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CMA NO.168 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01 / 08 / 2024

JUDGMENT PRONOUNCED ON : 19 / 09 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.168 OF 2022
AND CMP NO.1314 OF 2022

The Chief Executive Claim Officer,
Royal Sundaram General Insurance
Company Limited,
II Floor, No.1, Subramaniya
Building,
Club House Road, Anna Salai,
Chennai – 600 002.

... Appellant
2nd Respondent

Versus

1.Paulinmary W/o. Sagayaraj
2.Elsun Rajeshkumar S/o.Sagayaraj
3.Jacqueline D/o. Sagayaraj
4.Savariyammal W/o. Michael

... Respondents 1 to 4/
Petitioners

5.Arul Murugan

... 5th Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor



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Vehicles Act, 1988, praying to set aside the Judgment and Decree dated September 15, 2021 made in M.C.O.P.No.605 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gingee.

For Appellant : Ms.Harini
for Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents 1-4: Mr.M.Santhanaraman

J U D G M E N T

Feeling aggrieved by the Award dated September 15, 2021 passed by the 'Motor Accidents Claims Tribunal, Subordinate Court, Gingee' [henceforth 'Tribunal' for brevity] in M.C.O.P.No.605 of 2018, the second respondent therein, namely, Royal Sundaram General Insurance Company Ltd., has preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, henceforth, the parties will be referred to as per their array before the Tribunal.

Petitioners' case:

3.It is the case of the petitioners that they are the dependents of the deceased - Sagayaraj. On June 9, 2018, at about 18.40 hours, the deceased was riding his motorcycle towards Gingee from Thiruvannamalai. While nearing Sathiyamangalam Village, Varaha Nadhi Bridge, a Car bearing

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Registration No.TN-09-CB-0750 came in the same direction in a rash and negligent manner, and dashed against Sagayaraj's motorcycle. In the said accident, Sagayaraj sustained multiple injuries and he was taken to the Government Hospital, Gingee and then he was referred to JIPMER Hospital, Pondicherry and thereafter, he was transferred to Rajiv Gandhi Government General Hospital, Chennai and subsequently, he succumbed to those injuries. The 1st respondent is the owner of the Car and second respondent is the insurer of the 1st respondent's Car. 1st petitioner is the wife, 2nd petitioner is the son, 3rd petitioner is the daughter, and 4th petitioner is the mother, of the deceased-Sagayaraj. According to the petitioners, at the time of accident, the deceased was 40 years old and was earning a sum of Rs.15,000/- per month. Accordingly, the petitioners filed claim petition before the Tribunal seeking compensation of a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only).

1st Respondent's case:

4.First respondent is the owner of the Car bearing Registration No.TN09-CB-0750.

4.1.Despite service of notice, first respondent did not choose to



contest the petition and hence he was called absent before the Tribunal and accordingly, set *ex-parte*.

2nd Respondent's case:

5. Second respondent is the insurer of the first respondent's vehicle. The second respondent – Insurance Company filed a counter denying the allegations made by the petitioners and also denied the age, avocation and the manner of the accident. According to them, the accident had occurred only due to the negligent act of the deceased. Further case of the second respondent is that the deceased along with two other persons was riding the motorcycle that too without wearing helmet, which are in violation of the Motor Vehicles Act, 1988. In this regard, a case was registered in Crime No.113 of 2018 under Sections 279 and 337 of the Indian Penal Code, 1860, on the file of Sathiyamangalam Police Station, Villupuram District against the Driver of the first respondent's Car. After completion of investigation, the Police filed final report as 'mistake of fact' and closed the case. Hence, the second respondent denied the involvement of the first respondent's Car bearing Registration No.TN-09-CB-0750 in the said accident. The claim petition was filed collusively with a view to get compensation from the second respondent. Accordingly, he prayed to dismiss the Original Petition.



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6.At trial, on the side of the petitioners, first petitioner- Paulinmary was examined as P.W.1 and one Mr.Robin Smith was examined as P.W.2; Ex-P.1 to Ex-P.10 were marked. On the side of the second respondent, one Thiru. Sudharshan, Deputy Manager of second respondent – Insurance Company was examined as R.W.1 and Ex-R.1 to Ex-R.3 were marked.

