

(2013) 11 MAD CK 0062

In the Madras High Court

Case No : C.M.A. No. 91 of 2010 and M.P. No. 1 of 2010

New India Assurance Company Ltd.

APPELLANT

Vs

Madhammal, Krishnan, Siva represented by his Mother and
Next Friend Madhammal and S. Bagadhoor

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0062

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; M. Selvam for Respondents 1 to 3 and
Mr. P.S. Kothandaraman for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The New India Assurance Company Limited, which figured as the second respondent in MCOP. No. 341 of 2005

on the file of the Motor Vehicle Accident Claims Tribunal (Additional District Judge), Dharmapuri, is the appellant in the present Civil

Miscellaneous Appeal. The claimants before the Tribunal are the respondents 1 to 3 in the appeal. The owner of the offending vehicle allegedly

involved in the accident, who figured as the first respondent in MCOP is the 4th respondent in the appeal. The respondents 1 and 2 herein, being

the wife and father of the deceased Vijayakumar, claimed compensation to the tune of Rs. 10,00,000/- by filing MCOP. No. 341 of 2005 on the

file of the Tribunal against the 4th respondent herein and the appellant herein as owner and insurer respectively of the lorry bearing registration No.

TAS-4579 for the death of Vijayakumar, husband of the first respondent. As the first respondent was carrying a child in the womb and during the

pendency of the MCOP she delivered a child, the said child was impleaded as third petitioner in the MCOP. In their petition, they had contended

that while the deceased Vijayakumar was proceeding in his bicycle from Gandhipalayam to Dharmapuri Bus Stand cautiously and observing all

traffic rules keeping extreme left side of the road on 09.02.2005 at about 4.30 a.m., the above said lorry bearing registration No. TAS-4579 came

from behind, driven by its driver in a rash and negligent manner and hit the cycle near Periyar Statue causing instant death of the said Vijayakumar.

According to the respondents 1 to 3/claimants 1 to 3 in the MCOP, the accident took place solely due to the rash and negligent driving of the

above said lorry by its driver and hence, the 4th respondent as owner and the appellant as insurer of the lorry were liable to pay compensation to them.

2. The 4th respondent, who figured as the first respondent in the MCOP, did not contest the case and he remained ex parte.

3. The appellant herein, who figured as the second respondent in the MCOP, alone contested the case, totally denying the involvement of the

aforesaid vehicle belonging to the 4th respondent, which stood insured with the appellant herein. Beside such a total denial, the appellant had also

denied the averments made in the petition that the accident took place due to the rash and negligent driving of the lorry by its driver. In addition,

they had also disputed the claim of the respondents 1 to 3 herein to be the legal heirs of the deceased. Based on such averments made in the

counter statement, the appellant herein prayed for dismissal of the MCOP.

4. In the enquiry conducted before the Tribunal, three witnesses were examined as P.Ws. 1 to 3 and seven documents were marked as Exs. A1 to

A7 on the side of the respondents 1 to 3 herein/claimants 1 to 3. Two witnesses were examined as R.Ws. 1 and 2 and no document was marked

on the side of the appellant herein/second respondent in MCOP.

5. The Tribunal, upon consideration of the evidence, rendered a finding that the vehicle bearing registration No. TAS-4579 owned by the 4th

respondent herein/first respondent in the MCOP, which stood insured with the appellant herein/second respondent in the MCOP, was the

offending vehicle, which caused the accident. The Tribunal also held the driver of the said lorry to be at fault as he had driven the said vehicle in a

rash and negligent manner and hit the deceased, who was proceeding in his bicycle, from behind, and thus caused the accident leading to the instantaneous death of the deceased Vijayakumar. Taking the age and income of the deceased to be 25 years and Rs. 3,000/- per month respectively and fixing the annual income at Rs. 36,000/-, the Tribunal deducted 1/3rd amount from the annual income towards personal and living expenses, multiplied the balance with the selected multiplier "18", arrived at the figure Rs. 4,32,000/- as the loss of support suffered by the respondents 1 to 3 herein, added some amount towards conventional damages and fixed the total amount of compensation as Rs. 4,65,000/-. The Tribunal held the 4th respondent herein and the appellant jointly and severally liable to pay the said amount together with an interest on the said amount at the rate of 7.5% per annum and also costs. The Tribunal has also indicated the ratio in which the amount is to be apportioned among the respondents 1 to 3 herein.

6. As against the award passed by the Tribunal, the respondents 1 to 3/claimants have not chosen to file any appeal or cross objection, claiming

enhancement of compensation. The 4th respondent also has not filed any appeal.

