



C.M.A(MD)No.278 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.278 of 2021

and

C.M.P(MD)No.2310 of 2021

and

C.M.P(MD)Nos.433, 2211 & 2209 of 2022

The Deputy Manager (Legal),
M/s.United India Insurance Company Ltd.,
Regional Office/TP/HUB,
3rd Floor, 7A,
West Veli Street,
Madurai-625 001.

: Appellant/2nd Respondent

Vs.

1.Sarprasadhamary
2.SArun Rahul
3.Minor S.Anisha
4.A.Innasi
5.I.Michael Ammal

: Respondents 1 to 5/
Petitioners 1 to 5

(3rd minor respondent represented
through her mother/next friend
S.Sarprasadhamary)

Amended as per order in I.A.No.1365/2016, dated 23.12.2016

6.D.Madhesan

... 6th Respondent/Respondent No.1



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.C.O.P.No.353 of 2014, dated 05.02.2020, on the file of the Motor Accident Claims Tribunal-cum-Special District Court, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.P.K.Rajagopal

JUDGMENT

[Judgment of the Court was made by
K.K. RAMAKRISHNAN.J.]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Special District Court, Madurai in M.C.O.P.No.353 of 2014, dated 05.02.2020, the Insurance Company has filed the present appeal challenging the involvement of the insured vehicle bearing registration number TN 30 AK 3777 in the accident that took place on 19.03.2014.

2.For the sake of convenience, the parties are referred herein as per their ranking before the Tribunal.



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WEB COPY 3.Facts of the Case:-

On 19.03.2014 at about 1.00 p.m., when the deceased was riding the Bajaj Pulsar Motorcycle bearing registration No.TN-65-W-0222 towards North at Madurai-Aruppukottai Road with due care and caution observing traffic rules keeping to his left side, near Kanni Deivam Automobile, the first respondent lorry bearing registration No.TN-30-AK-3777 was driven by RW.4 came behind the deceased in uncontrollable speed and in a rash and negligent manner dashed against the deceased Soosai Doss. Due to the impact, the deceased fell down on the road and died on the spot.

4. The dependants of the deceased filed a claim petition in M.C.O.P. No.353 of 2014, on the file of the Motor Accident Claims Tribunal-Special District Judge, Madurai claiming compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) for the death of the deceased in the said accident. The deceased was working as a Assistant Elementary Educational Officer at the time of accident and hence, they claimed a sum of Rs.50,00,000/- as compensation.



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5.The appellant filed the counter statement denying the involvement of the vehicle. He further pleaded that in the FIR it is stated as Un-known vehicle and subsequently, the investigating officer implicated the vehicle falsely in the above said case and hence, they made a representation to many police officials to investigate the matter. Hence, he seeks exoneration from fixing the liability.

6. Before the Tribunal, to prove the case of the claimants, P.Ws.1 & 3 were examined and marked Ex.P1 to Ex.P10 were marked. On the side of the respondents, R.W.1 to R.W.8 were examined and Ex.R1 to Ex.R9 were marked and Ex.X1 to Ex.X6 were marked.

7.Finding of the Tribunal:

The Tribunal, after considering the evidence adduced on both sides and more particularly, considering the evidence of R.W.4 and other witnesses, declined to accept the contention of the learned counsel appearing for the insurance company that the vehicle was not involved in the said accident and fixed the liability on the appellant and awarded a sum of Rs.25,21,446/- as compensation.



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7.1.In the said circumstances, the insurance company has filed this appeal challenging the finding of the tribunal that R.W.4 drove the insured vehicle bearing registration No.TN 30 AK 3777 and caused the accident to the deceased on 19.03.2014 and the same was proved in accordance with law.

8. Submission of the learned counsel for the appellant:-

The learned counsel appearing for the insurance company would submit that the insurance company has sent a representation and also complaint to the jurisdictional police and the CBCID and the same were marked as Ex.R3 to Ex.R7 and they took steps and brought about the false implication of the vehicle. To prove the same, R.W.4 was examined and Ex.R3 to Ex.R7 were marked. Further, R.W.4 driver of the lorry, deposed that he was not driving the vehicle and he never plied the vehicle in the accident route and hence, the vehicle was not involved in the accident. Therefore, seeks to interfere with the findings of the tribunal and set-aside the same and consequently exonerate the insurance company.



