



C.M.A.No.2982 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.11.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2982 of 2022
and C.M.P.Nos.23198 of 2022 and 18854 of 2023

The Divisional Manager
The Oriental Insurance Co. Ltd.
3rd Party Claim Hub
No.256, Prakasam Salai
Chennai 600 008

... Appellant

Vs.

1.Valli
2.Sakkaravarthi
3.Priyanka
4.Srinivason

... Respondent

PRAYER: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.518 of 2015 dated 09.09.2022 on the file of the learned Motor Accident Claims Tribunal Cases / Subordinate Court, Gingee.

For appellant : Mr.J.Chandran

For respondents : Mr.E.Kannadasan - R1 to R3
Mr.M.Guruprasad - R4

JUDGMENT



C.M.A.No.2982 of 2022

On 06.09.2015 at about 11.30 a.m., certain Thiruvengadam died in a road accident. The manner how the accident took place has different versions, but the fact remains he died in a road accident while he was riding a motorcycle bearing Registration No.PY-01-CC-0975. Seeking a compensation, his dependants approached the Tribunal and the Tribunal did award a compensation of Rs.12,40,000/-.

2.Now turning to the specifics, according to the claimants the accident had taken place when a rashly and negligently driven goods carrier knocked the motorcycle in which Thiruvengadam was riding at the relevant time from behind owing to which Thiruvengadam lost control and dashed against a road side tree and met his end. The Insurance Company of the goods carrier which contested the matter contended that the concerned goods carrier was not involved in the accident. According to it, the victim of the accident due to his rash and negligent driving ran on to a road side tree and died.

3. Before the Tribunal, the claimants have examined four witnesses of whom P.W.2 Kumar is critical. The respondent interalia examined R.W.1, the



C.M.A.No.2982 of 2022

brother of the victim.

WEB COPY

4.The Insurance Company appears to have placed reliance on Ex.P.1 / F.I.R, registered at the instance of R.W.1, to project his case of non involvement of the goods carrier in the accident. The Tribunal however, opted to rely on the testimony of P.W.3, an independent witness to hold that there indeed was an accident involving the offending vehicle and proceeded to pass an award for the compensation that it has determined.

5.Contending that there is no involvement of the goods carrier as alleged by the claimants, the Insurance Company of the alleged offending vehicle has preferred this appeal.

6.The learned counsel for the appellant / Insurance Company made the following submissions:

- a) The F.I.R. was registered at the instance of the brother of the victim who was later examined as R.W.1. In Ex.P.1, it is stated that the victim had invited his ultimate end due to his rash and



C.M.A.No.2982 of 2022

negligent driving.

WEB COPY

b) The Tribunal went wrong in relying on the testimony of P.W.3, who had deposed before the Tribunal that he was some 300 meters away and came to the spot when he rushed to the S.O.C on hearing the noise of the accident.

c) The Tribunal has strangely held that because P.W.3 has not denied the involvement of the offending vehicle, it has to be concluded that it was so involved. R.W.1 in his testimony says when he visited the S.O.C. he had seen the goods carrier but does not provide details that it is the offending vehicle involved in the accident.

d) The offending vehicle was identified as involved in the accident some 20 days after the accident and it is found to belong to the 1st respondent who also hails from the same place from where the victim too hailed, R.W.1 speaks to this fact.

7.Collating the bits and pieces of material before this Court, the learned



C.M.A.No.2982 of 2022

counsel submitted that the inconsistency as between the evidence made available by the claimants before the Tribunal shows considerable amount of internal inconsistencies and contradictions, and that they are plainly unreliable.

8.Per contra, the learned counsel for the claimants / respondents submitted that R.W.1 has testified that he came to know about the accident only from a cell phonic call from P.W.2 and P.W.2 speaks to the accident. This apart, R.W.1 even in his chief examination has deposed that he did not prefer any written complaint to the police and that he had signed merely the complaint which had already been prepared. He also added that he was forced to sign the document only to expedite post mortem on the body of his brother. Therefore, the testimony of R.W.1 cannot be read in isolation and unconnected to the circumstances under which he became instrumental for the registration of Ex.P.1 / F.I.R.

9.Rival submissions carefully weighed. Even though Evidence Act may not *stricto sensu* applied to proceedings of a Tribunal, the fact remains that in



C.M.A.No.2982 of 2022

all proceedings of civil character, the Court necessarily need to apply the rule of preponderance of probability in deciding disputed question of fact. Here the question before the Court is whether the goods carrier of the 1st respondent was involved in the accident. As indicated above, this fact has to be decided based on the rule of preponderance of probability.

10.The learned counsel for the appellant relied on Ex.P.1. Ex.P.1, on its face fixes the negligence on the victim of the accident. It however, has to be underscored, that it was given by R.W.1, who admittedly was not at the SOC. Therefore, this Court necessarily requires to look to other evidence. R.W.1 in his cross examination refers to certain Perumal and another Balu were at the Police Station. Of them, Perumal is stated to belong to the very place from where the claimants come from. When R.W.1 is not an eye witness and R.W.1 also refers to two other witnesses, they could have been examined especially when Ex.P1 does not support the case of the claimants. One line of consistency which this Court finds from the evidence on record is that R.W.1 states that he was informed about the accident by certain Kumar, and this Kumar was examined as P.W.2. In his cross examination,



WEB.COM

he had categorically admitted that the victim of the accident was speed-riding and dashed against the road side tree as he could not control the vehicle. He had further admitted in his cross examination that the alleged offending vehicle was implicated in the accident only to obtain compensation. Lastly and not surprisingly, the owner of the offending vehicle hails from the very place where the claimants hail.

11.As rightly argued by the learned counsel for the appellant, when bits and pieces of evidence now available on record are collated together, it inspires confidence to conclude that the offending vehicle might have been involved in the accident as alleged by the Tribunal. This Court finds that the Tribunal has over strained itself in appreciating the evidence of P.W.3 to hold that the driver of the offending vehicle was responsible. The Tribunal apparently did not take into consideration to other attending facts. Even if P.W.3's testimony is considered, he claims that he heard the noise of the accident from a place which according to him is some 300 meters away from the scene of accident. This implies that he is not an eye witness to the accident and whatever he has testified vis-a-vis the manner of the accident can be



C.M.A.No.2982 of 2022

accepted only with a pinch of salt.

WEB COPY

12.This Court concludes that the evidence on record preponderates the only possibility that the 1st respondent's goods carrier could not have been involved in the accident.

13.The appeal stands allowed accordingly. The judgment and decree passed in M.C.O.P.No.518 of 2015 dated 09.09.2022 on the file of the learned Motor Accident Claims Tribunal Cases and Judge / Subordinate Court Judge, Gingee is hereby set aside. This Court is informed that the appellant / Insurance Company had made certain deposits to the credit of this case before the Tribunal. It is now entitled to withdraw the same with all accrued interest. No costs. Consequently, the connected miscellaneous petitions are closed.

27.11.2023

kas

Index : Yes / No
Neutral Citation



C.M.A.No.2982 of 2022

To.

WEB.COM

The Motor Accident Claims Tribunal
Subordinate Court,
Gingee

N.SESHASAYEE, J.



WEB COPY



C.M.A.No.2982 of 2022

kas

C.M.A.No.2982 of 2022
and C.M.P.Nos.23198 of 2022
and C.M.P.No.18854 of 2023

27.11.2023