BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.03.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.57 of 2024
and
C.M.P.(MD).No.957 of 2024

The Branch Manager,
Reliance General Insurance Company,
Daha Plaza, South Bye Pass Road,
Vannarapettai,
Tirunelveli. ... Appellant

Vs.

1.Rajapaul

2.Minor Michael Trinisha Jenifa

3.Minor Anton Jenifa

(Minor respondents 2 and 3 represented through their father and next friend 1st respondent herein)

4.Arulraja

5.The Branch Manager,
United India Insurance Company Limited,
No.19, 1 Floor, Kalpana Complex,
Cantonment, Fords Road,
Trichy- 680 001. ... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.188 of 2014 on the file of the Motor Accident Claims Tribunal, Valliyoor, dated 19.07.2023.

For Appellant : Mrs.K.R.Shivashankari
For R1 to R3 : Mr.M.Laxmi Mahendraa
For R4 : No appearance
For R5 : Mr.C.Karthik

JUDGMENT

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Valliyoor in M.C.O.P.No.188 of 2014, dated 19.07.2023, the present appeal has been filed by the Insurance Company.

2. The respondents 1 to 3 filed the petition in M.C.O.P.No.188 of 2014, seeking compensation of Rs.1,50,00,000/-, for the death of the first respondent's wife viz., Jasmin Melba, in the road accident on 25.07.2014.

3.Facts of the Case:

According to the claimants, on 25.07.2014, at about 4.15 pm., the deceased namely Jasmin Melba was travelling from east to west on the left side of the road in a two wheeler near Valliyoor Bagavath singh bus stop and at that time the vehicle coming behind namely a Mini Bus bearing Registration No.TN 45 N 0354 , was driven at a high speed not using the horn by its driver and dashed against the two wheeler of the deceased. Due to the said impact, the deceased namely Jasmin Melba, died on the spot. The accident occurred only, as the driver of the mini bus drove it in a high speed and rash and negligent manner. The fourth respondent is the owner of the involved vehicle. In the said accident, the offending vehicle Mini bus was insured with the appellant insurance company. The FIR was registered against the driver of the Mini Bus in Crime No.328/2014 under Sections 304(A) of IPC.

4. The claim was resisted by the appellant/Insurance Company contending that the Mini Bus bearing Registration No.TN 45 N 0354 was not involved in the accident and in order to claim compensation from the Insurance Company, the claimants implicated the Mini Bus. Further, the accident had happened only on account of the fault of the deceased only, for which the Insurance Company is are not liable to pay compensation.

5. Finding of the Tribunal:

Before the Tribunal, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P20 were marked and on the side of the respondents, R.Ws.1 to 3 were examined and Exs.R1 and R2 were marked. The permission letter was marked as Ex.X1 and the permit of the Mini Bus bearing Registration

No.TN 45 N 0354 was marked as Ex.C2. The Tribunal, upon considering the oral and documentary evidence, came to the conclusion that the driver of the Mini Bus bearing Registration No.TN 45 N 0354 caused the death and awarded a sum of Rs.73,05,100/- with 7.5% interest from the date of petition till the date of realisation under the heads which are as follows:

Sl.No.	Heads	Amount in Rupees
1	Loss of Income	Rs. 71,55,024/-
2	Loss of Estate	Rs. 15,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Loss of Consortium to the first respondent	Rs. 40,000/-
5	Loss of Love and affection to the second and third respondent	Rs. 80,000/-
	Total	**Rs.73,05,024/-**

Challenging the same, the present appeal has been filed by the Insurance Company only disputing the involvement of the vehicle.

6. Submission of the learned counsel for the Appellant:

The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal ought not to have fastened the liability against the appellant/Insurance Company, when the insured vehicle bearing Registration No.TN 45 N 0354 was not involved in the accident. Further, the evidence of P.W.2 does not corroborate with the documentary evidence relied on by the claimants to prove the accident. She would further submit that in order to claim compensation from the appellant/Insurance Company, the vehicle bearing Registration No.TN 45 N 0354 was falsely implicated. The same was not properly considered by the learned Tribunal Judge and hence, she seeks to interfere with the award.