9. Submission of the learned counsel for the claimants/

respondents 1 to 5

Per contra, the learned counsel appearing for the claimants/respondents 1 to 5 submitted that the claim of the appellant that the driver plied the vehicle on some other route has not been proved by any document. He further submitted that the case was investigated and final report has been filed against the driver of the insured vehicle. During the investigation, the police examined three independent witnesses and filed the final report and no interference is required to the findings of the tribunal. Even to support Ex.R3 to Ex.R7 the complaint given to the officers no document was produced to show false implication of the vehicle.

10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

11. The following point arises for consideration of this appeal:

Whether the findings of the tribunal that R.W.4 drove the lorry



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insured with the appellant insurance company bearing registration No.TN 30 AK 3777 on 19.03.2014 on the Viraganoor Ring Road near the Kanni Deivam Automobiles at 1.30pm and dashed the deceased two-wheeler and caused death is correct or not?

12. Deceased Soosai Doss rode his two-wheeler bearing registration No.TN 65 W 0222 on 19.03.2014 on the Viraganoor Ring Road near the Kanni Deivam Automobiles. R.W.4 drove the lorry bearing registration No. TN 30 AK 3777 on the same road in a rash and negligent manner and in an uncontrollable speed and dashed the two wheeler of the deceased. Deceased sustained severe head injuries and died on the spot. After, hitting the two-wheeler, the lorry driver without stopping the vehicle sped off from the occurrence place. One of the son of the deceased reached occurrence place on hearing the news about the accident and made a complaint against the un-known vehicle. Thereafter, the jurisdictional police registered a case on 19.03.2014 in Crime No.97 of 2014 and conducted investigation by examining the P.W.2 (Narayanan), one Ashok Kumar and Sivakumar as occurrence witnesses and found that R.W.4 drove the vehicle bearing the registration No.TN 37



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AK 3777 and dashed the two-wheeler of the deceased and caused the accident resulting in the death of the deceased. After completion of the investigation, he filed final report before the Learned Judicial Magistrate No.II, Madurai. He also arrested the accused.

13.R.W.6 officer of the appellant insurance company conducted independent enquiry and found that the vehicle was not involved and he submitted the report to the head of the department and filed the same before this Court under Ex.R8. Thereafter, he made a complaint to the Superintendent of Police, Madurai (Ex.R4) and CBCID officers (Ex.R6) to make investigation about the false final report filed against the appellant insured vehicle bearing registration No. TN 30 AK 3777. RW.5 also examined from the appellant insurance company and he also reiterated the version of RW.6. According to RW.5&6, the vehicle was not plied in the said accident route. To prove the same, they relied the self serving report under Ex.R8. It is settled principle that the self serving report of the appellant insurance company marked under Ex.R2 is neither admissible nor relevant to decide the involvement of the vehicle as held in the case of *T.T. Antony v. State of Kerala*, reported in (2001) 6 SCC



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31. In Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279] a Constitution Bench of this Court while considering the constitutional validity of the Commissions of Inquiry Act, indicated that the Commission is merely to investigate, record its findings and make its recommendations which are not enforceable proprio vigore and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an exercise of judicial function properly so called. The recommendations of the Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. It would be appropriate to notice the following observations of the Constitution Bench : (AIR p. 547, para 9)

“But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, under Section 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking



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any action 'as and by way of securing redress or punishment' which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be."

14. Even though, the Insurance company had submitted a representation to the Superintendent of Police suspecting involvement of the vehicle, the same was not a ground to render finding that vehicle was not involved without any final opinion on the basis of the representation. Neither the owner of the vehicle nor the driver of the vehicle took steps to show that vehicle was falsely implicated in this case. It is the specific case of the RW.5&6 that the RW.4 did not drive the vehicle in the said route and he plied the vehicle in another route. If it is so, it is duty of the RW.4, RW.5 and RW.6 to prove the same by producing the log books and other documents of the lorry and establish that the vehicle was plying the some other route. In the absence of the same, the final report filed by the

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investigating agency against RW.4 with allegation that RW.4 drove the vehicle and caused the accident on 19.03.2014 in the above stated occurrence place is to be accepted.

