred to the evidence of RW-3/first respondent, who deposed that at the time of the accident, he was coming from Bangalore to Erode and at around 9 p.m., he crossed Omalur and that he did not cause the accident. Thereafter, the next day the police officials had come over to his residence and had taken his car for inspection. He took back the car after 15 days.

10. The Tribunal also considered the evidence of RW-1 Samydurai, Sub Inspector of Police, Omalur Police Station. In the FIR, it had been stated that the accident had been caused by the vehicle bearing Vehicle Registration No. TN-33AR-6494 which was a red coloured motor vehicle.

11. Thereafter, the witness stated that during the course of investigation, it had been found that no conclusion could be reached consequent to investigation whether the aforesaid vehicle was the cause for the accident and therefore, a final report in the said terms had been filed.

12. However, the Tribunal brushed aside such evidence and also relied on the evidence of PW-2, who stated that he was present at that particular point of time and that the vehicle hit John Basha and dragged him to quite some distance. He also stated that it was a red colour Indica car. He had lodged the complaint, pursuant to which First Information Report in Crime No. 570 of 2013 had been registered. This complaint was given at 3 a.m., that very night when the accident took place. The accident had taken place at 9.45 p.m. In that FIR itself the registration number of the vehicle TN-33-AR-6494 had been mentioned.



13. Balancing the evidence, the Tribunal found that it was that particular car which was the cause of the accident which resulted in the death of John Basha.

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14. Thereafter, the Tribunal proceeded to determine the quantum which was the second issue which was framed for consideration. It was found that the deceased was aged 43 years and that he was doing business. The Tribunal determined his monthly income at Rs.6,500/-. The Tribunal also deducted 3/4th towards family expenses. The Tribunal therefore arrived at a sum of Rs.1,58,500/- as monthly income and applied a multiplier of '14' and determined the loss of income at Rs.8,19,000/-. The Tribunal also awarded Rs.25,000/- for funeral expenses, Rs.40,000/- for loss of consortium for the first claimant and Rs.1,50,000/- for loss of love and affection for the 2nd, 3rd and 5th minor children and Rs.10,000/- for the 4th respondent / mother and awarded a total compensation at Rs.10,44,000/-/ The Tribunal also determined the apportionment to be followed for payment out of the said compensation amount.

15. Questioning this Judgment, the second respondent had preferred with this Appeal.

16. Heard Mr. T.K.Premkumar, learned counsel for the appellant and Mr.S.P.Yuvaraj, learned counsel for the first, second, third and fifth respondents.

17. The main contention raised by Mr.T.K.Premkumar was to question the liability cast on the insurer, since it was stressed by the learned counsel that the vehicle bearing Registration No. TN -33-AR-6494 was not the vehicle which was involved in the accident. The learned counsel pointed out that the vehicle was identified at the Tollgate and later, an inspection was done of the vehicle, and in this connection, the learned counsel relied on Ex.X-4, the report of the Motor Vehicle Inspector where it was stated that there were no visible dents or damages to the vehicle. The learned counsel also placed strong reliance on Ex.X-3/final report filed by the Omalur Police Station, wherein they had referred the case as vehicle could not be traced and closed it.

18. The learned counsel also stated that it had been the consistent case of the witness/PW-2 that the vehicle was a red colour indigo car whereas the vehicle with Registration No. TN-33-AR-6494 was actually a red colour innova car. The learned counsel therefore stated that the appellant should not be



fastened with liability as the vehicle was not at all the cause of the accident.

19. The learned counsel further pointed out that the Motor Accident Claims Original Petition was filed under Section 163-A and 166 of the Motor Vehicles Act, 1988 and in this connection relied on the Judgment of the Hon'ble Supreme Court report in 2007 (2) TANMAC 9 (SC) [Oriental Insurance Company Ltd., Vs. Meena Variyal & Ors], wherein the Hon'ble Supreme Court had brought out the distinction between an application under Section 163-A and under Section 166 of the Motor Vehicles Act, 1988. The learned counsel therefore stated that the petition having been filed under both the petitions, and later since trial had taken place, it should be considered as one under Section 166 of the Motor Vehicles Act, 1988 and the burden was on the claimants to establish that the vehicle which they had identified as the cause of the accident was actually the cause of the accident. Learned Counsel stated that such burden had not been discharged. The learned counsel therefore stated that the Motor Accident Claims Original Petition should be dismissed and the appeal should be allowed.

20. Mr. S.P.Yuvaraj, learned counsel for the first to third and fifth respondents on the other hand supported the findings of the Tribunal that the vehicle involved was actually the red colour motor vehicle bearing Registration No. TN-33-AR-6494 and stated that a positive identification to that extent had been spoken to by PW-2 and there was no reason for PW-2 to allege that a particular vehicle had been the cause of the accident, unless the vehicle was actually the cause the accident. The learned counsel justified the award granted and stated that the appeal should be dismissed.

21. I have carefully considered the arguments advanced and perused the relevant records.

22. In the claim petition, the provision of law had been given stating that it had been filed under both Section 163-A and Section 166 of the Motor Vehicles Act, 1988. However, the Tribunal had proceeded to determine and adjudicate the issues framed only under Section 166 of the Motor Vehicles Act, 1988. Naturally, in any petition filed under Section 166 of the Motor Vehicles Act 1988, a burden is cast on the claimants to establish that the accident occurred owing to the rash and negligent driving of the vehicle involved.