7. The appellant/insurer alone has chosen to file the present appeal challenging the fixation of the liability not only on the appellant/insurer, but also

on the 4th respondent, on the premise that the above said vehicle bearing registration No. TAS-4579 was not the one involved in the accident and

that the claim came to be made in collusion with the 4th respondent herein. The only ground on which the award of the Tribunal is challenged in this

appeal is that a vehicle, which had nothing to do with the accident in which Vijayakumar died, had been wrongly introduced to cause wrongful loss

to the appellant and wrongful gain to the respondents 1 to 3 herein, with the collusion and connivance of the 4th respondent herein. The appellant

has not challenged even the reasonableness of the quantum awarded as compensation. Hence, the only question that arises for consideration in this

appeal is:

Whether the claim made by the respondents 1 to 3 is a collusive claim made in collusion with the 4th respondent and whether the lorry bearing

registration No. TAS-4579 was not the one involved in the accident in question ?

8. The argument advanced by Mr. S. Manohar, learned counsel for the appellant

and Mr. M. Selvam, learned counsel for the respondents 1 to 3 are heard. Though the 4th respondent had chosen to enter appearance through a counsel in this appeal even though he remained ex parte before the Tribunal, there is no representation for the 4th respondent and hence, this Court is left with no other option to decide the case after hearing the arguments advanced on behalf of the appellant and respondents 1 to 3 herein.

9. The learned counsel for the appellant vehemently argues that the information furnished to the police for the registration of the case did not contain either the registration number of the lorry or the make of the lorry so as to enable the police to identify the same; that the owner of the said vehicle, who is none other than the 4th respondent herein and the driver were summoned and examined by the appellant herein and they deposed to the effect that they themselves took the lorry to the police station, surrendered the same for inspection, whereas according to the evidence of PW. 3, the vehicle was traced with the clue found in the First Information Report and that the said contradiction would indicate that by collusion between the respondents 1 to 3 and the 4th respondent herein the vehicle which was not involved in the accident has been planted in this case. The learned counsel for the appellant would also contend that the case of the respondents 1 to 3 projected through PW. 3, that one Thangavelu, who saw the vehicle at a place in Salem, on his own gave the information to the police and based on such information, the vehicle was seized by the police could not be true.

10. On the other hand, Mr. M. Selvam, learned counsel for the respondents 1 to 3 would contend that there was no collusion as projected by the appellant and on the other hand, there seems to be an attempt made by the appellant/insurer in collusion with the 4th respondent to deny the liability of the owner as well as insurer of the offending vehicle. It is his further contention that even though the registration number of the lorry was not furnished by the informant to the police in the First Information Report, a vital clue had been furnished by him and based on that vital clue, one who had seen such a vehicle with the unique mark passed on the information to the police and the same led to the detection of the vehicle involved in the accident.

11. This Court paid its anxious consideration to the above said submissions made

on behalf of the appellant and on behalf of the respondents 1 to

3.

12. It is not in dispute that the deceased Vijayakumar, while proceeding in his bicycle on 09.02.2005 at about 4.30 a.m. near Periyar Statue,

Dharmapuri on Thiruppattur Dharmapuri Road, a lorry that came from behind hit him and ran over him causing instantaneous death of

Vijayakumar. PW. 2 Tirupathi, who was an eye witness to the occurrence gave the complaint to the police and the copy of the First Information

Report has been marked as Ex. A1. In the complaint, he has stated in clear terms that while he was proceeding on the above said road near Girls

Higher Secondary School, the deceased was proceeding in his bicycle ahead of him and that near Periyar Statue when he was turning towards

right, a lorry which came in the very same direction, passed him and at that point of time, he was able to see the rashness and negligent reckless

manner in which the driver of the said lorry was driving the same and that while so, he saw the said lorry hitting the deceased, pursuant to which the

deceased fell down and crushed under the wheel. He has also stated in clear terms that though he was not able to note the registration number of

the lorry, on the back side of the lorry he saw a picture painted depicting an elephant holding a tree. Based on the said information, the case was

registered and during the course of investigation, according to PW. 3 investigating officer, the vehicle was traced on the information furnished by

one Thangavelu that the said lorry with such a picture on its back side was found at a place in Salem. Of course there are some discrepancies

between the evidence of PW. 3 and the evidence of driver and owner of the vehicle, who were summoned and examined on the side of the

appellant as R.Ws. 1 and 2 as to whether the police went to Salem and seized the vehicle after identifying it or the driver and owner of the vehicle

took the vehicle to the police station and produced it for inspection. Such a discrepancy caused by the testimonies of R.Ws. 1 and 2 cannot be

successfully projected against the claims of the respondents 1 to 3 herein.