7.**Submission of the learned counsel appearing for the respondents 1 to 3 and 5:**

The learned Tribunal judge accepted the evidence of the eye witness and disbelieved the evidence of the respondent's evidence and has held that the appellant insured vehicle was involved in the accident. The said finding is based on appreciation of evidence. This Court has no jurisdiction to interfere with the award. Therefore, they seek to dismiss this appeal.

8. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to 3 and 5 and perused the materials available on record.

9.The following points arise for consideration of this appeal:

9.1.Whether the learned Tribunal is correct in holding that the appellant insured vehicle is involved in the accident.

10.Discussion on the negligence and involvement of vehicle:

It is the case of the claimants that on 25.07.2014, at about 4.15 pm., while the deceased namely Jasmin Melba was riding two wheeler from east to west on the left side of the road in a two wheeler near Valliyoor Bagavath singh bus stop, the Mini Bus bearing Registration No.TN 45 N 0354 , was driven at a high speed by its driver and dashed on the back side of the two wheeler of the deceased and hence, she sustained injuries and died on the spot. P.W.2 clearly deposed above manner of the accident and his evidence is cogent and trustyworthy. Even though he was subjected to incisive cross examination, nothing was elicited to disbelieve his version. No contra evidence was adduced to prove that he was not present on the scene of the occurrence. The FIR also registered against the driver of the appellant insured vehicle. The motor vehicle report also confirmed the involvement of the appellant insured vehicle. The case of the appellant that the case was registered against one Vijayan and he was the driver of the vehicle bearing Registration No.TN 45 C 1567, was not proved through legal evidence. Further case of the appellant that the vehicle bearing Registration No.TN 45 N0354, also has no route in the said area is also not proved. The learned Tribunal Judge correctly disbelieved the evidence of

D.W.1., who was according to the appellant insurance company, drove the vehicle bearing Registration No.TN 45 C 1567. He has also not filed any document to show that he drove the vehicle on the said day. Therefore, in all aspects, the case of the appellant that the vehicle was falsely implicated is not proved in accordance with law.

11. 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 ***United India Insurance Co. Ltd. v. Shila Datta***, reported in **(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.

12.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 a 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.*

13.The said principle also reiterated in the case of ***Parmeshwari v. Amir Chand,*** reported in ***(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."*

14.In this case, the P.W.2 independent witness clearly deposed about the involvement of the appellant insured mini bus in the accident happened on 25.07.2014. The owner of the vehicle was not examined to prove the fact that the vehicle was not operated in the said route. In the summary proceedings, when the learned Tribunal Judge believed the evidence and considered Ex.Ps. 1, 5, 6 and 7 and the evidence of P.W.2 and non appearance of the owner of the vehicle and rendered the finding that the vehicle was involved in the accident, as held by the above, the Hon'ble Supreme Court, this Court has no jurisdiction to interfere with the finding of the said learned Tribunal Judge without any perversity and therefore, this Court declines to accept the submission of the learned counsel appearing for the appellant that the claimants have not proved the involvement of the vehicle in the accident.

15.The appellant insurance company has not disputed the quantum and relating to the arrival of the quantum and hence, this Court confirm the award amount passed by the learned Tribunal Judge.

16.Accordingly, This Civil Miscellaneous Appeal is dismissed. The compensation awarded in M.C.O.P.No.188 of 2014 on the file of the Motor Accident Claims Tribunal, Valliyoor, dated 19.07.2023, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the major claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank in a fixed deposit under cumulative deposit scheme, till they attain majority. The first respondent, who is the father and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minors. No Costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] **[K.K.R.K.,J.]**
01.03.2024

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

akv/*sbn*

To

1.The Motor Accident Claims Tribunal,
Valliyoor.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

V.BHAVANI SUBBAROYAN,J.
and
K.K.RAMAKRISHNAN,J.

akv/*sbn*

C.M.A.(MD).No.57 of 2024
and
C.M.P.(MD).No.957 of 2024

Dated: 01.03.2024