7.After analyzing the oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent riding of the first respondent' Driver and hence, the second respondent, who is the insurer of the first respondent's vehicle is liable to pay compensation to the petitioners. Accordingly, the Tribunal arrived at a sum of Rs.9,32,750/- as total compensation.

8.Feeing aggrieved with the Award passed by the Tribunal, the second respondent – Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments:

9.This Court has heard the submissions made on either side.

10.The learned counsel for the second respondent (appellant) has



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argued that the Tribunal did not consider the fact that final report clearly establishes that the Car bearing Registration No.TN-09-CB-0750 was not involved in the accident; that the alleged accident happened on June 9, 2018 but the FIR was registered only on June 16, 2018 *i.e.*, after a delay of 7 days and the same has not been properly explained; that though the Tribunal believed the FIR despite the delay, it did not believe the final report, which was filed after a thorough investigation by the investigating agency; that only with a view to get compensation, the petitioners and the first respondent / fifth respondent herein have collusively filed this claim petition; that there is no material evidence available on record to show that the first respondent's vehicle was involved in the accident. Accordingly, the learned Counsel prayed to allow the Civil Miscellaneous Appeal and set aside the Award.

11.Per contra, learned counsel for the petitioners (respondents 1 to 4) contended that immediately after the accident, deceased - Sagayaraj was taken to Government Hospital, Gingee, then he was referred to JIPMER Hospital, Pondicherry and thereafter, to Rajiv Gandhi Government General Hospital, Chennai; that while Sagayaraj was undergoing treatment at Rajiv Gandhi Government General Hospital, Chennai, he passed away; that the first petitioner, who is the wife of Sagayaraj, was accompanying her husband

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throughout this time and hence, the delay in registering the First Information Report (FIR); that the Investigating Officer did not conduct a proper investigation as per law before filing final report; that the Investigating Officer neither examined the owner of the vehicle *i.e.*, first respondent nor the Driver of the first respondent's Car bearing Registration No.TN-09-CB-0750; that the evidence of P.W.2 – Robin Smith (Ocular witness) and the other evidence available on record clearly establishes that the accident occurred on June 9, 2018 at 18.40 hours; that the second respondent – Insurance Company did not examine any witness to disprove or rebut the evidence of the petitioners; that under such circumstances, the Criminal Courts records or final report alone are not sufficient to rebut the evidence of P.W.2, who is an eye-witness; that in the absence of rebuttal evidence, there is no reason to reject the evidence of P.W.1 and P.W.2; that the Tribunal, after evaluating the evidence and the materials available on record, came to the conclusion that the first respondent's vehicle was involved in the accident; that on the date of accident, the first respondent's vehicle was insured with the second respondent; that accordingly, the Tribunal fixed liability on the second respondent and hence, there is no reason to interfere with the Award. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

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Discussion:

12.This Court has considered the submissions made on either side and perused the materials available on record.

13.Thiru. Robin Smith, who was examined as P.W.2, has deposed that on June 9, 2018 at about 06.40 p.m., while he was riding his motorcycle from Tiruvannamalai to his village, he saw Sagayaraj riding ahead of him on his motorcycle. At that time, the Driver of the Car bearing Registration No.TN-09-CB-0750 drove the Car in a rash and negligent manner and rammed into the motorcycle ridden by Sagayaraj. Due to the accident, Sagayaraj sustained grievous injuries. Immediately, P.W.2 and other persons informed Sagayaraj's family about the accident and sent Sagayaraj to Tiruvannamalai Hospital through *108 Ambulance*. Later, P.W.2 came to know that Sagayaraj passed away at Rajiv Gandhi Government General Hospital, Chennai, while under treatment.

13.1.P.W.2 was cross examined by R.W.1. He denied the suggestion that an unidentified motorcycle caused the accident.

14.Accident occurred on June 9, 2018. But the FIR was registered only on June 16, 2018. However, P.W.1 has explained the reason



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for the delay in registering the FIR; she has deposed that since she was accompanying her husband to the Hospitals, she filed the FIR after a delay.