13. It is not the case of the appellant herein that the lorry bearing registration No. TAS-4579 belonging to the 4th respondent herein, which stood

insured with the appellant herein, did not contain a picture as described in the First Information Report on the back side of the lorry. Though the

learned counsel for the appellant might have made an attempt to contend that the said identification alone shall not be enough to fix the vehicle, such an attempt in this case is not fully successful. R.Ws. 1 and 2 who were summoned by the appellant herein denied having colluded with the respondents 1 to 3. They have also clearly admitted that the lorry bearing registration No. TAS-4579 was with a picture on its back side depicting an elephant carrying a tree. It is also an admission made by them that the said lorry was the one involved in the accident. When such is the admission, which corroborates the particulars found in Ex. A1-First Information Report, stronger evidence is needed on the side of the appellant herein to show that the said vehicle was planted in order to enable the respondents 1 to 3 to make a claim against the appellant/insurer. Even though a blanket suggestion was made that the same could not be the only vehicle with such picture, it was not brought to the notice of either the Investigating Officer or the Tribunal that there was any other lorry bearing some other registration number with the very same identification mark. In the absence of any such evidence on the part of the appellant and in the light of the admission made by R.Ws. 1 and 2, the discrepancies between the evidence of PW. 3 and the evidence of R.Ws. 1 and 2 can be ignored.

14. It is also pertinent to note that RW. 1 was prosecuted for the offence under Sections 279 and 304(A) IPC on the allegation that he drove the lorry bearing registration No. TAS-4579 in a rash and negligent manner and caused the accident leading to the death of Vijayakumar. The certified copy of the final report is Ex. A6. RW. 1 admitted the charge, pleaded guilty and based on his admission, he was convicted. The same is evident from the copy of the judgment of the criminal Court marked as Ex. A7. Though the judgment of the criminal Court will be irrelevant in civil cases and Motor Accident Claim Cases, when the conviction is made based on admission, the same becomes admissible not as a judgment of the criminal court, but as an admission. Admissions are the best evidence even though they are not conclusive proof. In order to discredit the evidentiary value of such admission, the party opposing it is expected to lead evidence to prove that either such admission was not made or that such a fact admitted therein is not true. Stronger proof is needed in such cases. In this case, except summoning R.Ws. 1 and 2 and cross examining

them, no other evidence has been adduced on the side of the appellant to show that the fact admitted by RW. 1 in the criminal case was not true.

Apart from the fact that the admission made by RW. 1 in the criminal case being one of the best pieces of evidence, there are other evidence in the

form of testimonies of P.Ws. 2 and 3 and Ex. A1 to prove the case of the respondents 1 to 3 herein that the lorry bearing registration No. TAS-

4579 belonging to the 4th respondent herein was the one which caused the accident.

15. For all the reasons stated above, this Court comes to the conclusion that the finding of the Tribunal that the respondents 1 to 3 were able to

prove by preponderance of probabilities that the above said vehicle, namely the lorry bearing registration No. TAS-4579, was the one involved in

the accident cannot be termed either infirm or defective warranting interference by this Court. This Court is also of the considered view that the

appellant is not able to prove by sufficient reliable evidence any collusion or fraud to make a wrong claim against the appellant/insurer. Therefore,

the finding of the Tribunal that the lorry bearing registration No. TAS-4579 was the offending vehicle deserves to be confirmed. Accordingly, the

said finding is confirmed.

16. As pointed out supra, the challenge to the award is made only on the ground that a vehicle which had nothing to do with the accident had been

planted with a view to make a claim against the appellant/insurer and no one has challenged the award on quantum. It is also not the case of the

appellant that the lorry bearing registration No. TAS-4579 belonging to the 4th respondent herein was not insured with the appellant as on the date

of the accident. Therefore, the finding of the Tribunal that the 4th respondent herein and the appellant herein being respectively the owner and the

insurer of the lorry bearing registration No. TAS-4579 are liable to jointly and severally compensate the respondents 1 to 3 herein deserves to be

confirmed. There is no merit in the appeal and the appeal deserves to be dismissed. In the result, the appeal fails and the same is dismissed. The

award of the Tribunal is confirmed without any modification. However, there shall be no order as to costs in this appeal. Consequently, connected

Miscellaneous Petition is closed.