15. It is well settled in the motor accident claims, the standard of proof is by way of preponderance of the probabilities, rather than beyond reasonable doubt. The Hon'ble Three Judges Bench of the Supreme Court in the case of the ***United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509 at page 517***

Nature of a claim petition under the Motor Vehicles Act, 1988

10. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accidents Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete code in itself. We may in this context refer to the following significant aspects in regard to the



Tribunals and determination of compensation by the Tribunals:

- 1. Proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (the claimants) under Section 166(1) or Section 163-A of the Act or suo motu by the Tribunal, by treating any report of accident (forwarded to the Tribunal under Section 158(6) of the Act as an application for compensation under Section 166(4) of the Act).*

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

- 1. In a proceedings initiated suo motu by the Tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under Section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver*



and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party-respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under Section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words “receipt of an application for compensation” in Section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu registration of an application for compensation under Section 166(4) of the Act on the basis of a report of an accident under Section 158(6) of the Act.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under Section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of



compensation which appears to it to be just. (Vide Section 168 of the Act.)

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry. (Vide Section 169 of the Act.)

(vii) The award of the Tribunal should specify the person(s) to whom compensation should be paid. It should also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. (Vide Section 168 of the Act.)

(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide Section 168(2) of the Act.)

We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation



on the occurrence of an accident, after due enquiry, in accordance with the statute.

16.The Hon'ble Supreme court in the Paragraph No.15 of the **Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 at page 534** while deciding the similar question whether the vehicle was involved in the accident or not directed the Courts to take holistic view:

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

17.The said principle also reiterated in the **caseParmeshwari v. Amir Chand, (2011) 11 SCC 635 at page 638**

13. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is “a device to grab money from the insurance company”. This finding in the absence of any material is certainly perverse. The High Court



appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2010) 1 SCC (Cri) 1101 : (2009) 5 SCC (Civ) 189] are very pertinent: (SCC p. 534, para 15)

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

18. In view of the above discussion, the Learned Tribunal Judge correctly decided the involvement of the appellant insured lorry in the accident happened on 19.03.2014 and the driver of the said insured lorry dashed the deceased in rash and negligence manner and this Court finds no perversity in the said findings and therefore affirms the said findings.

19. According to the counsel for the appellant, in the FIR it is stated



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that un-known vehicle is involved. FIR is not an encyclopaedia, which is an information received regarding the accident. The investigating officer has conducted an investigation and filed the final report before the jurisdictional Court against the R.W.4. In the said circumstances, R.W.4 failed to prove the case of the insurance company that he was plying the vehicle in some other route and no documents were produced to prove the same. In the said circumstances, an independent witness clearly deposed that the vehicle was involved in the accident and they were subjected to cross-examination and no material was elicited to disbelieve the evidence.

20. Therefore, we are not inclined to accept the arguments of the learned counsel for the appellant that the vehicle was not involved in the said accident and falsely implicated in this case. The Tribunal, appreciating the evidence of R.W.1 and other evidence, more particularly, the evidence of P.W.2 and the charge-sheet filed against the driver of the insured vehicle came to the conclusion that the insured vehicle is involved in the accident.



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21. This Court is in agreement with the findings of the tribunal and the contention of the learned counsel for the appellant/insurance company is not accepted. Hence, we find that the tribunal has rightly come to the conclusion that the vehicle was involved in the accident and fixed the liability upon the driver of the insured lorry and directed to pay the compensation and no interference is required.

22. Regarding the quantum of compensation, the tribunal has rightly awarded the compensation amount and there is no dispute in this regard and hence, the quantum of compensation awarded by the Tribunal is just and fair and does not require any interference.

23. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal – Special District Court, Madurai in M.C.O.P.No.353 of 2014, dated 05.02.2020 is hereby confirmed. The appellant Insurance company is directed to deposit the award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such

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deposit, the claimants are permitted to withdraw their share amount as per the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

**(V.B.S.J.) (K.K.R.K.J.)
15.03.2024**

Index :Yes/No
Internet :Yes/No
am.

To

- 1.The Motor Accident Claims Tribunal-cum-Special District Court, Madurai.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

am

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