This Court is of the view that there is no reason to reject the explanation offered by P.W.1.

15.The second respondent – Insurance Company has not denied the accident. The case of the second respondent – Insurance Company is that the vehicle bearing Registration No.TN09-CB-0750 was not involved in the accident and that the petitioners and the first respondent collusively filed an FIR with a view to get compensation from the second respondent.

16.In a motor accident claim petition, initial burden is upon the petitioners to prove that the accident occurred due to the rash and negligent driving of the opponent's Driver. In this case, FIR was registered against the first respondent's Driver. P.W.2 who witnessed the accident deposed that the first respondent's Car caused the accident. In these circumstances, the foundational facts *i.e.*, the accident and involvement of the alleged offending vehicle in the accident were established by the petitioners. In these circumstances, the onus to rebut the evidence on the side of the petitioners shifts onto the respondents.

17.The question that arises for consideration in this appeal is

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whether the 2nd respondent (appellant) has successfully discharged the onus of proof by adducing evidence against the case of the petitioners.

18.The 2nd respondent (appellant) has relied on the final report. According to final report, Witness No.4 - Periyannayagam states that first petitioner informed him that, someone known to her from Sathiyamangalam had promised to fetch the accident insurance compensation and that was planning to file a complaint about another vehicle. The statement recorded under Section 161 of the Code of Criminal Procedure, 1973, has no evidentiary value unless the maker of the statement comes to Tribunal and give evidence. Further corroboration is also required depending upon the facts and circumstances of the case on hand. In this case, the Police after investigation has closed the FIR as 'Mistake of Fact'. It should be noted that the Investigating Officer, who filed the negative report has not been examined. Whether the factum of closure has been brought to the notice of the *defacto* complainant or not is also not known to this Court. Further, on perusal of the records, it is seen that the Investigating Officer, neither examined the first respondent / owner of the vehicle nor the Driver of the first respondent's vehicle before filing closure report. The second respondent also did not take any steps to examine the first respondent or the first respondent's Driver.

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Further, the second respondent did not examine any other witnesses shown in the final report. Under such circumstances, this Court is of the considered view that the second respondent did not successfully discharge the onus of proof shifted onto them. That means, the evidence of P.W.1 and P.W.2 have not been rebutted by the respondents.

19.It is settled law that standard of proof requires to claim compensation under the Motor Vehicles Act, 1988 is preponderance of probability and not beyond reasonable doubt. In this case, this Court is of the view that the petitioners have proved their case by way of preponderance of probability. On the other hand, the 2nd respondent (appellant) failed to rebut the evidence of the petitioners. Hence, this Court is inclined to decide that the first respondent's vehicle was involved in the accident; that the first respondent's Driver is responsible for the accident; that the second respondent being the insurer of the first respondent's vehicle, is liable to pay compensation to the petitioners.

20.As far as the quantum of compensation is concerned, the deceased - Sagayaraj passed away on June 16, 2018 at Rajiv Gandhi Government General Hospital, Chennai. The Tribunal relied on the document submitted by the second respondent, which shows the date of birth of

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Sagayaraj as June 8, 1954, to fix 54 years as the age of the deceased. The petitioners have not proved that Sagayaraj was earning Rs.15,000/- per month from his grocery business. Hence, the Tribunal has taken a sum of Rs.7,500/- as his notional income; added 10% as future prospects as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Others [(2017) 16 SCC 680]*; applied multiplier of 11; deducted 1/3rd as his personal expenses as per the decision of the Hon'ble Supreme Court in *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]*; and thus, arrived at a sum of Rs.8,16,750/- as loss of dependency.

21.It is apposite to state that the petitioners / respondents 1 to 4 have not filed any Cross Objection or Appeal. In these circumstances, this Court is of the view that there is no need to interfere with the quantum of compensation awarded by the Tribunal.

Conclusion:

22.In view of the above narrative, this Civil Miscellaneous Appeal does not have merit and accordingly, stands dismissed. Considering



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the facts and circumstances of the case, there shall be no order as to costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

The Motor Accidents Claims Tribunal
Subordinate Court
Gingee.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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