23. In the instant case, there is yet another factor to be examined, namely, whether the vehicle bearing Registration No. TN -33-AR6494 was actually the vehicle which caused the accident. Strong reliance is placed by Mr.T.K.Premkumar, learned counsel for the appellant on Ex.X-3 final report filed by the police wherein, after investigation, it had been concluded that there was a mistake of fact with respect to the vehicle and that the actual vehicle involved could not be traced.

24. The facts of the case reveal that at around 9.45 p.m., at 14.08.2013 in Dharmapuri to Salem Main Road, at Omalur, according to PW-2 and for which there is no contra evidence available, the deceased John Basha was walking on the left side of the road towards a Dhall Mill, when the offending motor vehicle came from behind, hit him and dragged him for about 100 mts. Thereafter, John Basha who suffered grievous injuries, was taken to the Government Hospital at Omalur. He died. Immediately after the accident which occurred at around 9.45 p.m., on 14.08.2013 in the same night, complaint had been given to the jurisdictional police, wherein FIR in Crime No. 570 of 2013 had been registered early in the morning at 3.00 a.m., on 15.08.2013.

25. In the complaint given to the jurisdictional police, namely, the Omalur Police Station, the Registration number of the offending vehicle had been very clearly stated as TN-33-AR-6494. This indicates that in the first instance itself, the vehicle had been identified by its registration number. This gave a clue for further investigation and that particular vehicle was noticed in the Toll gate and it is the evidence of RW-1 Sub Inspector of Police that on the very next day on 16.08.2013, the vehicle was seized and the driver was arrested.

26. I must point out that RW-1 Samydurai, the then Sub Inspector of Police at Omalur Police Station to put it very mildly, did not come out with much credit doing his examination in Court. In his chief examination, he spoke on behalf of the respondents and he stated that the complaint was given and the FIR was registered after 18 hours from the time of accident. This statement is false. In the cross examination, he admitted that the complaint had been given at 3.00 a.m., on 15.08.2013 and that the accident had occurred on 9.45 p.m., on 14.08.2013 which would indicate that the complaint was given in the middle of the night within 5 ½ hours. It is unfortunate that a deep suspicion arises that RW-1 and the Investigating Officer had been in nexus with the respondent. They had knowledge of the registration number of the vehicle. They had seized the vehicle on 16.08.2013. But they sent the vehicle for examination by the Motor Vehicle



Inspector after a period of 17 days. There is no explanation for the delay. This fact has also been admitted by RW-1 in his cross examination. This further affirms and reinforces the conviction in the mind of this Court that RW-1 and the police personal at Omalur Police Station have, for reasons best known and hopefully for not extraneous considerations, acted for the benefit of the respondents though it had been crystal clear in the very first information given to them that the vehicle involved bore the Registration No. TN-33-AR-6494 and it was a red colour Motor Vehicle. The difference in the model of the vehicle pales into insignificance since the Registration number had been very clearly given. I would therefore reject the final report filed by the police that the complaint was a mistake of fact.

27. It must also be additionally stated that under Section 168 of the Motor Vehicles Act, 1988, power had been given to the Claims Tribunal, to hold an enquiry into the claim and then make an award determining the amount of compensation which appears to be just and specifying the person or persons, to whom compensation shall be made and also indicate the amount which shall be paid by the insurer or by the owner or by the driver of the vehicle involved in the accident. Further, Section 169 of the Motor Vehicles Act 1988 gives the procedure and powers of the Claims Tribunal and clarifies the nature of enquiry to be conducted and had stated that summary procedure shall be followed. It had also been stated that the Tribunal shall have the powers of a Civil Court for taking evidence on oath and shall be deemed to be a Civil Court while adjudicating any claim for compensation and while recording evidence.

28. In the instant case, the Tribunal had therefore, with the powers vested in it made such enquiry and had determined that the offending vehicle was indeed the vehicle with Registration No. TN-33-AR-6494. I would concur with that particular finding of the Tribunal and hold that the Tribunal had also correctly adjudged the liability to be paid by the insurer, namely, the appellant herein. The appeal had been primarily preferred on that particular ground and that particular ground fails.

29. The grounds of appeal has been restricted only with respect to the identity of the vehicle and this ground is rejected by me. It is held that the offending vehicle is indeed the red colour vehicle bearing Registration No. TN-33-AR-6494 insured with the appellant.



30. In the grounds of appeal, only in ground No. 13, has the appellant stated that exorbitant sums of compensation had been granted without indicating as to under which particular head the compensation granted is exorbitant. Arguments were also not advanced explaining that aspect.

31. There being no effective appeal on those aspects, I would therefore dismiss the Appeal and affirm the finding of the Tribunal both on the issue of liability placed on the appellant and also on the compensation granted.

32. Therefore, this Civil Miscellaneous Appeal is dismissed. No order as to costs. The order of the Tribunal dated 09.03.2017 made in M.C.O.P.No. 1370 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court, Salem) is confirmed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

vsg

To

1.The Special District Judge,
Motor Accident Claims Tribunal
Salem.

Copy to:
The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to Mr.T.K.Premkumar, Advocate SR.No.14497

+1cc to Mr.SP.Yuvaraj, Advocate SR.No.15101

CMA No. 2787 of 2017

KV(CO)
CB(23/03/2022)